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9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

[FNS-2007-0041]

RIN 0584-AD36

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Miscellaneous Vendor-Related Provisions

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the WIC Program to clarify issues that have arisen subsequent to the publication of the WIC Food Delivery Systems Final Rule on December 29, 2000, and to strengthen further the requirements for State vendor management and infant formula cost-containment systems. This rule contains provisions that would prohibit a State agency from requiring an infant formula manufacturer to provide free infant formula or other items in its infant formula rebate bid solicitation and contract; require that a State agency provide an abbreviated administrative review when a vendor receives a WIC civil money penalty (CMP) as a result of a Food Stamp Program (FSP) disqualification; and expand the types of vendor information that a State agency may release for general program purposes. Technical changes were also made to 7 CFR 246.16a due to revisions made to the WIC Food Packages, published in the **Federal Register** December 6, 2007. This rule updates regulatory citations contained in 7 CFR 246.16a that refer to 7 CFR 246.10.

DATES: *Effective Date:* This rule is effective June 23, 2008.

Implementation Date: State agencies must implement the provisions of this rule no later than October 23, 2008.

FOR FURTHER INFORMATION CONTACT:

Debra R. Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302, (703) 305-2746.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant and was not reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). The Administrator, Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule modifies language used in WIC infant formula rebate solicitations and contracts, as well as in vendor agreements. The effect of these changes would fall primarily on State agencies. Vendors authorized by the WIC Program to provide supplemental foods, some of which are small entities, could also be affected. However, the impact on small entities is expected to be minimal.

Unfunded Mandates Reform Act

Title II of the 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and related Notice (48 FR 29114), this program is included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13121.

Prior Consultation With State Officials

Prior to drafting the final rule, a comment period was provided to permit State and local agencies and the general public the opportunity to comment on the proposed changes. Further, because the WIC Program is a State-administered, federally funded program, FNS regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program and policy issues. This arrangement allows State and local agencies to provide comments that form the basis for many discretionary decisions in this and other WIC Program rules. We have also received oral and written requests for policy guidance on the implications of the Food Delivery Systems Final Rule from State agencies that deliver WIC services.

Nature of Concerns and the Need To Issue This Rule

This rule addresses the need to assure the soundness of infant formula rebate solicitations and contracts. With limited

exceptions, as provided for at 42 U.S.C. 1786(h)(8) and WIC regulations at 7 CFR 246.16a(a), all State agencies must continuously operate a cost containment system for infant formula. Some also have rebates for other supplemental foods, such as infant juice and cereal. As a result, in Fiscal Year 2006, State agencies received approximately \$1.7 billion in rebates on infant formula and other supplemental foods purchased by WIC participants. The rebates that State agencies receive allow the WIC Program to serve an estimated 2 million additional participants annually.

Infant formula manufacturers have questioned the inclusion of requirements to provide free infant formula and other items in infant formula rebate bid solicitations. Receipt of free infant formula reduces the amount of formula that the State agency potentially could purchase under rebate contracts and may lower the level of rebate bids received. A lower rebate could lead to a reduction in the number of eligible persons that the WIC Program is able to serve. This rule modifies the requirements for rebate solicitations and contracts to address this issue and thereby helps to maintain sound infant formula cost containment systems.

Technical changes were made to 7 CFR 246.16a due to revisions made to the WIC Food Packages, published in the **Federal Register** December 6, 2007. This rule updates regulatory citations contained in 7 CFR 246.16a that refer to 7 CFR 246.10.

The rule also addresses two issues affecting WIC vendors. First, State agencies have questioned the need to offer a full administrative review to vendors who receive a WIC civil money penalty as a result of FSP disqualification. State agencies are required to impose a civil money penalty when they determine that an authorized vendor that has been disqualified from the FSP is needed to ensure participant access to supplemental foods. In responding to this issue, the rule seeks to assure a vendor's right to due process while encouraging the most cost-effective use of State agency resources.

In addition, while implementing the WIC Food Delivery Systems Final Rule, State agencies have sought approval to release basic vendor information that the rule designates as confidential. This rule seeks to accommodate State agency requests to release such information, while preserving the overall confidentiality of vendor information.

Extent To Which Those Concerns Have Been Met

The rule would substantially resolve the vendor management problems State agencies have identified. It increases a State agency's flexibility in conducting appeals of a civil money penalty imposed in lieu of reciprocal disqualification from the WIC Program, and in disclosing vendor information as part of sound program management. It also supports the integrity of State agency infant formula rebate systems by prohibiting gratis provision requirements in infant formula rebate solicitations and contracts.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with Departmental Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts this rule might have on minorities, women, and persons with disabilities. All data available to FNS indicate that protected individuals have the same opportunity to participate in the WIC Program as non-protected individuals. FNS specifically prohibits State and local government agencies that administer the WIC Program from engaging in actions that discriminate against any individual in any of the protected classes; see 7 CFR 246.8(a) for the non-discrimination policy of the WIC Program. Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 246.8.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain

information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

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

Background

On July 27, 2005, the Department published a proposed rule at 70 FR 43332, concerning revisions of miscellaneous vendor-related provisions of the WIC Program regulations. The comment period ended on November 25, 2005. Thirteen comment documents were submitted to the Department to provide comments on the proposed revisions. We greatly appreciate these comments, all of which were carefully considered in the development of this final rule. Following is a discussion of each provision as proposed, the comments received, and an explanation of the provisions set forth in this final rule.

1. Gratis Provisions in Infant Formula Rebate Solicitations and Contracts (7 CFR 246.16a(j)(4))

The Department proposed prohibiting the requirement of gratis infant formula or other items in infant formula rebate solicitations and contracts. The receipt of free infant formula or other items by the State agency from the manufacturer may lower the level of rebate bids received. Therefore, the Department proposed to amend 7 CFR 246.16a(j), by adding to a list of provisions that are prohibited to be included in cost containment contracts the requirement for gratis infant formula and other items.

All but one of the comment letters received supported this proposal. Some of the comment letters supporting the provision also recommended allowing: (1) Exceptions from the gratis prohibition for labels and other inexpensive educational materials that are germane to the contract; (2) gratis provisions only for new brands of infant formula introduced to participants as a result of the bid process; (3) State agencies that choose to provide sample infant formula to pay for it at the net contract price; (4) capping the purchase amount of infant formula samples to no more than one percent of the previous year's volume of infant formula; and (5) gratis provisions as voluntary components of bids which would not be

used in evaluating the bidder's qualifications, or economics of the bid.

One commenter opposing the provision agreed that the elimination of sample or gratis formula would result in lower cost to the manufacturer, more favorable bids, and ultimately lower WIC food costs. However, the commenter stated that formula is needed by clinics for formula challenges and substitutions for a different type of formula when an infant cannot tolerate the formula initially issued. This commenter requested that the Department require State agencies to evaluate the levels and uses of gratis infant formulas to ensure cost effectiveness and to ensure the needs of infant participants are addressed. The Department has considered these recommendations and discusses them below.

One commenter requested State agencies be allowed to purchase limited quantities of sample infant formula. Currently, WIC State agencies are allowed to pay for sample infant formula for clinics to use for formula challenges and substitutions. Contracts can include a provision to allow a State agency to purchase sample formulas at the same net cost as other contract infant formulas. WIC Program funds may not be used to purchase formula for applicants or other individuals who are not WIC participants (7 CFR 246.14(b)(1)(i)). Therefore, State agencies that choose to purchase sample infant formula would be expected to ensure that such formula is issued to a WIC participant only.

Commenters also suggested State agencies be given the authority to request the manufacturer provide labels and mixing instructions for safe handling and safe storage of its products. It is not the intent of this regulation to prohibit such practices by State agencies; however, such items may not be included as a required provision in an infant formula rebate solicitation and contract.

Several commenters suggested State agencies be required to limit the purchase amount of infant formula samples. If a State agency purchases infant formula to be distributed as samples, or receives sample infant formula voluntarily from an infant formula manufacturer, State agencies may want, as a prudent business decision, to consider capping the amount of sample infant formula that is issued, or to establish other procedures for the control and issuance of sample infant formula. However, no changes will be added to this rule requiring such a cap.

FNS continues to believe that contract solicitations should not require any gratis infant formulas, even if these gratis formulas are not included as part of the bid evaluation. Such provisions are considered inappropriate and could have the effect of reducing rebate savings not only to individual State agencies, but also to the WIC Program nationally.

Accordingly, after careful consideration of the comments received, 7 CFR 246.16a(j)(4) in this final rule remains as proposed.

2. Abbreviated Administrative Reviews (7 CFR 246.18(a)(1)(ii))

The Department proposed to require a State agency to offer an abbreviated administrative review when a vendor appeals a WIC CMP imposed in lieu of a disqualification that stems from an FSP disqualification unless, as in the case of all adverse actions subject to abbreviated administrative review, the State agency decides to provide a full administrative review. As a result of the WIC/FSP Vendor Disqualification Rule, 64 FR 13311, March 18, 1999, a reciprocal disqualification imposed by a WIC State agency, *i.e.*, a disqualification based on an FSP disqualification, is not currently subject to administrative or judicial review under the WIC Program. However, if the State agency determines that the vendor is needed to ensure participant access to supplemental foods, the State agency must impose a CMP in lieu of a disqualification as provided in 7 CFR 246.12(l)(1)(ix); under 7 CFR 246.18(a)(1)(i), the imposition of a CMP in lieu of disqualification is subject to a full administrative review.

The Department took the position that a CMP imposed in lieu of a reciprocal disqualification does not warrant a full administrative review, and instead should be subject to an abbreviated administrative review, because at issue are two factual questions only, namely, whether the vendor has been disqualified from FSP and whether the State agency correctly calculated the amount of the CMP. Answers to these questions can easily be established within the context of an abbreviated review; an abbreviated review would be the more cost-effective means of honoring the vendor's due process protections. This would be consistent with the adverse actions for which WIC Program regulations currently allow abbreviated reviews.

All commenters supported the proposal, although one commenter recommended that adverse actions for two other reasons also be made subject to abbreviated administrative review,

including denial of authorization based on an absence of FSP authorization and disqualification resulting from failure to pay a CMP.

The Department agrees that denial of authorization based on an absence of FSP authorization should also be subject to an abbreviated administrative review. Like termination based on change of location, or denial of an application submitted outside of the timeframe for submitting applications, which are subject to abbreviated administrative review under the current regulations, determination of whether an applicant vendor is currently FSP-authorized is also a narrow factual determination. Many WIC State agencies require FSP authorization as a selection criterion for WIC authorization. Although not a mandatory selection criterion, requiring FSP authorization as a selection criterion for WIC authorization helps the WIC State agency to screen vendor applicants regarding common requirements of the two programs such as business integrity and valid documentation of ownership.

However, unlike the absence of FSP authorization, failure to pay a CMP may involve issues that are beyond a narrow factual determination. Therefore, the Department will consider seeking public comment on whether an abbreviated administrative review rather than a full administrative review should be provided for failure to pay a CMP in a future rulemaking.

Accordingly, 7 CFR 246.18(a)(1)(ii) in this final rule remains as proposed except that denial of authorization based on an absence of FSP authorization will be included as an additional adverse action which is subject to an abbreviated administrative review.

3. Confidentiality of Vendor Information (7 CFR 246.26(e))

The current 7 CFR 246.26(e) restricts the use or disclosure of information that individually identifies a vendor, except for the vendor's name, address and authorization status, to persons directly connected with the administration or enforcement of WIC or FSP; persons directly connected with the administration or enforcement of any Federal or State law; or vendors who are subject to an adverse action.

The Department proposed to amend 7 CFR 246.26(e) to expand the types of vendor information allowed for general release and thus not be subject to confidentiality restrictions, including the vendor's telephone number, Web site and e-mail address, WIC identification number, and store type. The term "store type" refers to ordinary

terms for retail food stores, such as "grocery store," "chain store," and "convenience store," but not to specialized regulatory terms such as "above-50-percent vendor" or "WIC-only store". "Store type" was included in the preamble of the proposed rule, but inadvertently omitted from the proposed rule itself. The Department believed that this increased information would allow WIC State agencies to provide participants with vendors' telephone numbers and Web sites and/or e-mail addresses to assist them with locating authorized vendors in their neighborhood or local service area, and that knowing a vendor's store type also would help participants to determine where to transact their food instruments. Further, the Department proposed to allow WIC State agencies to issue public notices of vendor disqualifications (including the length of disqualification and the reason for the disqualification) and to provide this information to authorized vendors and program participants; the Department believed that issuing public notices of WIC vendor disqualifications would deter vendor fraud and abuse in the WIC Program.

The comments were generally supportive, but requested several clarifications and revisions. Many of the commenters objected to release of the vendor identification number, contending that this would not assist the participants or public, and may lead to fraud, *e.g.*, creation of a counterfeit vendor stamp. Also, one of the commenters asserted that knowing the store type of a vendor would not help participants to choose where to shop. Finally, one of the commenters stated that the name of the owner should be released, since this would assist the State health licensing process. The Department agrees that the vendor identification number would be of little value, and that making WIC vendor identification numbers public could lead to fraud.

However, the Department cannot consider making the name of the owner available to the general public in this final rule, since the name of the owner was not specified in 7 CFR 246.26(e) of the proposed rule. Removing the confidentiality of such personal information should not be undertaken without an opportunity for comment. Also, the Department disagrees that the store type should not be made available to the general public, since, unlike the name of the owner, there is no privacy issued involved. Accordingly, the vendor identification number and the name of the owner are not included in 7 CFR 246.26(e) of this final rule, while

the store type of the vendor is included in 7 CFR 246.26(e).

One of the commenters recommended that 7 CFR 246.26(e)(2) should be revised to include local ordinances as well as Federal and State laws regarding the persons directly connected with administration or enforcement, because a city may be responsible for licensing grocery stores, and also because the WIC State agency could benefit by having another source of information on ownership. Another commenter asserted that FNS should clarify that infant formula manufacturers participating in the cost containment process are persons directly connected with the administration or enforcement of the WIC Program in 7 CFR 246.26(e)(1). This commenter pointed out that these companies play a unique and important role regarding WIC, and thus need to know how the retail presence of their products will be impacted by the acceptance of a bid in order to reduce uncertainties which might impede aggressive bidding, and also need to ensure that participants have access to infant formula when a State agency transitions to a new contractor or during periods of inventory shortages. The information of interest includes only the names of the top 20 retailers and their associated percentage of WIC volume.

The Department agrees that the State agency should be able to share confidential vendor information with persons who are directly connected with the administration or enforcement of local laws or ordinances on such matters as licensing grocery stores, under agreement with the State agency restricting third party disclosure. Accordingly, 7 CFR 246.26(e)(2) of this final rule includes the reference to local laws and ordinances as well as Federal and State laws. However, the Department does not agree that infant formula manufacturers are persons directly connected with the administration or enforcement of the WIC Program within the meaning of 7 CFR 246.26(e)(1). Although infant formula manufacturers have a unique and important role regarding the WIC Program, these manufacturers do not administer or enforce the Federal, State, or local laws, rules, regulations, or ordinances which govern the WIC Program. Their contracts with WIC State agencies do not include responsibilities for such programmatic activities as the certification of participants, the authorization of vendors, the operation of State agency Management Information Systems, the conducting of audits or investigations on behalf of State agencies, or any other activities applying the Federal WIC-related laws,

rules, and regulations, or for such responsibilities related to State or local laws or ordinances. The redemption volume of individual WIC vendors is confidential vendor information under 7 CFR 246.26(e), and thus may not be disclosed by WIC State agencies to infant formula manufacturers under 7 CFR 246.26(e)(1) because infant formula manufacturers are not persons directly connected with the administration or enforcement of the WIC Program.

Finally, several commenters expressed reservations or recommended restrictions regarding State agencies issuing public notices of WIC vendor disqualifications. One of the commenters objected to release of the disqualification information because the proposed provision is so broad that it could compromise investigative techniques and lead to release of investigative reports, and that release of derogatory information could unfairly damage the reputation of a vendor who later prevails on appeal. One commenter objected to release of the disqualification information because this may be used to justify an expansive discovery process in legal proceedings regarding information on vendors other than the vendor seeking discovery, recommending that the proposed provision needs to be more specific and should cover CMPs as well as disqualifications. Another commenter asserted that there should be equal treatment for participants and program officials, *i.e.*, public notification of participants and program officials found guilty of fraud; this commenter also asserted that such notification should only occur after due process has been exhausted.

The Department agrees with many of these concerns. To accommodate all of these issues, disqualification information is addressed by a new 7 CFR 246.26(e)(4) in this final rule. This new provision explicitly provides that a State agency may release such information at its discretion, that the imposition of CMPs may be included as well as disqualifications, and that State agencies are only permitted to release the vendor's name, address, length of the disqualification or amount of the CMP, and a summary of the reason(s) for such sanction provided in the notice of adverse action. Further, the new provision provides that such information may not be disclosed unless the vendor's right to appeal through the judicial as well as administrative review procedures has been exhausted. Finally, under this new provision, this information may only be disclosed to other authorized vendors or vendor applicants, since such disclosure is

intended to deter vendor violations, not the violations of participants or program officials. If a State agency does not view this revised language as meeting all of its concerns, then the State agency may exercise its discretion to not issue such notices.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, for the reasons set forth in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ 1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 2. In § 246.16a:

■ a. Amend paragraph (c)(3)(i), (c)(3)(ii)(A) and (B) by removing the reference “§ 246.10(c)(1)(i)” wherever it appears and replacing it with “§ 246.10(e)(1)(iii) and § 246.10(e)(2)(iii)”.

■ b. Amend paragraph (c)(4)(i) by removing the reference “§ 246.10(c)(1)(vi)” and replacing it with “§ 246.10(e)(9)(Table1)”.

■ c. Amend paragraph (e) by removing the reference “§ 246.4(a)(14)(xi)” and replacing it with “§ 246.4(a)(14)(x)”.

■ d. Amend paragraph (j)(2) by removing the reference “§ 246.10(f); or” and replacing it with “§ 246.10(g);”.

■ e. Amend paragraph (j)(3) by removing the period at the end of the paragraph and adding in its place a semicolon followed by the word “or”; and

■ f. Add paragraph (j)(4) to read as follows:

§ 246.16a Infant formula cost containment.

* * * * *

(j) * * *

■ (4) Require infant formula manufacturers to provide gratis infant formula or other items.

* * * * *

■ 3. In § 246.18, add new paragraphs (a)(1)(ii)(I) and (a)(1)(ii)(J) to read as follows:

§ 246.18 Administrative review of State agency actions.

(a) * * *

(1) * * *

(ii) * * *

(I) A civil money penalty imposed in lieu of disqualification based on a Food

Stamp Program disqualification under § 246.12(l)(1)(vii) and,

(J) Denial of an application based on a determination of whether an applicant vendor is currently authorized by the Food Stamp Program.

* * * * *

■ 4. In § 246.26:

■ a. Amend the first sentence of the introductory text of paragraph (e) by removing the words “and authorization status” and by adding, in their place, the words “, telephone number, Web site/e-mail address, store type, and authorization status”;

■ b. Amend paragraph (e)(2) by adding the words “or local law or ordinance” at the end of the first sentence; and,

■ c. Add a new paragraph (e)(4) to read as follows:

§ 246.26 Other provisions.

* * * * *

(e) * * *

■ (4) At the discretion of the State agency, all authorized vendors and vendor applicants regarding vendor sanctions which have been imposed, identifying only the vendor's name, address, length of the disqualification or amount of the civil money penalty, and a summary of the reason(s) for such sanction provided in the notice of adverse action. Such information may be disclosed only following the exhaustion of all administrative and judicial review, in which the State agency has prevailed, regarding the sanction imposed on the subject vendor, or the time period for requesting such review has expired.

* * * * *

Dated: April 10, 2008.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E8-8767 Filed 4-22-08; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0411; Directorate Identifier 2008-NM-061-AD; Amendment 39-15488; AD 2008-09-07]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 757 Airplanes and Model 767-200, 767-300, and 767-300F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 757 airplanes and Model 767-200, 767-300, and 767-300F series airplanes. This AD requires revising the Limitations section of the airplane flight manual to advise the flight crew of procedures to follow to ensure that a fuel filter impending bypass condition due to gross fuel contamination is detected in a timely manner. This AD was prompted by an error in the operating program software (OPS) of the engine indication and crew alerting system (EICAS). The error prevents the display of an advisory message to the flight crew of a left engine fuel filter contamination and imminent bypass condition, which may indicate an imminent multiple engine thrust loss or engine malfunction event due to fuel contamination. We are issuing this AD to prevent malfunction and thrust loss on both engines, which could result in a forced off-airport landing.

DATES: This AD is effective May 8, 2008.

We must receive comments on this AD by June 23, 2008.

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

• Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

• Fax: 202-493-2251.

• Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• Hand Delivery: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind

Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6497; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

We have been advised that an operator discovered an error in the Engine Indication and Crew Alerting System (EICAS) operating program software (OPS) Version 6. This software error prevents the display of the "L ENG FUEL FILT" advisory message to the flight crew. This message was intended to be displayed if an impending clogging condition of the left engine fuel filter exists. (The corresponding message for the right engine functions normally.) Boeing has determined that this software error is isolated to the EICAS OPS Version 6. This software is currently approved for installation on all Boeing Model 757 airplanes, and Model 767-200, 767-300, and 767-300F series airplanes. (Model 767-400ER series airplanes use different software.) OPS Version 6 was approved in mid-2007 for production and retrofit installation. Boeing's records show that the majority of the affected airplanes currently have Version 6 software installed. Absence of an engine fuel filter bypass indication for each engine eliminates the only effective advance warning the flight crew will receive of potential engine malfunction due to a gross fuel contamination event on the airplane. Without such advance warning, malfunction and thrust loss on both engines due to fuel contamination could cause a forced off-airport landing.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This AD requires revising the Limitations section of the airplane flight manual (AFM) to advise the flight crew of procedures to follow to ensure that a fuel filter impending bypass condition due to gross fuel contamination is detected in a timely manner.

The actions specified by paragraph (f) of this AD are not required when all affected airplanes in an operator's fleet have been verified by the operator to have an EICAS computer with a particular part number and EICAS OPS versions other than Version 6 software. This exception is currently available for Model 757 and 767 passenger airplanes and for new production freighter airplanes, but will be available for non-production-modified freighter airplanes

only when OPS versions later than Version 6 software become available. Non-production-modified freighter airplanes include, but are not limited to, Model 757 airplanes modified in accordance with Supplemental Type Certificate (STC) ST01920LA, and Model 767 series airplanes modified in accordance with design approvals granted to Boeing for the Boeing Converted Freighter (BCF) or Special Freighter (SF) configurations. Only OPS Version 6 software or a later OPS version was approved by the FAA for use on non-production-modified freighter airplanes; this is because cargo door indications required for certification of those freighter conversion modifications were introduced at Version 6.

FAA's Justification and Determination of the Effective Date

Because of our requirement to promote safe flight of civil aircraft, and thus the critical need to ensure that the flight crew has procedures to follow to ensure that a fuel filter impending bypass condition due to gross fuel contamination is detected in a timely manner, and because of the short compliance time involved with this action, this AD must be issued immediately.

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0411; Directorate Identifier 2008-NM-061-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2008–09–07 Boeing: Amendment 39–15488. Docket No. FAA–2008–0411; Directorate Identifier 2008–NM–061–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes, and Model 767–200, 767–300, and 767–300F series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by an error in the operating program software (OPS) of the engine indication and crew alerting system (EICAS). The error prevents the display of an advisory message to the flight crew of a left engine fuel filter contamination and imminent bypass condition, which may indicate an imminent multiple engine thrust loss or engine malfunction event due to fuel contamination. We are issuing this AD to prevent malfunction and thrust loss on both engines, which could result in a forced off-airport landing.

Compliance

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

Revision of Airplane Flight Manual (AFM)

(f) Within 30 days after the effective date of this AD, revise the Limitations section of the applicable AFM to include the following. This may be done by inserting a copy of this AD into the AFM.

“If the STATUS cue shows while on the ground after engine start or during flight, select the status page on the secondary EICAS display, and verify the “L ENG FUEL FILT” message is not shown. If the “L ENG FUEL FILT” message is not shown on the status page, the secondary engine parameters may be reselected on the secondary EICAS display, or the display may be blanked. If the “L ENG FUEL FILT” message is shown on the status display, accomplish the ENGINE FUEL FILTER non-normal checklist as published in the Boeing Quick Reference Handbook. If on the ground, check the Dispatch Deviations Guide (DDG), or operator equivalent.

In the event that the status level “L ENG FUEL FILT” and advisory level “R ENG FUEL FILT” messages are simultaneously shown, an impending fuel filter bypass condition exists on both engines. With both messages shown, airplane fuel system contamination may be present and may result in erratic engine operation or flameout.

Further flight crew action in response to either or both the “L ENG FUEL FILT” status-level message and the “R ENG FUEL FILT” advisory level messages being shown are not established by Boeing or the FAA. Any

further flight crew action should be determined by individual operator policy.

Boeing policy on flight crew use of status-level messages has not changed. After engine start, any condition having an adverse effect on safe continuation of the flight appears as an EICAS alert message (Warning, Caution, or Advisory). If other status-level messages are shown as a consequence of complying with these temporary operating instructions, the flight crew should respond in accordance with the appropriate operator policy.

Dispatch of the airplane with an inoperative EICAS display unit is prohibited.

(g) If all affected airplanes in an operator's fleet have been verified by the operator to have EICAS computer part number S242N701–1001 and only EICAS OPS versions other than Version 6 software that are FAA approved for that airplane, then accomplishment of the actions specified in paragraph (f) of this AD is not required.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6497; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(i) None.

Issued in Renton, Washington, on April 14, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8653 Filed 4–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No FAA–2007–29260; Aerospace Docket 07–ASO–24]

Establishment of Class E Airspace; Winona, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Winona, MS. An Area Navigation (RNAV) Global Positioning

System (GPS) Standard Instrument Approach Procedures (SIAP) Runways (RWY) 03–21 has been developed for Winona-Montgomery County Airport and as a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rule (IFR) operations at Winona-Montgomery County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFA operations concurrent with the publication of the SIAP.

DATES: 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:

Melinda Giddens, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:**History**

On January 31, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E at Winona, MS, (73 FR 5776). This action provides adequate Class E airspace for IFR operations at Winona-Montgomery County Airport. Designations for Class E airspace are published in FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The area will be depicted on Aeronautical Charts for pilot reference.

The Rule

The FAA is amending Part 71 of the Code of Federal Regulations (14 CFR part 71) to establish Class E airspace at Winona, MS, to provide controlled airspace required to support the Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) Runways (RWY) 03/21 that were developed for Winona-Montgomery County Airport.

The FAA has determined that this proposed regulation only involves an

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Winona, MS.

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 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 Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO MS E5 Winona, MS [New]

Winona-Montgomery County Airport, MS (Lat. 33°27'54" N., long. 89°43'48.8" W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.9-mile radius of Winona-Montgomery County Airport.

* * * * *

Issued in College Park, Georgia, on April 7, 2008.

Kathy Swann,

*Acting Manager, System Support Group,
Eastern Service Center, Air Traffic
Organization.*

[FR Doc. E8–8578 Filed 4–22–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 39

[Docket Nos. AD08–6–000 and RM05–30–000]

Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards; Statement of Administrative Policy on Processing Reliability Notices of Penalty and Order Revising Statement in Order No. 672

Issued April 17, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule; Statement of Administrative Policy.

SUMMARY: On February 3, 2006, the Federal Energy Regulatory Commission issued a Final Rule (Order No. 672) implementing Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005, which is Title XII of the Energy Policy Act of 2005 (EPAct). The Commission is issuing a policy statement that adopts administrative policy on Commission review of notices of penalty for violation of Reliability Standards and that modifies Order No. 672.

DATES: *Effective Date:* April 17, 2008.

FOR FURTHER INFORMATION CONTACT:

Roger P. Morie, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8446.

Christy Walsh (Legal Information), Office of the General Counsel, Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6523.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Sudeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellenhoff.

1. On February 3, 2006, the Commission issued a Final Rule (Order No. 672),¹ implementing Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005, which is Title XII of the Energy Policy Act of 2005.² Among other things, Order No. 672 amended the Commission's regulations to implement section 215(e) of the Federal Power Act (FPA), which authorizes the Electric Reliability Organization (ERO) to impose a penalty for a violation of a Reliability Standard by a user, owner or operator of the Bulk-Power System, subject to an opportunity for Commission review.³ In this order, the Commission adopts this statement of administrative policy on Commission review of these penalties.⁴ In addition, the Commission modifies our statement in Order No. 672 that any settlement of an alleged violation of a Reliability Standard that the ERO files with the Commission should be filed for information purposes only and that these settlements will not be subject to Commission review pursuant to section 39.7(e) of our regulations.⁵ Any settlement filed by the ERO after the date of this order will be subject to Commission review pursuant to section 39.7(e), although the Commission continues to encourage these settlements and expects that it will normally allow ERO or Regional Entity settlements to become effective.

I. Background

2. Pursuant to FPA section 215(e)(1),⁶ the North American Electric Reliability Corporation (NERC), in its capacity as

¹ *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh'g*, Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

² Public Law No. 109–58, Title XII, Subtitle A, 119 Stat. 594, 941, codified at 16 U.S.C. 824a (Supp. V 2005).

³ These implementing regulations are found in Part 39 of our regulations, 18 CFR Part 39 (2007).

⁴ FPA section 215(e)(3) empowers the Commission itself to impose a penalty against a user, owner or operator for a violation of a Reliability Standard. This order does not address the Commission's procedures for imposing these penalties. The Commission discussed these procedures in *Statement of Administrative Policy Regarding the Process for Assessing Civil Penalties*, 117 FERC ¶ 61,317, at P 5 & n.15 (2006).

⁵ See Order No. 672 at P 598.

⁶ 16 U.S.C. 824a(e)(1) (Supp. V (2005)).

the nation's ERO,⁷ may impose a penalty on a user, owner or operator of the Bulk-Power System for a violation of a Reliability Standard approved by the Commission. Pursuant to FPA section 215(e)(4),⁸ the Commission authorized NERC to delegate authority to impose such penalties to eight Regional Entities through Commission-approved Delegation Agreements.⁹ The Commission also approved, subject to further modifications, NERC's Compliance Monitoring and Enforcement Program (CMEP), which establishes procedures for Regional Entities to impose penalties and for NERC to review them, whether a registered entity appeals a Regional Entity determination, agrees not to contest it, or enters into a settlement with respect to the penalty.¹⁰ NERC itself may also impose a penalty.

3. FPA section 215(e)(2) provides that a penalty NERC or a Regional Entity imposes may take effect no earlier than 31 days after NERC files with the Commission a notice of penalty and the record of proceedings.¹¹ FPA section 215(e)(2) further states, "Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission."

4. In Order No. 693, the Commission approved 83 Reliability Standards that NERC proposed.¹² These Reliability Standards generally became effective on June 18, 2007. The Commission directed in Order No. 693 that NERC and the

Regional Entities, as a matter of enforcement discretion, focus their resources on the most serious violations during an initial period through December 31, 2007, and that this discretion should apply to all users, owners and operators of the Bulk-Power System.¹³ The Commission expects that, in due course, NERC will file notices of penalty with respect to certain violations of Reliability Standards that occurred during the June 18 to December 31, 2007 initial period. The Commission further expects that NERC will file notices of penalty representing settlements entered into by it or a Regional Entity of violations that occurred or are alleged to have occurred during this period. The Commission also expects that, in due course, NERC will file notices of penalty for violations that occurred or are alleged to have occurred after this initial six-month period. Accordingly, the Commission believes that an explanation of how it plans to process any notice of penalty filed by NERC will afford entities identified in notices of penalty, and the electric industry as a whole, increased transparency into the Commission's enforcement processes involving Reliability Standards.

II. Commission Review of ERO-Approved Penalties

5. Pursuant to section 39.7(e)(1) of our regulations, an entity subject to a notice of penalty may file an application for review of it within 30 days of the date NERC files the notice of penalty.¹⁴ Any answer, intervention or comment to an application for review of a proposed penalty must be filed within 20 days after the application is filed, unless otherwise ordered by the Commission.¹⁵ If the entity subject to a proposed penalty files an application for review of the proposed penalty, the Commission will take action on that application within 60 days of the date on which it is filed, unless the Commission determines on a case-by-case basis that an alternative expedited procedure is appropriate.¹⁶

6. In addition, any proposed penalty filed by NERC is subject to review by the Commission on its own motion

within 30 days after the date on which NERC files the notice of penalty.¹⁷ Should the Commission determine to review a proposed penalty on its own motion, it will issue an order initiating review of the proposed penalty and establishing a filing date for any answers, interventions or comments. The Commission's regulations do not state when answers, interventions and comments ordinarily would be filed if the Commission were to initiate review of a notice of penalty. However, we generally will establish the filing deadline as 20 days after the date of the Commission's order initiating a review of a proposed penalty on its own motion. Likewise, the Commission's regulations do not specify a default time period for the Commission to complete the review of a notice of penalty on its own motion. The Commission nevertheless anticipates that it would ordinarily issue a determination within 60 days of ordering that review, unless issues in a particular case require a longer period for consideration.

7. Section 39.7(e)(1) provides that the Commission may take action within 30 days after NERC files a notice of penalty, other than moving to review the notice of penalty, to prevent a proposed penalty from being affirmed by operation of law on the expiration of that 30-day period. For example, the Commission could issue an order stating that it requires more than 30 days to determine whether it should review a proposed penalty on its own motion. While we anticipate that the Commission will issue such orders rarely, in appropriate instances, the Commission retains the option of doing so. Such an order will not solicit answers, intervention or comments. If the Commission determines to review the notice of penalty, it will issue a subsequent order initiating review of the proposed penalty and establishing a filing deadline for any answers, intervention or comments. Should the Commission decide not to review the notice of penalty, the Commission will issue an order terminating the proceeding. The proposed penalty shall be affirmed by operation of law immediately upon the issuance of that order.

8. We wish to make clear that in an application for review of a proposed penalty filed by NERC, an entity may seek review of the amount of the proposed penalty or its type (i.e., argue that a proposed monetary penalty should be a non-monetary penalty, for example) as well as of any determinations underlying the proposed

⁷ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (ERO Certification Order), order on reh'g and compliance, 117 FERC ¶ 61,126 (2006).

⁸ 16 U.S.C. 824o(e)(4) (Supp. V (2005)).

⁹ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 (Delegation Agreement Order), order on reh'g, 120 FERC ¶ 61,260 (2007), order on responsive filing, 122 FERC ¶ 61,245 (2008) (Second Delegation Agreement Order). The Regional Entity Delegation Agreements went into effect on June 5, 2007. See *Delegation Agreement Between the North American Electric Reliability Corp. and Texas Regional Entity, a division of ERCOT*, 119 FERC ¶ 61,232 (2007).

¹⁰ See *id.* The relevant CMEP provisions are sections 5.1 through 5.6.

¹¹ 16 U.S.C. 824o(e)(2) (Supp. V (2005)). See also 18 CFR 39.7(e).

¹² *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1 (2007), order on reh'g, Order No. 693-A, 120 FERC ¶ 61,053 (2007). The Commission subsequently approved other Reliability Standards. *North American Electric Reliability Corp.*, 119 FERC ¶ 61,260 (2007) (approving eight regional standards proposed by the Western Electricity Coordinating Council); *Facilities Design, Connections and Maintenance Reliability Standards* (Order No. 705), 121 FERC ¶ 61,296 (2007); *Mandatory Reliability Standards for Critical Infrastructure Protection* (Order No. 706), 122 FERC ¶ 61,040 (2008).

¹³ Order No. 693 at P 222.

¹⁴ 18 CFR 39.7(e)(1).

¹⁵ 18 CFR 39.7(e)(4). All notices of penalty will receive a docket number with an "NP" prefix, as the Commission's Secretary stated in a February 7, 2008 notice.

¹⁶ 18 CFR 39.7(e)(6). The Commission may determine that an alternative time period is appropriate at any point within the "default" 60-day period that section 39.7(e)(6) establishes. If the Commission determines to extend that period in a particular proceeding, it will issue an order establishing the alternative time period.

¹⁷ 18 CFR 39.7(e)(1).

penalty, including whether a violation of a Commission-approved Reliability Standard occurred or whether there is a sufficient factual record to support any such determination.¹⁸ Likewise, if the Commission moves to review a proposed penalty, it may review the amount or type of the proposed penalty, as well as any determinations underlying it, such as the existence of one or more violations of a Commission-approved Reliability Standard.

9. Section 215(e)(6) of the FPA states that a penalty imposed for a violation of a Reliability Standard “shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of [the registered entity] to remedy the violation in a timely manner.”¹⁹ When reviewing a notice of penalty, whether pursuant to an application for review or on our own motion, we will conduct a *de novo* review of the record of the proceeding below to ascertain whether the record contains adequate evidence that the proposed penalty determination accords with this test.²⁰ We observe in this regard that FPA section 215(e)(2) states that in any proceeding to review a notice of penalty, the Commission must provide notice and an opportunity for hearing that “may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty.”²¹ As we stated in Order No. 672, based on this provision, we expect in most instances not to open the record set forth in or accompanying a notice of penalty to additional material from third parties.²²

¹⁸ See Order No. 672 at P 508 (allowing the Commission to remand a penalty to the ERO for additional fact-finding proceedings). Nevertheless, for example, it would not be appropriate, absent extraordinary circumstances, for an entity that applies for a review of a notice of penalty to contest a finding of violation included in it if that entity had admitted or not contested a finding of violation, as set forth in the record of proceedings the NERC submits with a notice of penalty. Similarly, we ordinarily would look with great disfavor on an entity’s attempt in an application for review to contest a fact or matter if that entity stipulated to it, as described in the record of proceedings.

¹⁹ 16 U.S.C. 824o(e)(6) (Supp. V (2005)).

²⁰ See Order No. 672 at P 614 (*de novo* review is consistent with the practice of other administrative agencies that review sanctions imposed by their associated self-regulatory organizations). We concluded in the *Delegation Agreement Order* that a Regional Entity or NERC may not impose a penalty in an adjudication without concluding that the preponderance of the evidence supports the penalty. *Delegation Agreement Order* at P 146.

²¹ 16 U.S.C. 824o(e)(2) (Supp. V (2005)).

²² Order No. 672 at P 511. In this regard, we emphasize our agreement in the *ERO Certification Order* at P 491 that NERC affords appropriate deference in its procedures to the Regional Entities’ role as reliability managers and their familiarity with operating conditions by prohibiting NERC’s

However, the Commission retains the discretion in particular cases to permit additions to the record with respect to a notice of penalty.²³

10. We believe that entities that are subject to Reliability Standards should have notice of the general criteria the Commission will use to determine whether it will review particular notice of penalty on its own motion. We will use the following principles in this matter. First, the Commission does not anticipate moving to review every notice of penalty that NERC files, or even most. While the Commission is required to review every notice of penalty for which a registered entity files an application for review, the Commission’s limited resources would likely preclude review of all uncontested notices of penalty. Second, as described earlier, the Commission has approved NERC’s CMEP as the framework for NERC’s enforcement authority under section 215 of the FPA, as well as NERC’s delegation of enforcement powers to Regional Entities through the Delegation Agreements. The Commission sees no general need to review each notice of penalty for which a Regional Entity has developed a record and which it has approved, and which NERC has reviewed for sufficiency and consistency. Third, the Commission recognizes that, on a continuing basis, Regional Entities and NERC retain an element of enforcement discretion similar to our own discretion in enforcement matters.²⁴ Reviewing every uncontested notice of penalty on our own motion would be inconsistent with this recognition and would ultimately weaken the enforcement efforts of the Regional Entities and NERC.²⁵

consideration on appeal of any fact that is not in the record compiled by the relevant Regional Entity.

²³ See 18 CFR 39.7(e)(2) (an applicant for Commission review of a penalty in a notice of penalty may support its explanation by providing information that is not included in the ERO’s record) and 39.7(e)(3) (when reviewing a notice of penalty, the Commission may “establish a hearing before an administrative law judge or initiate such further procedures as it determines to be appropriate”). However, in neither of these situations is the Commission required to admit into the record information or documents proffered by parties to the review proceeding. In particular, the Commission would look with disfavor on admitting into the record in a proceeding to review a notice of penalty documents or information that a party had an opportunity to move into the record before the Regional Entity, but failed to do so.

²⁴ See Order No. 693 at P 225 (“The Commission agrees that, separate from our specific directive that all concerned focus their resources on the most serious violations during an initial period, the ERO and Regional Entities retain enforcement discretion as would any enforcement entity.”).

²⁵ *Id.* (observing that NERC’s Sanction Guidelines, which set forth the principles under which NERC and the Regional Entities will determine penalties,

11. Nonetheless, because the Commission bears ultimate responsibility for the enforcement of Reliability Standards, we may review a notice of penalty even if the registered entity that is the subject of the notice of penalty does not file an application for review.²⁶ In determining whether to review a notice of penalty (which will occur prior to receiving an application for review), we would look first to the apparent relative seriousness of the violation at issue in the notice of penalty. For example, we would evaluate the seriousness of a violation by the combination of violation risk factor and violation severity level that NERC has assigned and that we have approved for particular requirements of the Reliability Standards implicated in the notice of penalty.²⁷ We also will analyze notices of penalty to ascertain the potential risk to the reliability of the Bulk-Power System, as well as any actual harm, presented by their particular fact patterns. The more serious a violation described in a notice of penalty appears to be, the more likely it is that we would review the proposed penalty. In addition, the Commission retains the authority to review notices of penalty on its own motion to ensure that penalties are applied in a reasonably consistent manner, or to improve compliance with Reliability Standards and thereby increase the reliability of the Bulk-Power System.²⁸

provide flexibility as to establishing the appropriate penalty within the range of applicable penalties).

²⁶ It is possible that a registered entity will file an application for review of a notice of penalty after the Commission has issued an order stating that it will review the notice of penalty on its own motion. In that situation, the Commission will adhere to the procedural provisions of section 39.7(e)(4) and (e)(6) with respect to an application for review of a notice of penalty.

²⁷ Pursuant to section 4.1 of NERC’s Sanction Guidelines, NERC and Regional Entities use the intersection of the violation risk factor and violation severity level in setting the initial range of the Base Penalty Amount that is calculated in the process of determining an appropriate penalty for a particular violation. See *North American Electric Reliability Corp.*, 119 FERC ¶61,248, at P 74 (2007). While the Commission has approved or directed revisions to violation risk factors for all requirements of Reliability Standards it has currently approved to apply nationwide, NERC’s proposed violation severity levels for these standards are currently pending before the Commission in Docket No. RR08–4–000. Pending Commission review of this filing, as an interim measure when determining penalties, NERC and Regional Entities may use existing Levels of Non-Compliance assigned to particular standards to substitute for violation severity levels. *Id.* P 79.

²⁸ See *Second Delegation Agreement Order* at P 60 (The Commission’s discretion to review penalty determinations on its own motion includes, but is broader than, ascertaining whether they clearly conflict with the goal of consistent national reliability enforcement or whether their revision is needed for oversight of Regional Entity compliance

12. Section 39.7(e)(3) of our regulations provides that neither an application for review of a notice of penalty nor the Commission's initiation of a review of a notice of penalty will operate as a stay of the proposed penalty unless the Commission otherwise orders, upon application by the subject of a notice of penalty or upon the Commission's own motion. Nevertheless, as a matter of policy, the Commission intends as a general matter to stay any proposed penalty under Commission review. Not doing so would require a user, owner or operator to pay a penalty that the Commission may later set aside or modify. To the extent that any proposed penalty is later affirmed by the Commission, the penalty amount must be paid with interest from the date of the stay.

13. Pursuant to section 39.7(e)(5) of our regulations, in any proceeding to review a proposed penalty, the Commission, after public notice and opportunity for hearing, may by order affirm, set aside, or modify the proposed penalty, or remand the determination of the proposed penalty, or its form or amount, to the ERO for further proceedings. Any party to the proceeding may seek rehearing of the Commission's order, as described in Rule 713 of the Commission's Rules of Practice and Procedure.²⁹

III. Commission Review of Settlements of Reliability Penalties by Regional Entities or NERC

A. Order No. 672

14. Order No. 672 stated the ERO should file, for informational purposes only, any settlement of an alleged violation regardless of whether the agreement contains an admission by the settling user, owner or operator. While settlements will be made public, Order No. 672 provided that settlements would not be noticed for public comment; nor would they be subject to Commission review pursuant to section 39.7(e) of the Commission's regulations

activities, citing *Delegation Agreement Order* at P 173).

²⁹ 18 CFR 385.713 (2007).

regarding Commission review of a notice of penalty.³⁰

B. Commission Determination

15. Upon reconsideration based on our experience since Order No. 672 issued, the Commission revises its policy stated in Order No. 672 with regard to reviewing settlements of alleged violations. In modifying our policy regarding ERO and Regional Entity settlements, we note that the Commission may change its policy if it provides, as it does here, a reasoned basis for that change.³¹ The Commission believes that, on reflection, our statement in Order No. 672 is not in the public interest for several reasons. First, it is contrary to Commission policy regarding settlements in other contexts. For example, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, the Commission must review written offers of settlement filed in any proceeding pending before the Commission.³² Further, the Commission reviews settlements entered into by the Commission's Office of Enforcement.³³ Second, after issuing Order No. 672, the Commission decided that the ERO should have authority on its own motion to reject settlements into which Regional Entities have entered.³⁴

16. The Commission does not believe that it should afford settlements entered into by the ERO or a Regional Entity relating to an alleged or confirmed violation of Commission-approved mandatory Reliability Standards more

³⁰ Order No. 672 at P 598. The Commission presumes that a settlement will require a registered entity that is a party to forego any right to file an application for Commission review of the settlement.

³¹ E.g., *B&J Oil and Gas v. FERC*, 353 F.3d 71 (D.C. Cir. 2004).

³² 18 CFR 385.602(g)(3), (h)(1)(i) (2007).

³³ See, e.g., *Statement of Administrative Policy Regarding the Process for Assessing Civil Penalties*, 117 FERC ¶ 61,317, at P 2 (2006) (noting that "civil penalties often are negotiated as part of a stipulation and agreement resolving compliance issues" and that "[i]n such cases the civil penalty is imposed through a Commission order approving the negotiated agreement. * * *") See also, e.g., *In re Gexa Energy, LLC*, 120 FERC ¶ 61,175 (2007); *In re Cleco Power, LLC*, 119 FERC ¶ 61,271 (2007).

³⁴ *Delegation Agreement Order* at P 107.

deference than we would afford to those entered into by the Office of Enforcement or approved by the Commission's Administrative Law Judges. Nor should the Commission abstain from reviewing settlements approved by the ERO in the manner in which it has permitted the ERO to review Regional Entity settlements. Finally, we do not believe it reasonable to treat settlements as categorically different than other notices of penalty.

17. Not allowing Commission review of a settlement would mean, for example, that an entity that does not contest a proposed penalty would nonetheless have its notice of penalty subject to review by the Commission, whereas an entity that initially contested the proposed penalty but subsequently settled with the Regional Entity would not have its settlement subject to review by the Commission. This distinction makes little sense and could actually increase litigation (in an effort to produce formal settlements) rather than reduce it. Therefore, any settlement entered into by the ERO or a Regional Entity after the date of this order will be subject to Commission review pursuant to section 39.7(e) of the Commission's regulations.

18. As a final matter, we wish to make it clear that the Commission continues to encourage settlements by Regional Entities and NERC.³⁵ Similar to the Commission's statement that it does not expect the ERO to reject Regional Entity settlements as a normal practice, the Commission expects that it will normally allow ERO or Regional Entity settlements to become effective.³⁶

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

APPENDIX

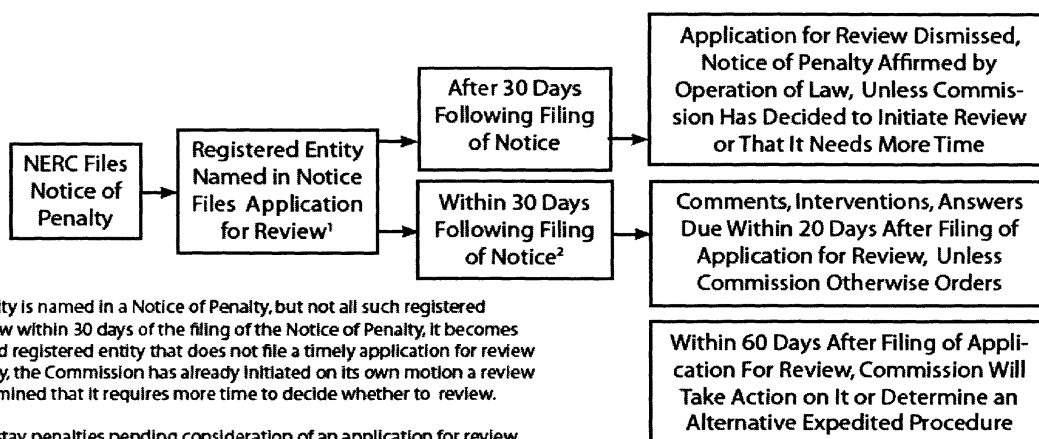
FLOW CHART ILLUSTRATING NOTICE OF PENALTY PROCESSES

BILLING CODE 6717-01-P

³⁵ See *ERO Certification Order* at P 479; *Delegation Agreement Order* at P 107.

³⁶ *Id.*

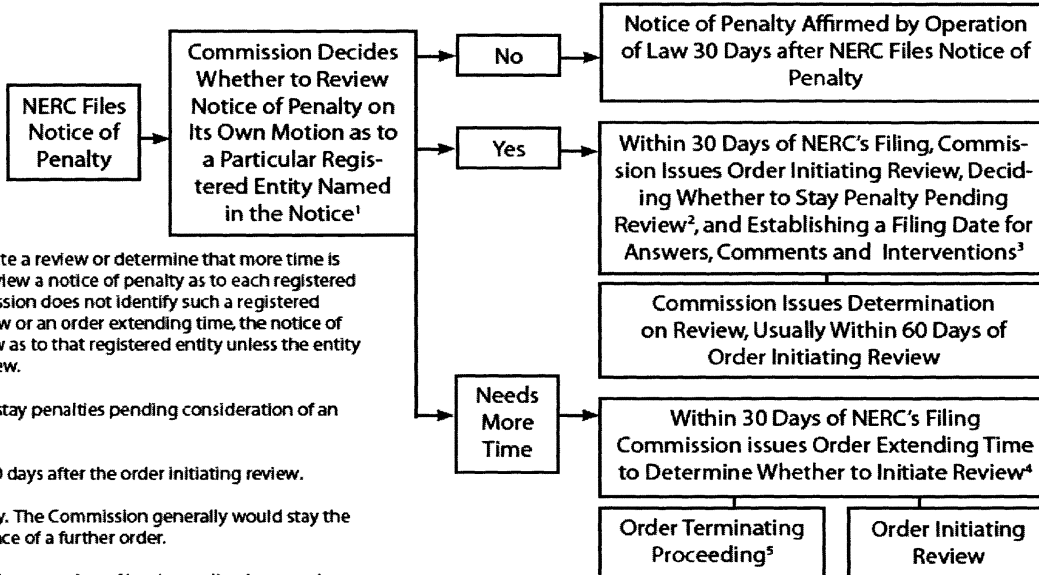
NERC Files Notice of Penalty That is Not a Settlement and Registered Entity Files Application for Review of Penalty



¹ If more than one registered entity is named in a Notice of Penalty, but not all such registered entities file applications for review within 30 days of the filing of the Notice of Penalty, it becomes affirmed by law as to each named registered entity that does not file a timely application for review unless, as to that registered entity, the Commission has already initiated on its own motion a review of the Notice of Penalty or determined that it requires more time to decide whether to review.

² The Commission generally will stay penalties pending consideration of an application for review.

NERC Files Notice of Penalty That is Not a Settlement And Commission Decides Whether to Initiate Review of Penalty on Its Own Motion



¹ The Commission need not initiate a review or determine that more time is needed to decide whether to review a notice of penalty as to each registered entity named in it. If the Commission does not identify such a registered entity in an order initiating review or an order extending time, the notice of penalty becomes affirmed by law as to that registered entity unless the entity files a timely application for review.

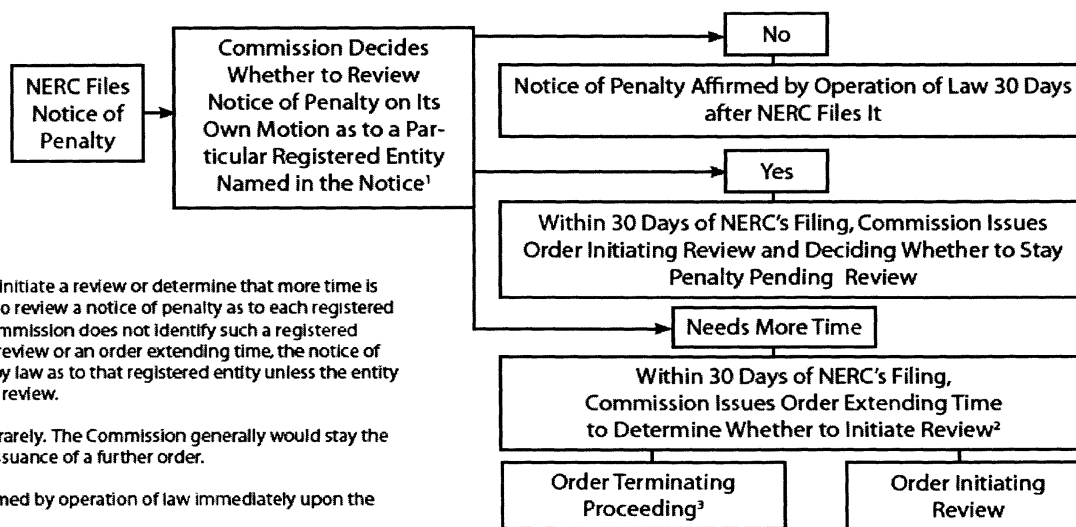
² The Commission generally will stay penalties pending consideration of an application for review.

³ The filing date usually will be 20 days after the order initiating review.

⁴ Such orders will be issued rarely. The Commission generally would stay the notice of penalty pending issuance of a further order.

⁵ The penalty would be affirmed by operation of law immediately upon the issuance of this order.

NERC Files Notice of Penalty for a Settlement by a Regional Entity or NERC



¹ The Commission need not initiate a review or determine that more time is needed to decide whether to review a notice of penalty as to each registered entity named in it. If the Commission does not identify such a registered entity in an order initiating review or an order extending time, the notice of penalty becomes affirmed by law as to that registered entity unless the entity files a timely application for review.

² Such orders will be issued rarely. The Commission generally would stay the notice of penalty pending issuance of a further order.

³ The penalty would be affirmed by operation of law immediately upon the issuance of this order.

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Parts 522 and 556****New Animal Drugs; Enrofloxacin**

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Bayer HealthCare LLC. The supplemental NADA provides for use of enrofloxacin injectable solution in swine for the treatment and control of respiratory disease.

DATES: This rule is effective April 23, 2008.

FOR FURTHER INFORMATION CONTACT:

Cindy L. Burnsteel, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8341, e-mail: cindy.burnsteel@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, filed a supplement to NADA 141-068 for BAYTRIL 100 (enrofloxacin) injectable solution. The supplemental NADA provides for use of enrofloxacin injectable solution in swine for the treatment and control of swine respiratory disease (SRD) associated with *Actinobacillus pleuropneumoniae*, *Pasteurella multocida*, *Haemophilus parasuis*, and *Streptococcus suis*. The supplemental NADA is approved as of March 14, 2008, and the regulations in 21 CFR 522.812 and 556.228 (§§ 522.812 and 556.228) are amended to reflect the approval.

In addition, FDA has noticed that § 556.228 is not in alphabetical sequence in 21 CFR part 556. At this time, that section is being redesignated to correct this error. A conforming change is also being made in § 522.812 to reflect the correction in part 556.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm.

1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning on the date of approval. The agency has determined under 21 CFR 25.33(d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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 522**

Animal drugs.

21 CFR Part 556

Animal drugs, Food.

■ 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 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. Section 522.812, is amended by revising paragraph (c) and adding paragraph (e)(3) to read as follows:

§ 522.812 Enrofloxacin.

* * * * *

(c) *Related tolerance.* See § 556.226 of this chapter

* * * * *

(e) * * *

(3) *Swine.* Use the product described in paragraph (a)(2) of this section as follows:

(i) *Amount.* Administer 7.5 mg/kg of body weight once, by subcutaneous injection behind the ear.

(ii) *Indications for use.* For the treatment and control of swine respiratory disease (SRD) associated with *Actinobacillus pleuropneumoniae*, *Pasteurella multocida*, *Haemophilus parasuis*, and *Streptococcus suis*.

(iii) *Limitations.* Animals intended for human consumption must not be

slaughtered within 5 days of receiving a single-injection dose.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

§ 556.228 [Redesignated as § 556.226]

■ 4. Redesignate § 556.228 as § 556.226 and revise newly redesignated § 556.226 to read as follows:

§ 556.226 Enrofloxacin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of enrofloxacin is 3 micrograms per kilogram of body weight per day.

(b) *Tolerances.* The tolerances for enrofloxacin are:

(1) *Cattle*—(i) *Liver (target tissue).* 0.1 part per million (ppm) desethylened ciprofloxacin (the marker residue).

(ii) [Reserved]

(2) *Swine*—(i) *Liver (target tissue).* 0.5 ppm enrofloxacin (the marker residue).

(ii) [Reserved]

(c) *Related conditions of use.* See § 522.812 of this chapter.

Dated: April 11, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8-8713 Filed 4-22-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 946**

[VA-124-FOR; Docket ID OSM-2007-0013]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; Approval of amendment.

SUMMARY: We are approving an amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The revisions concern Virginia's standards for revegetation success for certain postmining land uses, distribution of topsoil and subsoil materials, and allow approval of natural stream restoration channel design, as developed in consultation with the Army Corps of Engineers. The amendment is intended

to render the State's regulations no less effective than the Secretary's regulations in meeting the requirements of the Act.

DATES: *Effective Date:* April 23, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Bandy, Director, Knoxville Field Office; Telephone: (865) 545-4103 ext. 186. E-mail: ebandy@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Submission of the Amendment

By letter dated February 13, 2007 (Administrative Record Number VA-1059), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its submission, DMME proposed to revise the Virginia program regarding revegetation success standards for postmining land uses, distribution of topsoil and subsoil materials, and to allow approval of natural stream restoration channel design as developed in consultation with the Army Corp of Engineers. We announced receipt of the proposed amendment in the April 9, 2007, **Federal Register** (72 FR 17452). The public comment period closed on May 9, 2007.

The portion of the February 13, 2007, amendment dealing with revegetation success standards involved proposed

changes to Virginia's regulations at 4 VAC 25-130-816 and 817.116(a)(2) and (b)(3)(v)(C). DMME proposed to revise subsection (a)(2) to consider the levels of ground cover, production, or stocking as being equal to the approved success standard when they were not less than 70% of that success standard. DMME also proposed to revise subsection (a)(2) by adding an exception to the success standard requirements as provided for in subsection (b). Subsection (b) provides success standards for certain approved postmining land uses. Finally, DMME proposed to amend subsection (a)(2) by deleting a provision requiring that the sampling techniques for measuring success use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). In subsection (b)(3)(v)(C), DMME proposed to amend standards for herbaceous vegetation success on postmining land uses where woody plants are used for wildlife management, recreation, shelter belts or forest uses other than commercial forest land by requiring that areas planted with a mixture of herbaceous and woody species sustain a herbaceous ground cover of 70%.

After the February 13, 2007, proposed rule was published in the **Federal Register**, DMME revised the portion of its proposed amendment dealing with revegetation success standards. By electronic mail dated April 18, 2007, (Administrative Record No. VA-1074), DMME stated that it wished to withdraw the changes it previously made to 4 VAC 25-130-816 and 817.116(a)(2) regarding the sampling techniques and retain the original language. Additionally, DMME indicated that it wished to revise the herbaceous ground cover success standard of 4 VAC 25-130-816 and 817.117(b)(3)(v)(C) to require that postmining land uses of wildlife management, recreation, shelter belts, or forest uses other than commercial forest land that are planted with a mixture of herbaceous and woody species must sustain a herbaceous ground cover of 80%. We announced these proposed revisions in a July 5, 2007, **Federal Register** notice (72 FR 36632) in which we reopened the public comment period. The reopened public comment period closed July 20, 2007.

After our review of the second resubmission of the amendments and based on our discussions regarding the amendment with DMME, DMME chose to resubmit 4 VAC 25-130-816 and 817.116(b)(3) and 816 and 817.116(b)(3)(v)(C) with added language that would facilitate the growth of woody plants in areas to be developed for fish and wildlife habitat, recreation,

shelter belts, or forestry. By electronic mail dated August 30, 2007 (Administrative Record No. VA-1082), DMME stated that it would revise parts of 4 VAC 25-130-816.116 and 817.116 based, in part, on discussions with us regarding the benefits of using the Forestry Reclamation Approach (FRA). The FRA is a method for reclaiming coal-mined land to forests and is based on knowledge gained from both scientific research and experience. It is designed to restore forest land capability and accelerate the natural process of forest development. The FRA advocates selection of a suitable rooting medium for tree growth, loosely grading the growth medium to reduce compaction, using ground covers compatible with growing trees, planting early succession and commercially valuable tree species, and using proper tree planting techniques. We announced these proposed revisions in the December 17, 2007 (Administrative Record No. VA-1084) **Federal Register** notice (72 FR 71295) in which we reopened the public comment period. The public comment period closed January 2, 2008. No public hearing was held because one was not requested.

III. OSM's Findings

Following are the findings that we made concerning the amendment under SMCRA and 30 CFR 732.15 and 732.17. We are approving the amendment.

1. 4 VAC 25-130-816.22 and 817.22 Topsoil and subsoil.

Subpart (d)(1) is amended by inserting the words “and substitutes” between the word “materials” and the word “removed.” Also, the phrase “and (b)” is added immediately after the phrase “under Paragraph (a).” The word “Paragraph” is pluralized. Subpart (d)(1)(i) is amended by adding the word “when” between the word “thickness” and the word “consistent.” Also, the following sentence is added at the end of subpart (d)(1)(i): “Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit.” Currently subsection (d) provides as follows:

(d) Redistribution.

(1) Topsoil materials removed under Paragraph (a) of this section shall be redistributed in a manner that—

(i) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

(ii) Prevents excess compaction of the materials; and

(iii) Protects the materials from wind and water erosion before and after seeding and planting.

As amended, 4 VAC 25–130–816.22(d) and 817.22(d) provide as follows:

(d) Redistribution.

(1) Topsoil materials and substitutes removed under Paragraphs (a) and (b) of this section shall be redistributed in a manner that—

(i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface-water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;

(ii) Prevents excess compaction of the materials; and

(iii) Protects the materials from wind and water erosion before and after seeding and planting.

We find that as amended, 4 VAC 25–130–816.22 and 817.22 are substantively identical to and no less effective than the Federal regulations concerning topsoil and subsoil at 30 CFR 816.22 and 817.22 and are therefore approved.

2. 4 VAC 25–130–816.43 and 817.43 Divisions.

Subpart (a)(4) is amended by deleting the second sentence and by revising the first sentence. In the first sentence, all the words following the phrase “continuously or frequently shall be” are deleted and are replaced by the words “designed by a qualified registered professional engineer and constructed to ensure stability and compliance with the standards of this Part and any other criteria set by the Division.” Subpart (a)(5) is deleted in its entirety.

Currently, subparts (a)(4) and (a)(5) provide as follow:

(a) General requirements.

* * * * *

(4) Divisions which convey water continuously or frequently shall be lined with rock rip rap to at least the normal flow depth, including an allowance for freeboard. Divisions constructed in competent bedrock and portions of channels above normal flow depth shall comply with the velocity limitations of Paragraph (5) below.

(5) The maximum permissible velocity for the following methods of stabilization are:

Vegetated channel constructed in soil: 3.5 feet per second

Vegetated channel with jute netting: 5.0 feet per second

Rock rip rap lined channel: 16.0 feet per second

Channel constructed in competent bedrock: No limit

* * * * *

As amended, 4 VAC 25–130–816.43(a)(4) and 817.43(a)(4) provide as follows:

(4) Divisions which convey water continuously or frequently shall be designed by a qualified registered professional

engineer and constructed to ensure stability and compliance with the standards of this Part and any other criteria set by the Division.

In its submittal letter, the DMME stated that these changes to the Virginia rules will allow the approval of natural stream restoration channel design approved by the U.S. Army Corps of Engineers. While these amendments have no direct federal counterparts, they are consistent with the federal regulations at 30 CFR 816.43(a)(4) and 817.43(a)(4), both of which allow the regulatory authority to specify additional design criteria for diversions to meet the requirements of 30 CFR 816.43 and 817.43. Therefore, the amendments are approved.

3. 4 VAC 25–130–816.116(b)(3) and 817.116(b)(3). Revegetation; standards for success.

Subsection (b) of each of these sections, concerning standards for success, is amended by revising subpart (b)(3). Currently, subpart (b)(3) provides as follows:

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

* * * * *

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

The DMME is amending these sections to indicate that for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, woody plants must be stocked at least equal to the rates specified in the approved reclamation plan. Additionally, the DMME is adding a requirement that in order to minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan.

As amended, 4 VAC 25–130–816 and 817.116(b)(3) provide as follows:

4 VAC 25–130–816.116(b)(3) and 817.116(b)(3). Revegetation; standards for success.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forestry, the stocking of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the

approved reclamation plan. Such parameters are described as follows:

* * * * *

While these amendments have no direct federal counterparts, they are consistent with the federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3), both of which govern revegetation success for areas to be developed for fish and wildlife habitat, recreation, undeveloped land or forest products. Therefore, we are approving the amendments.

It should be noted that these amendments mirror the changes recently promulgated by OSM to the counterpart revegetation success standards in the Tennessee federal program, at 30 CFR 942.816(b)(3) and 942.817(b)(3). (72 FR 9637, March 2, 2007)

4. 4 VAC 25–130–816.116(b)(3)(v)(C) and 817.116(b)(3)(v)(C). Revegetation; standards for success.

Subsection (b), concerning standards for success, is amended by revising subparts (b)(3)(v)(C). Currently, subsection (b)(3)(v)(C) provides as follows:

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

* * * * *

(C) Areas planted with a mixture of herbaceous and woody species shall sustain an herbaceous vegetative ground cover of 90% and an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

* * * * *

The DMME is amending this section by deleting the 90% herbaceous ground cover requirement, and by adding a phrase requiring herbaceous ground cover to comply with guidelines provided by the division and with the approved forestry reclamation plan.

As amended, 4 VAC 25–130–816 and 817.116(b)(3)(v)(C) provide as follows:

4 VAC 25–130–816.116(b)(3)(v)(C) and 817.116(b)(3)(v)(C). Revegetation; standards for success.

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

* * * * *

(C) Areas planted with a mixture of herbaceous and woody species shall sustain an herbaceous vegetative ground cover in accordance with guidance provided by the division and the approved forestry reclamation plan and establish an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife

food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

* * * * *

While these amendments have no direct federal counterparts, they are consistent with the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3), which govern revegetation success on areas to be developed for fish and wildlife habitat, recreation, undeveloped land or forest products. Therefore, we are approving the amendments.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. VA-1084) and received comments from one person.

The commenter was opposed to the addition “and substitutes” in subpart (d)(1) without any clarification. The commenter’s concern was that the word “substitute” could be construed to mean whatever the operator wanted it to mean. However, the Virginia regulation cited below clearly limits the use of substitutes, thereby preventing the unfettered operator discretion feared by the commenter. This limitation is substantively identical to its federal counterparts at 30 CFR 816.22(b) and 817.22(b).

The Virginia regulations at 4 VAC 25-130-816.22/817.22(b) state as follows:

Substitutes and supplements.

Selected overburden materials may be substituted for, or used as a supplement to topsoil if the operator demonstrates to the division, in accordance with 4 VAC 25-130-780.18 [or 784.13] that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

The commenter also urged suspension of consideration of these amendments until Virginia submits an adequate definition of the term “substitutes”. In response, we disagree that a definition is needed. The language of limitation above is sufficient to prevent the unrestricted use of substitutes. Also, we note that the Federal regulations likewise contain no definition of this term.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on February 22, 2007, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Virginia program

(Administrative Record No. VA-1060). The United States Department of Labor, Mine Safety and Health Administration responded and stated that such amendments are deemed appropriate and there appears to be no conflict with MSHA regulations (Administrative Record No. VA-1061). The United States Department of the Interior, Bureau of Land Management responded and stated that they found no inconsistencies between the proposed changes and the Federal Laws, which govern mining (Administrative Record No. VA-1062). The United States Department of the Interior, Fish and Wildlife Service, Ecological Services responded and stated that it appears that no impacts to federally listed or proposed species or federally designated critical habitat will occur (Administrative Record No. VA-1066).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Virginia proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

V. OSM's Decision

Based on the above findings, we are approving the amendment sent to us by Virginia on February 13, 2007. To implement this decision, we are amending the Federal regulations at 30 CFR part 946, which codify decisions concerning the Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State’s program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

The provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the Federal Regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that the provisions in this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 1, 2008.

Thomas D. Shope,

Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR part 946 is amended as set forth below:

PART 946—VIRGINIA

■ 1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 946.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
February 13, 2007	April 23, 2008	4 VAC 25–130–816.22(d)(1) and 817.22(d)(1). 4 VAC 25–130–816.43(a) and 817.43(a). 4 VAC 25–130–816.116(b) and 817.116(b).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0210]

Special Local Regulation; Opening Day on San Francisco Bay, Pacific Inter-Club Yacht Association, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Opening Day on San Francisco Bay special local regulation from 11:59 a.m. to 2 p.m. on April 27, 2008. This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, no spectator or vessel shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels, in the regulated areas during all applicable dates and times, unless cleared to do so by or through an official patrol vessel.

DATES: The regulations in 33 CFR 100.1103 will be enforced from 11:59 a.m. to 2 p.m. on April 27, 2008.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade Sheral Richardson, Waterways Management Branch, U.S. Coast Guard Sector San Francisco, at (415) 399–7436.

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

The Coast Guard will enforce the special local regulation for the annual Opening Day on the Bay in 33 CFR 100.1103 on April 29, 2008, from 11:59 a.m. to 2 p.m. The special local regulation includes San Francisco waterfront from Crissy Field to Pier 35, and can be defined by a line drawn from Fort Point (37[deg]48.66N, 122[deg]28.64W); thence easterly approximately 5,000 yards to a point located at 37[deg]49.15N, 122[deg]25.61W; thence easterly to the

Blossom Rock Bell Buoy (37[deg]49.10N, 122[deg]24.20W); thence westerly to the Northeast corner of Pier 35; thence returning along the shoreline to the point of origin.

Under the provisions of 33 CFR 100.1103, spectator vessels may not anchor, block, loiter, nor impede the through transit of participants or official patrol vessels within the area described during the event without permission from the Coast Guard Patrol Commander. Vessels entering the regulated area shall follow the parade route established by the sponsor and be capable of maintaining an approximate speed of six knots. The parade will be interrupted, as necessary, to permit the passage of commercial vessel traffic, which must cross the parade route at a no-wake speed and perpendicular to the parade route. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation. This notice is issued under authority of 33 CFR 100.1103 and 5 U.S.C. 552(a). Even though this notice is published in the **Federal Register**, if the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: April 4, 2008.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port, Sector San Francisco.

[FR Doc. E8–8736 Filed 4–22–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG 2008–0200]

Special Local Regulation; Blessing of the Fleet, Corinthian Yacht Club, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Blessing of the Fleet special local regulation from 8 a.m. to 11:59 a.m. on April 27, 2008. This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, no spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels, in the regulated areas during all applicable

effective dates and times, unless cleared to do so by or through an official patrol vessel.

DATES: The regulations in 33 CFR 100.1103 will be enforced from 8 a.m. to 11:59 a.m. on April 27, 2008.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade Sheral Richardson, Waterways Management Branch, U.S. Coast Guard Sector San Francisco, at (415) 399–7436.

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

The Coast Guard will enforce the special local regulation for the annual Blessing of the Fleet in 33 CFR 100.1103 on April 29, 2008, from 8 a.m. to 11:59 a.m. The special local regulation includes Raccoon Straits and can be defined by a line drawn from Bluff Point the southeastern side of Tiburon Peninsula to Point Campbell on the northern edge of Angel Island, and a line drawn from Peninsula Point on the southern edge of Tiburon Peninsula to Point Stuart on the western edge of Angel Island.

Under the provisions of 33 CFR 100.1103, no spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels, in the regulated areas during all applicable effective dates and times, unless cleared to do so by or through an official patrol vessel. Additionally, when hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this special local regulation.

This notice is issued under authority of 33 CFR 100.1103 and 5 U.S.C. 552(a). Even though this event is published in the **Federal Register**, if the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: April 4, 2008.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port, Sector San Francisco.

[FR Doc. E8-8733 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2003-0138, FRL-8557-1]

RIN 2060-AO99

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on the national emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline), which EPA promulgated on February 3, 2004, and amended on July 28, 2006. In this action, EPA is clarifying combustion control device compliance requirements, certain storage tank control compliance dates, and vapor balance system monitoring requirements. In addition, EPA is correcting typographical errors found in the July 28, 2006, final rule amendments.

DATES: This direct final rule is effective on July 22, 2008, without further notice, unless EPA receives adverse comment by June 9, 2008. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the relevant section of this rule, will not take effect.

Public Hearing: If anyone contacts EPA requesting to speak at a public hearing concerning this rulemaking by May 5, 2008, we will hold a public hearing on May 8, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0138, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **E-mail:** a-and-r-Docket@epa.gov.

- **Fax:** (202) 566-9744.

- **Mail:** Air and Radiation Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- **Hand Delivery:** In person or by courier, deliver your comments to: Air

and Radiation Docket, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that a separate copy also be sent to the contact persons listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2003-0138. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed either in the <http://www.regulations.gov> index or in the legacy docket, Docket No. A-98-13. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [http://](http://www.regulations.gov)

www.regulations.gov or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

Public Hearing: If you are interested in attending the public hearing, contact Ms. Janet Eck at (919) 541-7946 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. If no one contacts EPA requesting to speak at a public hearing concerning this rule by May 5, 2008 this hearing will be cancelled without further notice.

FOR FURTHER INFORMATION CONTACT:

General and Technical Information: MR. STEPHEN SHEDD, OFFICE OF AIR QUALITY PLANNING AND STANDARDS, SECTOR POLICIES AND PROGRAMS DIVISION, COATINGS AND CHEMICALS GROUP (E143-01), EPA, RESEARCH TRIANGLE PARK, NC 27711, TELEPHONE: (919) 541-5397, FACSIMILE NUMBER: (919) 685-3195, E-MAIL ADDRESS: shedd.steve@epa.gov.
Compliance Information: Ms. Marcia Mia, Office of Compliance, Air Compliance Branch (2223A), EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (202) 564-7042, facsimile number: (202) 564-0050, e-mail address: mia.marcia@epa.gov.

SUPPLEMENTARY INFORMATION:

EPA is publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment because the changes being implemented clarify the application of the rule, make the rule consistent with other regulations with no loss in its effectiveness in achieving emission reductions, and correct typographical and format errors. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule for these revisions if adverse comments are received on this direct final rule. If we receive adverse comment on a distinct section of this rule, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the amendments in this rule will not take effect. The provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on

any other provision, unless we determine that it would not be appropriate to promulgate those provisions due to their being affected by the provisions for which we receive any adverse comments. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about

commenting on this rule, see the **ADDRESSES** section of this document.

Submitting CBI.

Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific

information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of regulated entities
Industry	325211, 325192, 325188, 32411, 49311, 49319, 48611, 42269, 42271.	Operations at major sources that transfer organic liquids into or out of the plant site, including: liquid storage terminals, crude oil pipeline stations, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with collocated OLD operations.
Federal Government		Federal agency facilities that operate any of the types of entities listed under the "industry" category in this table.

*North American Industry Classification System/Considered to be the primary industrial codes for the plant sites with OLD operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final rule. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR part 63, subpart EEEE. If you have any questions regarding the applicability of this final rule to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

Outline: The information presented in this preamble is organized as follows:

- I. Background
- II. Summary of These Final Rule Amendments
- III. Rationale for These Final Rule Amendments
 - A. Use of TOC as a Surrogate for HAP When Demonstrating Compliance with Percent Emission Reduction
 - B. Compliance Date and Initial Demonstration of Compliance for Storage Tanks Using Vapor Balancing or Routing

- Emissions Back to a Process or a Fuel Gas System
- C. Monitoring of Vapor Balancing System Components With the Potential To Leak
- D. Format, Grammatical, and Typographical Errors
- IV. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act

I. Background

On February 3, 2004 (69 FR 5063), EPA promulgated the National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) (OLD NESHAP) (40 CFR part 63, subpart EEEE) pursuant to section 112 of the Clean Air Act (CAA). In response to several petitions for administrative reconsideration of the OLD NESHAP and several petitions for judicial review filed with the United

States Court of Appeals for the District of Columbia Circuit, and pursuant to a settlement agreement between some of the parties to the litigation, EPA proposed amendments to subpart EEEE on November 14, 2005 (70 CFR 69210). EPA received comments from four entities. On July 28, 2006 (71 FR 42898), EPA promulgated amendments to subpart EEEE based on consideration of the comments received on the proposed amendments.

II. Summary of These Final Rule Amendments

Under these final rule amendments, the following changes or clarifications are being promulgated.

- Removing the requirement that owners and operators must obtain prior approval from the Administrator to use total organic compounds (TOC) as a surrogate for hazardous air pollutants (HAP) when demonstrating compliance with the percent emission reduction requirements for combustion devices.
- Clarifying that demonstration of initial compliance for storage tanks that elect to comply with either the vapor balancing work practice requirement or the routing of emissions to a fuel gas system or back to a process work practice requirement must be made by April 25, 2011, and not 10 years after February 3, 2004. We retain the requirement that compliance must occur prior to the specified date or the first degassing, whichever occur earlier.
- Clarifying that the continuous compliance requirements for the

monitoring of a transfer rack system using vapor balancing is for all points in the system that may leak and that monitoring is not required in any quarter in which loading does not occur.

These final rule amendments also correct several format, grammatical, and typographical errors which occur in Table 2 (item 9.b.ii), Table 5 (item 1.b), Table 6 (item 1), Table 7 (item 1.a.i, item 1.c.i, and item 2.a.i), and § 63.2343(d).

III. Rationale for These Final Rule Amendments

A. Use of TOC as a Surrogate for HAP When Demonstrating Compliance With Percent Emission Reduction

Section 63.2354(b) of the NESHAP specifies that you must comply with various requirements of 40 CFR part 63, subpart SS for performance testing provisions, including § 63.997(e). Additionally, § 63.2346(f) specifies that if you elect to demonstrate compliance with the percent reduction requirements using TOC rather than organic HAP, you must first demonstrate, subject to approval of the Administrator, that TOC is an appropriate surrogate for organic HAP. This requirement was intended to address circumstances under which a device such as a condenser could achieve substantively different results from one compound to another. Under these conditions, an inlet and outlet percent control determination for TOC might not be equivalent to a similar determination for each or total HAP. Since promulgation, we have received questions on whether the requirement to first demonstrate that TOC is an appropriate surrogate for organic HAP is necessary for a combustion device. When organic compounds are controlled by combustion processes, the organic compounds emitted at the outlet of the device are not the same as those entering the inlet to the device and are typically unknown. Further, unlike non-combustion devices, combustion devices achieve a greater uniformity of destruction across all organic HAP compounds. Therefore, we have determined that the requirement to first demonstrate that TOC is an appropriate surrogate for organic HAP is unwarranted for combustion devices and have modified paragraph (f) of 40 CFR 63.2346 to make this requirement applicable only to non-combustion devices.

B. Compliance Date and Initial Demonstration of Compliance for Storage Tanks Using Vapor Balancing or Routing Emissions Back to a Process or a Fuel Gas System

Section 63.2342 identifies when an owner or operator must comply with the requirements of subpart EEEEE, while § 63.2358 identifies the dates by which an owner or operator must demonstrate initial compliance. As discussed below, there is an inconsistency in these two sections of the rule as they apply to storage tanks for which vapor balancing or routing of emissions to a fuel gas system or back to a process are used to comply with the rule.

Paragraph (b)(1) of § 63.2342 states that owners or operators of existing affected sources must be in compliance with the emission limitations, operating limits, and work practice standards for existing sources by February 5, 2007, except as specified in § 63.2342(b)(2). Paragraph (b)(2) states that “floating roof tanks at existing affected sources must be in compliance with the work practice standards in Table 4 to this subpart, item 1, at all times after the next degassing and cleaning activity or within 10 years after February 3, 2004, whichever occurs first. If the first degassing and cleaning activity occurs during the 3 years following February 3, 2004, the compliance date is February 5, 2007.”

With regards to demonstrating initial compliance, paragraph (c)(1) of § 63.2358 states that “for storage tanks at existing affected sources complying with the work practice standard in Table 4 to this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than 10 years after February 3, 2004.” The work practice standards in Table 4 for storage tanks at existing facilities are:

- Comply with the requirements of 40 CFR part 63, subpart WW (control level 2), which addressed the use of floating roofs;
- Comply with the requirements of § 63.984 for routing emissions to a fuel gas system or back to a process; and
- Comply with the requirements of § 63.2346(a)(4) for vapor balancing emissions to the transport vehicle from which the storage tank is filled.

As stated in the July 28, 2006, **Federal Register** in response to a public comment (71 FR 42899), the technical basis for allowing demonstration of initial compliance up to 10 years after February 3, 2004, applies only to storage tanks with floating roofs and not to storage tanks with fixed roofs. EPA, in

both the February 3, 2004 rulemaking promulgating 40 CFR part 63, subpart EEEEE, and in the July 28, 2006 rulemaking promulgating amendments to 40 CFR part 63, subpart EEEEE, inadvertently failed to revise § 63.2358 to reflect its intent to apply the “up to 10 years” compliance provision to only the “floating roof” work practice standard.

As the current regulation stands, owners and operators seeking to comply with the work practice standards for storage tanks would have “up to 10 years” to demonstrate initial compliance if they elect to comply by routing the emissions to a fuel gas system or back to a process or by using a vapor balancing system. This was never EPA’s intent for these two types of work practice standards. EPA points out that these same types of work practice standards are allowed for transfer racks, and the rule is unambiguous that demonstration of initial compliance is required within 180 days after the compliance date of February 3, 2007.

To correct this oversight, EPA is clarifying that the “up to 10-year” demonstration of initial compliance date applies only when a floating roof is used to comply with 40 CFR part 63, subpart EEEEE, and inserting the actual date “February 3, 2014” into the rule text. In addition, the intended compliance date has past (180 days after the compliance date of February 3, 2007) to demonstrate initial compliance if they elect to route storage tank emissions to a fuel system or back to a process or to use vapor balancing. Because facilities will need time to plan and install equipment and affected sources had up to 3 years to comply with the original rule, we are specifying the compliance date for routing storage tank emissions to a fuel gas system or back to a process or to use vapor balancing to be 3 years from this notice. However, we retain and still require compliance by “the next time the storage tank is emptied and degassed, but not later than” 3 years from this notice.

C. Monitoring of Vapor Balancing System Components With the Potential To Leak

Table 10 to 40 CFR part 63, subpart EEEEE addresses continuous compliance requirements, in part, for vapor balancing systems when used for transfer racks and storage tanks. EPA has received a question concerning the relationship between the continuous compliance requirements for vapor balancing systems and those for equipment leak components.

For vapor balancing systems, there are two places in 40 CFR part 63, subpart EEEE that identify compliance requirements—Table 10 and § 63.2346(a)(4)(v). As found in item 4.b.i to Table 10, the continuous compliance requirement for a transfer rack using a vapor balancing system reads:

“Monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle or the filling of a container using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to subpart EEEE, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards.”

Paragraph (a)(4)(v) of § 63.2346 identifies leak detection and repair (LDAR) requirements for pressure relief devices used in vapor balancing systems. The current rule language is, at best, ambiguous as to the relationship of this paragraph and the language in Table 10.

For equipment leak components, which are defined in 40 CFR part 63, subpart EEEE as pumps, valves, and sampling connections, the owner or operator selects one of three 40 CFR part 63 subparts, as specified in item 4 of Table 4. These three subparts identify LDAR provisions that are to be applied to pumps, valves, and sampling connections.

To clarify the intended relationship between these various provisions, the phrase “each potential source of vapor leakage” is intended to apply to any and all equipment in the vapor balancing system that may leak, including, but not limited to pumps, valves, and sampling connections. For all such equipment, the owner or operator is to apply the applicable provisions found in the equipment leak standard selected by the owner or operator to comply with the equipment leak components. This could mean that an owner or operator may be applying LDAR requirements found in the selected 40 CFR part 63 subpart for components other than a pump, valve, or sampling connection. If the vapor balancing system has a pressure relief valve, however, the owner or operator would comply with the LDAR provisions for pressure relief valves found in § 63.2346(a)(4)(v). For equipment leak components (as defined in 40 CFR part 63, subpart EEEE) that are not part of a vapor balancing system, continuous compliance is demonstrated as specified in item 5 to Table 10.

To clarify these relationships, EPA is revising item 4.b.i in Table 10 or 40 CFR part 63, subpart EEEE to read as follows:

“Except for pressure relief devices, monitoring each potential source of vapor leakage in the system, including, but not limited to pumps, valves, and sampling connections, quarterly during the loading of a transport vehicle or the filling of a container using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards. For pressure relief devices, comply with § 63.2346(a)(4)(v). If no loading of a transport vehicle or filling of a container occurs during a quarter, then monitoring of the vapor balancing system is not required.”

Finally, item 6.b.i to Table 10 of 40 CFR part 63, subpart EEEE addresses the same vapor balancing system monitoring requirements, but for storage tanks. EPA is making the same changes as in item 4.b.i to Table 10. EPA is also making one additional change. As the rule currently reads, item 6.b.i refers to “monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle or the filling of a container.” This item should be referring to the loading of a storage tank and not the loading of a transport vehicle or the filling of a container. Therefore, EPA is also correcting this incorrect reference.

D. Format, Grammatical, and Typographical Errors

1. In Table 2, item 9.b.ii or 40 CFR part 63, subpart EEEE should have been placed on a separate line rather than on the same line as the end of item 9.b.i. For clarity, item 9.b.ii has been reformatted so that it starts on its own line.

2. In Table 5 of 40 CFR part 63, subpart EEEE, the first two columns associated with item b. were incorrectly placed under the headings “According to * * *” and “Using * * *”. They should have been placed under the headings, respectively, “You must conduct * * *” and “According to * * *”.

3. In Table 6, item 1 of 40 CFR part 63, subpart EEEE, the first column cross-references items 1 through 6 in Table 2. The sentence, therefore, should refer to “meeting *any* set of tank capacity and liquid organic HAP vapor pressure criteria” rather to “meeting *either* set.”

4. In Table 6 of 40 CFR part 63, subpart EEEE, the second column of item 1 states, in part, “or as an option for combustion devices to an exhaust concentration of ≤20 ppmv.” The word “nonflare” was inadvertently omitted from this sentence. This sentence is revised to read, in part, “or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.” This makes the sentence consistent with the other items in Table 6.

5. In Table 7 of 40 CFR part 63, subpart EEEE, three typographical errors are being corrected from the July 28, 2006, FR notice. In item 1.a.i, “perform” was misspelled as “perofrm.” In item 1.c.i, the cross-reference was incorrectly identified as § 3.2346(a)(4); the correct cross-reference is § 63.2346(a)(4). In item 2.a.i, “primary” was misspelled as “priamry.”

6. Section 63.2343(d) currently reads: “If one or more of the events identified in paragraphs (d)(1) through (4) of this section occur since the filing of the Notification of Compliance Status or the last Compliance report, you must submit a subsequent Compliance report as specified in paragraphs (b)(3) and (c)(3) of this section.” The cross-references to paragraphs (b)(3) and (c)(3) are incorrect. The correct cross-references are paragraphs (b)(2) and (c)(2). The direct final rule makes this correction.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final amendments clarify, but do not add requirements increasing the collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 63, subpart EEEE under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0539. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule amendments on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The final rule amendments will not impose any new requirements on small entities, and, therefore, will have no significant adverse economic impact on subject small entities. The Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish

any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that these final rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. These final rule amendments clarify certain provisions and correct typographical errors in the rule text for a rule EPA determined not to include a Federal mandate that may result in an estimated cost of \$100 million or more (69 FR 5061, February 3, 2004). These clarifications do not change the level or cost of the standard, except, in some cases, reduce the cost of testing for combustion control devices at some facilities using that option. Thus, these final rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. EPA has determined that these final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. These final rule amendments clarify certain provisions and correct typographical errors in the rule text, thus, should not affect small governments.

E. Executive Order 13132: Federalism

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

These final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. They provide clarification and correct typographical errors. These changes do not modify existing or create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. Thus, Executive Order 13132 does not apply to these final rule amendments.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." These final rule amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to these final rule amendments.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

These final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note)

directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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

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

EPA has determined that these final rule amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These final rule amendments do not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing the final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). These final rule amendments will be effective on July 22, 2008.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 16, 2008.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart EEEE—[Amended]

■ 2. Section 63.2343 is amended by revising paragraph (d) introductory text to read as follows:

§ 63.2343 What are my requirements for emission sources not requiring control?

* * * * *

(d) If one or more of the events identified in paragraphs (d)(1) through (4) of this section occur since the filing of the Notification of Compliance Status or the last Compliance report, you must submit a subsequent Compliance report as specified in paragraphs (b)(2) and (c)(2) of this section.

* * * * *

■ 3. Section 63.2346 is amended by revising paragraph (f) to read as follows:

§ 63.2346 What emission limitations, operating limits, and work practice standards must I meet?

* * * * *

(f) For noncombustion devices, if you elect to demonstrate compliance with a percent reduction requirement in Table 2 to this subpart using total organic compounds (TOC) rather than organic HAP, you must first demonstrate, subject to the approval of the Administrator, that TOC is an appropriate surrogate for organic HAP in your case; that is, for your storage tank(s) and/or transfer rack(s), the percent destruction of organic HAP is equal to or higher than the percent destruction of TOC. This demonstration must be conducted prior to or during the initial compliance test.

* * * * *

■ 4. Section 63.2358 is amended by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 63.2358 By what date must I conduct performance tests and other initial compliance demonstrations?

* * * * *

(b)(1) For storage tanks and transfer racks at existing affected sources complying with the emission limitations listed in Table 2 to this subpart or with the work practice standards in items 1.b or 1.c in Table 4 to this subpart, you must demonstrate initial compliance with the emission limitations the next time the storage tank is emptied and degassed, but not later than April 25, 2011.

* * * * *

(c)(1) For storage tanks at existing affected sources complying with the work practice standard in item 1.a in Table 4 to this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than February 3, 2014.

* * * * *

■ 5. Table 2 to Subpart EEEE of Part 63 is amended by revising entry 9. to read as follows:

* * * * *

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS

If you own or operate . . .	And if . . .	Then you must . . .
* * *	* * *	* * *
9. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is less than 800,000 gallons.	a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 25 percent by weight and is being loaded into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS—Continued

If you own or operate . . .	And if . . .	Then you must . . .
	b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons.	i. For all such loading arms at the rack during the loading of organic liquids, comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart.
*	*	*

■ 6. Table 5 to Subpart EEEE of Part 63 is amended by revising entry 1. to read as follows:

* * * * *

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
1. Each existing, each reconstructed, and each new affected source using a nonflare control device to comply with an emission limit in Table 2 to this subpart, items 1 through 10.	a. A performance test to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, OR the exhaust concentration of each combustion device; OR.	i. § 63.985(b)(1)(ii), § 63.988(b), § 63.990(b), or § 63.995(b).	(1) EPA Method 1 or 1A in appendix A–1 of 40 CFR part 60, as appropriate. (2) EPA Method 2, 2A, 2C, 2D, or 2F in appendix A–1 of 40 CFR part 60, or EPA Method 2G in appendix A–2 of 40 CFR part 60, as appropriate. (3) EPA Method 3 or 3B in appendix A–2 of 40 CFR part 60, as appropriate. (4) EPA Method 4 in appendix A–3 of 40 CFR part 60.	(A) Sampling port locations and the required number of traverse points. (A) Stack gas velocity and volumetric flow rate. (A) Concentration of CO ₂ and O ₂ and dry molecular weight of the stack gas. (A) Moisture content of the stack gas.	(i) Sampling sites must be located at the inlet and outlet of each control device if complying with the control efficiency requirement or at the outlet of the control device if complying with the exhaust concentration requirement; AND (ii) the outlet sampling site must be located at each control device prior to any releases to the atmosphere. See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table. See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table. See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS—
Continued

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the fol- lowing requirements . . .
			(5) EPA Method 18 in appendix A–6 of 40 CFR part 60, or EPA Method 25 or 25A in appendix A–7 of 40 CFR part 60, as appropriate, or EPA Method 316 in appendix A of 40 CFR part 63 for measuring formaldehyde.	(A) Total organic HAP (or, upon approval, TOC), or formaldehyde emissions.	(i) The organic HAP used for the calibration gas for EPA Method 25A in appendix A–7 of 40 CFR part 60 must be the single organic HAP representing the largest percent by volume of emissions; AND (ii) During the performance test, you must establish the operating parameter limits within which total organic HAP (or, upon approval, TOC) emissions are reduced by the required weight-percent or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration.
	b. A design evaluation (for nonflare control devices) to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, or the exhaust concentration of each combustion control device.	§ 63.985(b)(1)(i)			During a design evaluation, you must establish the operating parameter limits within which total organic HAP, (or, upon approval, TOC) emissions are reduced by at least 95 weight-percent for storage tanks or 98 weight-percent for transfer racks, or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration
*	*	*	*	*	*

■ 7. Table 6 to Subpart EEEE of Part 63 is amended by revising entry 1. to read as follows:

* * * * *

TABLE 6 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

For each . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	Reduce total organic HAP (or, upon approval, TOC) emissions by at least 95 weight-percent, or as an option for nonflare combustion devices to an exhaust concentration of ≤ 20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 95 weight-percent or as an option for nonflare combustion devices to an exhaust concentration ≤ 20 ppmv.
*	*	*

■ 8. Table 7 to Subpart EEEE of Part 63 is amended by revising entries 1. and 2. to read as follows:

TABLE 7 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	If you . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 or 2.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a. b. Route emissions to a fuel gas system or back to a process. c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. After emptying and degassing, you visually inspect each internal floating roof before the refilling of the storage tank and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the refilling of the storage tank. i. You meet the requirements in § 63.984(b) and submit the statement of connection required by § 63.984(c). i. You meet the requirements in § 63.2346(a)(4).
2. Storage tank at a reconstructed or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 3 through 5.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a. b. Route emissions to a fuel gas system or back to a process. c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. You visually inspect each internal floating roof before the initial filling of the storage tank, and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the initial filling of the storage tank. i. See item 1.b.i of this table. i. See item 1.c.i of this table.
*	*	*

■ 9. Table 10 to Subpart EEEE of Part 63 is amended by revising entries 4. and 6. to read as follows:

* * * * *

TABLE 10 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
4. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Ensure that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.	i. Ensuring that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.
*	*	*

TABLE 10 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
	b. Install and, during the loading of organic liquids, operate a vapor balancing system.	i. Except for pressure relief devices, monitoring each potential source of vapor leakage in the system, including, but not limited to pumps, valves, and sampling connections, quarterly during the loading of a transport vehicle or the filling of a container using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards. For pressure relief devices, comply with § 63.2346(a)(4)(v). If no loading of a transport vehicle or filling of a container occurs during a quarter, then monitoring of the vapor balancing system is not required.
	c. Route emissions to a fuel gas system or back to a process.	i. Continuing to meet the requirements specified in § 63.984(b).
* * *	* * *	* * *
6. Storage tank at an existing, reconstructed, or new affected source meeting any of the tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	a. Route emissions to a fuel gas system or back to the process.	i. Continuing to meet the requirements specified in § 63.984(b).
	b. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. Except for pressure relief devices, monitoring each potential source of vapor leakage in the system, including, but not limited to pumps, valves, and sampling connections, quarterly during the loading of a storage tank using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards. For pressure relief devices, comply with § 63.2346(a)(4)(v). If no loading of a transport vehicle or filling of a container occurs during a quarter, then monitoring of the vapor balancing system is not required.

[FR Doc. E8-8810 Filed 4-22-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180****[EPA-HQ-OPP-2007-0872; FRL-8360-4]****Cyazofamid; Pesticide Tolerances****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of cyazofamid and its metabloite CCIM in or on carrot, roots. Interregional

Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 23, 2008. Objections and requests for hearings must be received on or before June 23, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0872. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert

the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP

Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5218; e-mail address: stanton.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2007-0872 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before June 23, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2007-0872, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

II. Petition for Tolerance

In the **Federal Register** of September 28, 2007 (72 FR 55204) (FRL-8147-1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7244) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.601 be amended by establishing a tolerance for combined residues of the fungicide cyazofamid, 4-chloro-2-cyano-N,N-dimethyl-5-(4-methylphenyl)-1H-

imidazole-1-sulfonamide, and its metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1H-imidazole-2-carbonitrile, expressed as cyazofamid, in or on carrot, roots at 0.06 parts per million (ppm). That notice referenced a summary of the petition prepared by ISK Biosciences Corporation, the registrant, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the tolerance level for carrot roots. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of cyazofamid and its metabolite CCIM on carrot, roots at 0.09 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information

concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Cyazofamid has a low order of acute toxicity via the oral, dermal and inhalation routes of exposure. Cyazofamid produces minimal but reversible eye irritation, is a slight dermal irritant and is a weak dermal sensitizer. In subchronic toxicity studies in rats cyazofamid exhibited mild or low toxicity with the kidney being the primary target organ. Kidney effects included an increased number of "basophilic kidney tubules" and mild increases in urinary volume, pH, and protein. No adverse kidney effects or any other toxicity findings were noted in chronic toxicity studies in rats. Similarly, cyazofamid's overall toxicity profile in dogs seems to be limited. In both the 13 week and one year dog studies, there were no major toxicity findings up to a dose of 1,000 milligrams/kilogram body weight/day (mg/kg/bwt day). The only possible effect was increased cysts in parathyroids of both sexes and the pituitary in females observed in the high dose groups of the one year study.

Skin lesions, which may be due to systemic allergy, were observed in the males of the 18 month mouse carcinogenicity study. At the high dose, approaching 1,000 mg/kg/day, male mice suffered hair loss due to scratching, which was confirmed at necropsy by increased incidence of body sores (head, neck, trunk, limb, and/or tail) and was correlated histologically with an increased incidence of acanthosis (hyperplasia), chronic active dermatitis, ulceration, and premature death. The sulfonamide moiety in the cyanoimidazole ring might have rendered cyazofamid an allergen, albeit a weak one. This is supported by the findings that cyazofamid is a moderate irritant in the primary rabbit skin test and is a positive weak sensitizer in the guinea pig skin maximization test. There were no skin allergies in the rat feeding study, which may be due to possible species variation.

There were no maternal or developmental effects observed in the prenatal developmental toxicity study in rabbits and no maternal, reproductive or offspring effects in the 2-generation reproduction study in rats. There was some evidence of increased susceptibility following *in utero* exposure of rats in the prenatal developmental toxicity study. At the highest dose tested (HDT) (1,000 mg/kg/day), developmental effects (increased

incidence of bent ribs) were observed in the absence of maternal toxicity.

There were no indications of treatment-related adverse neurotoxicity findings including clinical signs, qualitative or quantitative neurobehavioral effects, brain weight, or gross/microscopic pathology in the acute neurotoxicity study and no evidence of neurotoxicity in other available studies for cyazofamid.

There was no evidence of carcinogenicity in the rat and mouse carcinogenicity studies and no evidence that cyazofamid is mutagenic in several *in vivo* and *in vitro* studies. Based on the results of these studies, EPA has classified cyazofamid as "not likely to be carcinogenic to humans."

Specific information on the studies received and the nature of the adverse effects caused by cyazofamid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document *Human Health Risk Assessment to Support the Registration of Cyazofamid for Use on Carrot* at pages 10 to 17 in docket ID number EPA-HQ-OPP-2007-0872.

B. Toxicological Endpoints

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

margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

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

A summary of the toxicological endpoints for cyazofamid used for human risk assessment can be found at <http://www.regulations.gov> in document *Human Health Risk Assessment to Support the Registration of Cyazofamid for Use on Carrot* at pages 18 to 21 in docket ID number EPA-HQ-OPP-2007-0872.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to cyazofamid, EPA considered exposure under the petitioned-for tolerances as well as all existing cyazofamid tolerances in 40 CFR 180.601. EPA assessed dietary exposures from cyazofamid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. EPA identified such an effect (increased incidence of bent ribs in the rat prenatal developmental toxicity study) for the population subgroup, females, 13 to 50 years old; however, no such effect was identified for the general population, including infants and children.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues and 100 PCT for all existing and new uses of cyazofamid. Default processing factors were set to 1x based on the results of processing studies indicating that residues of cyazofamid do not concentrate in processed commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As in the acute dietary exposure

assessment, EPA assumed tolerance-level residues and 100 PCT for all existing and new uses of cyazofamid and processing factors of 1x for all processed commodities.

iii. *Cancer.* Based on the results of carcinogenicity studies in rats and mice, EPA classified cyazofamid as “not likely to be carcinogenic to humans.”

Therefore, a cancer exposure assessment was not conducted.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for cyazofamid. Tolerance-level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for cyazofamid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of cyazofamid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Available environmental fate studies suggest cyazofamid is not very mobile and quickly degrades into a number of degradation products under different environmental conditions. Among the three major degradates for cyazofamid (CCIM, CCIM-AM, and CTCA), the two terminal ones are CCIM and CTCA. The highest estimated drinking water concentrations resulted from modeling which assumed application of 100% molar conversion of the parent into the terminal degradate CTCA. EPA used these estimates of CTCA in its dietary exposure assessments, a conservative approach that likely overestimates the exposure contribution from drinking water. Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of CTCA for acute exposures are estimated to be 136 parts per billion (ppb) for surface water and 2.18 ppb for ground water; the EDWCs of CTCA for chronic exposures for non-cancer assessments are estimated to be 133 ppb for surface water and 2.18 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 136 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of

value 133 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Cyazofamid is currently registered for the following uses that could result in residential exposures: Disease control on professionally managed turf areas, such as golf courses and college/professional sports fields. EPA assessed residential exposure using the following assumptions: Application by homeowners to residential turf is prohibited. Therefore, non-occupational (i.e., residential) handler exposure is not expected and was not assessed. Short and intermediate term post-application dermal exposure is possible for recreational golfers or players of various sports who use college/professional athletic fields after cyazofamid has been applied. EPA assessed post-application exposure of adult golfers as well as young golfers (children 6-12 and children 3-5 years old). Post-application exposures on college/professional sports fields were assessed only for adults, since children are not expected to play on these types of athletic fields. The post-application exposure assessment was conducted using conservative assumptions, and the resulting exposure estimates are considered to represent high-end exposures.

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

EPA has not found cyazofamid to share a common mechanism of toxicity with any other substances, and cyazofamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that cyazofamid does not have a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s website at <http://www.epa.gov/pesticides/cumulative>.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for pre-natal and post-natal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Pre-natal and post-natal sensitivity.* The pre- and post-natal toxicology database for cyazofamid includes rat and rabbit developmental toxicity studies and a 2-generation reproduction toxicity study in rats. In the prenatal developmental toxicity study in rabbits, there were no maternal or developmental effects at any dose up to the limit dose of 1,000 mg/kg/day. Similarly, in the 2-generation reproduction study, the HDT (>1,000 mg/kg/day) did not cause maternal systemic, reproductive or offspring toxicity. There was some evidence of increased susceptibility following *in utero* exposure of rats in the prenatal developmental toxicity study. At the HDT (1,000 mg/kg/day), developmental effects (increased incidence of bent ribs) were observed in the absence of maternal toxicity.

EPA concluded that the concern is low for the quantitative susceptibility seen in the rat developmental toxicity study and that there are no residual uncertainties because:

- i. The developmental effect is well identified with clear NOAEL/LOAEL;
- ii. The developmental effect (increased bent ribs) is a reversible variation rather than a malformation;
- iii. The developmental effect is seen only at the limit dose of 1,000 mg/kg/day;
- iv. This endpoint is used to establish the acute RfD for Females 13-49; and
- v. The overall toxicity profile indicates that cyazofamid is not a very toxic compound.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

- i. The toxicity database for cyazofamid is complete.

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

iii. There is no evidence that cyazofamid results in increased susceptibility in *in utero* rabbits in the prenatal developmental study or in young rats in the 2-generation reproduction study. Although there is quantitative evidence of increased susceptibility in the pre-natal developmental study in rats, the degree of concern for pre-natal toxicity is low and the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of cyazofamid.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to cyazofamid in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children (young golfers). These assessments will not underestimate the exposure and risks posed by cyazofamid.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short, intermediate, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to cyazofamid will occupy <1% of the aPAD for females 13–50 years old, the population group of concern for acute effects. Cyazofamid is not expected to pose an acute risk to the

general population, including infants and children.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to cyazofamid from food and water will utilize 1.1% of the cPAD for infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of cyazofamid is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyazofamid is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to cyazofamid.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 330 for adults, 7,100 for children 3–5 years old and 9,100 for children 6–12 years old. The aggregate MOE for adults includes post-application exposures on athletic fields treated with cyazofamid, the worst-case post-application exposure scenario. The aggregate MOEs for children include post-application exposure of young golfers on treated golf courses.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyazofamid is currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure to cyazofamid through food and water with intermediate-term exposures for cyazofamid. Since the endpoints and points of departure (NOAELs) are identical for short and intermediate-term exposures, the aggregate MOEs for intermediate-term exposure are the same as those for short-term exposure (330 for adults, 7,100 for children 3–5 years old and 9,100 for children 6–12 years old).

5. *Aggregate cancer risk for U.S. population.* EPA has classified cyazofamid into the category “Not likely to be carcinogenic to humans”.

Cyazofamid is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyazofamid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methodology is available to enforce the tolerance on carrot roots. Cyazofamid and the metabolite CCIM are completely recovered (>80% recovery) using FDA's Multi-Residue Protocol D (without cleanup). In addition, the petitioner has submitted the results of an Independent Laboratory Validation (ILV) for an HPLC/UV method (high performance liquid chromatography method using an ultra violet detector) which can be used as a single analyte confirmatory method. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There are no maximum residue limits (MRLs) established by Codex, Canada or Mexico for cyazofamid.

C. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA determined that the proposed tolerance on “carrot, roots” should be increased from 0.06 ppm to 0.09 ppm. EPA revised the tolerance level based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data.

V. Conclusion

Therefore, a tolerance is established for combined residues of cyazofamid, 4-chloro-2-cyano-N,N-dimethyl-5-(4-methylphenyl)-1H-imidazole-1-sulfonamide, and its metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1H-imidazole-2-carbonitrile, expressed as cyazofamid, in or on carrot, roots at 0.09 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995

(NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 10, 2008.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.601 is amended by alphabetically adding the following commodity to the table in paragraph (a) to read as follows:

§ 180.601 Cyazofamid; tolerances for residues.

(a) * * *

Commodity	Parts per million
Carrot, roots	0.09
* * *	
* * *	

[FR Doc. E8-8371 Filed 4-22-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0003; FRL-8359-7]

Pyraclostrobin; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the fungicide pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl]carbamate), expressed as parent compound, in or on Belgian endive. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing post harvest use of the pesticide on endive, Belgian to control the fungal pathogen, *Sclerotinia sclerotiorum*. This regulation establishes a maximum permissible level for residues of pyraclostrobin in this food commodity. The time-limited tolerance expires and is revoked on December 31, 2009.

DATES: This regulation is effective April 23, 2008. Objections and requests for hearings must be received on or before June 23, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0003. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Stacey Groce, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-2505; e-mail address: groce.stacey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing

Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2008-0003 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 23, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2008-0003, by one of the following methods:

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

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited tolerance for combined residues of the fungicide, pyraclostrobin, in or on

endive, Belgian at 11.0 parts per million (ppm). This time-limited tolerance expires and is revoked on December 31, 2009. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the CFR.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related time-limited tolerances to set binding precedents for the application of section 408 of FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a time-limited tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Pyraclostrobin on Endive, Belgian and FFDCA Tolerances

The California Environmental Protection Agency, Department of Pesticide Regulation, utilized the crisis

provision under section 18 of FIFRA for emergency use of pyraclostrobin as a post harvest treatment on chicory roots to control fungal growth of *Sclerotinia sclerotiorum* during cold storage. According to the applicant, portions of the dormant roots are periodically removed from cold storage and propagated in sheds within a controlled environment in order to stimulate bud development. These edible buds are known as Belgian endives, and are marketed. Based on information provided in the submission, an emergency situation exists because the pathogen, *Sclerotinia sclerotiorum*, resides in field soils and can grow on the chicory root during cold storage, which makes the produce unmarketable. The state's application asserts there are currently no other fungicides registered for the post harvest treatment of chicory root to control fungal growth. Further, the State claims that good agricultural practices are not sufficient to suppress this fungal pathogen. EPA has authorized a crisis exemption for the California Department of Pesticide Regulation under FIFRA section 18 for the use of pyraclostrobin on endive, Belgian for control of *Sclerotinia sclerotiorum*. The crisis exemption program ended on January 31, 2008.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of pyraclostrobin in or on endive, Belgian. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary time-limited tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this time-limited tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although this time-limited tolerance expires and is revoked on December 31, 2009, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on endive, Belgian after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke this time-limited tolerance earlier if any experience with, scientific data on, or other relevant information

on this pesticide indicate that the residues are not safe.

Because this time-limited tolerance is being approved under emergency conditions, EPA has not made any final decisions about whether pyraclostrobin meets FIFRA's registration requirements for use on endive, Belgian or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of pyraclostrobin by a State for special local needs under FIFRA section 24(c). Nor does this time-limited tolerance serve as the basis for persons in any State other than California to use this pesticide on this crop under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for pyraclostrobin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a time-limited tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see <http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm>.

Consistent with the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in

support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerance for combined residues of pyraclostrobin on endive, Belgian at 11.0 ppm. EPA's assessment of exposures and risks associated with establishing a time-limited tolerance follows.

In the **Federal Register** of September 26, 2007 (72 FR 54564, FRL-8148-6), EPA published a final rule establishing tolerances for the combined residues of pyraclostrobin and its desmethoxy metabolite in or on berry, group 13; cotton, undelinted seed; and cotton, gin byproducts. When the Agency conducted the risk assessments in support of the above referenced tolerance action, EPA also assessed data submitted in the California Department of Environmental Protection emergency exemption request from trials that used backpack sprayers in both pre-cold storage and pre-forcing trays. This assessment determined that the backpack sprayer trials reflected the worse-case scenario and that the Agency could support the section 18 request and grant a time-limited tolerance of 11 ppm on Belgian endive.

This time-limited tolerance is expected to adequately cover any pyraclostrobin residues using the backpack sprayer application method. The values for combined pyraclostrobin residues were used to calculate the appropriate tolerance for Belgian endive. A detailed summary of this evaluation can be found in the document dated May 30, 2007 entitled, "Pyraclostrobin. Amendment. Petition for Tolerance on Belgian endive. Additional Discussion of Residue Data and Its Use For Adjustment of Previous Tolerance Recommendation" by going to <http://www.regulations.gov>. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA-HQ-OPP-2008-0003 in that docket. Locate and click on the hyperlink for docket ID number EPA-HQ-OPP-2008-0003. Double-click on the document to view the referenced information of page 2 of 8.

Since EPA calculated a time-limited tolerance of 11.0 ppm for Belgian endive in the May 30, 2007 amendment, the establishment of this time-limited tolerance will not change the estimated aggregate risks resulting from use of pyraclostrobin as discussed in the final rule published in the **Federal Register** on September 26, 2007. Refer to this **Federal Register** document available at <http://www.regulations.gov> for a more

detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action as well as the amendment dated May 30, 2007 referenced in Unit. IV. Refer to docket ID number EPA-HQ-OPP-2008-0003 at <http://www.regulations.gov> for a detailed review of this document.

Based on the risk assessments discussed in the final rule published in the **Federal Register** on September 26, 2007, (72 FR 54564, FRL-8148-6), and the document "Pyraclostrobin. Amendment. Petition for Tolerance on Belgian endive. Additional Discussion of Residue Data and Its Use For Adjustment of Previous Tolerance Recommendation," EPA concludes that there is reasonable certainty that no harm will result to the general population and to infants and children from aggregate exposure to the combined residues of pyraclostrobin.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (a liquid chromatography/mass spectrometry (LC/MS/MS) method (BASF Method D9808), and a high performance liquid chromatography/ultraviolet (HPLC/UV) method (BASF Method D9904)) is available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There are no established or proposed Codex Maximum Residue Limits (MRLs) for pyraclostrobin. There are no Canadian or Mexican MRLs established for Belgian endive.

VI. Conclusion

Therefore, a time-limited tolerance is established for combined residues of pyraclostrobin, (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl] phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl]carbamate), expressed as parent compound, in or on endive, Belgian at 11.0 ppm. This tolerance expires and is revoked on December 31, 2009.

VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under sections 408(e) and 408(l)(6) of

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

Since tolerances and exemptions that are established in accordance with sections 408(e) and 408(l)(6) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this rule. In addition, this rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require

Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 7, 2008.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.582 is amended by alphabetically adding text to paragraph (b) after the paragraph heading to read as follows:

§ 180.582 Pyraclostrobin; tolerances for residues.

* * * * *

(b)* * * A time-limited tolerance is established for combined residues of the fungicide pyraclostrobin, (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl] phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl]carbamate) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The time-limited tolerance will expire and is revoked on the date specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Endive, Belgian	11.0	12/31/09

* * * * *

[FR Doc. E8-8675 Filed 4-22-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 271**

[EPA-R08-RCRA-2006-0127; FRL-8556-7]

Utah: Final Authorization of State Hazardous Waste Management Program Revisions**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Withdrawal of immediate final rule.

SUMMARY: EPA is withdrawing the immediate final rule, Utah: Final Authorization of State Hazardous Waste Management Program Revisions, published on March 7, 2008 at 73 FR 12277, which authorized revisions to Utah's hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA stated in the immediate final rule that if EPA received comments that oppose this authorization, EPA would publish a timely notice of withdrawal in the **Federal Register**. Since EPA did receive comments that oppose this action, EPA is withdrawing the immediate final rule. EPA will address these comments in a subsequent final action based on the proposed rule also published on March 7, 2008, at 73 FR 12340.

DATES: As of April 23, 2008, EPA withdraws the immediate final rule published on March 7, 2008, at 73 FR 12277.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Solid and Hazardous Waste Program, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312-6416, daly.carl@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is withdrawing the immediate final rule, Utah: Final Authorization of State Hazardous Waste Management Program Revisions, published on March 7, 2008, at 73 FR 12277, which intended to grant authorization for revisions to Utah's hazardous waste program. EPA stated in the immediate final rule that if EPA received comments that opposed this action, EPA would publish a timely notice of withdrawal in the **Federal**

Register. Since EPA did receive adverse comments, EPA is withdrawing the immediate final rule. EPA will address all comments in a subsequent final action based on the proposed rule previously published on March 7, 2008, at 73 FR 12340. EPA will not provide for additional public comment during the final action.

Dated: April 15, 2008.

Robert E. Roberts,*Regional Administrator, Region 8.*

[FR Doc. E8-8799 Filed 4-22-08; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 64**

[CG Docket No. 03-123; DA 08-312]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Request for Stay Pending Judicial Review**AGENCY:** Federal Communications Commission.**ACTION:** Final rule; stay of effectiveness.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau (Bureau) grants a request to stay the effectiveness of paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling*, which restrict telecommunications relay service (TRS) providers from using consumer or call databases to contact TRS users. Because these paragraphs have been challenged in the Court of Appeals, a stay is appropriate pending review of the argument that these paragraphs violate the First Amendment rights of providers.

DATES: Paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling*, as summarized in paragraph 24, published at 73 FR 3197, January 17, 2008, are stayed for 90 days, starting February 7, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418-1475 (voice), (202) 418-0597 (TTY), or e-mail at Thomas.Chandler@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Order, DA 08-312, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Request for Stay Pending Judicial Review*, CG Docket No. 03-123, Order, 23 FCC Rcd 1705 (CGB 2008), adopted and released February 7, 2008. The full text of DA 08-312 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. DA 08-312 and copies of subsequently filed documents in this matter also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site www.bcpweb.com or by calling 1-800-378-3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). DA 08-312 also can be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.html#orders>.

Synopsis

1. On November 19, 2007, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007) (*2007 TRS Cost Recovery Declaratory Ruling*), published at 73 FR 3197, January 17, 2008, which, among other things, prohibits providers from using a consumer or call database to contact TRS users "for lobbying or any other purpose," and prohibits providers from using a consumer or call database to "contact TRS users or to in any way attempt to affect or influence, directly or indirectly, their use of relay service." *2007 TRS Cost Recovery Declaratory Ruling*, 22 FCC Rcd at 20176, paras. 95-96. On January 16, 2008, Sorenson Communications, Inc. (Sorenson) filed a Petition for Review in the United States

Court of Appeals for the Tenth Circuit asserting, in part, that the above-quoted language violates the First Amendment rights of TRS providers. On January 28, 2008, Sorenson filed with the Commission a request for a stay of paragraphs 95 and 96 pending judicial review. Sorenson Communications, Inc., *Request for Stay Pending Judicial Review*, CG Docket No. 03–123 (filed Jan. 28, 2008) (*Stay Request*).

2. In its *Stay Request*, Sorenson contends that it has a substantial likelihood of prevailing on the merits of the judicial review proceeding in the Tenth Circuit because paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling* violate Sorenson's First Amendment rights by "limiting [its] ability to engage in core political speech and to petition the government for redress of grievances" and by "restrict[ing] [its] ability to engage in protected commercial speech."

Although Sorenson does not dispute that the Commission has a substantial interest in preventing providers from using customer call data to offer TRS users financial incentives to make unnecessary TRS calls, it contends that the Commission has no substantial interest in preventing providers from contacting users for other reasons, including to assist them with service issues, to educate them about new service features, or to inform them of potential misuse of the service by third parties. Sorenson also asserts that, absent a stay, it will suffer irreparable harm through the loss of its First Amendment rights and harm to its business as a result of its inability to warn its users of scams and abusive relay practices. Sorenson further asserts that a stay will not injure other parties, as it will simply preserve the *status quo*. Finally, Sorenson asserts that a stay is in the public interest because the challenged restrictions run afoul of the First Amendment and impair the ability of TRS users to learn about developments in the provision of relay service.

3. In considering requests for stay, the Commission generally considers the four criteria set forth in *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (DC Cir. 1958). These criteria are: (1) A likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) the issuance of the order will further the public interest. As the Commission has explained, the relative importance of the four criteria will vary depending upon the circumstances of the case. If there is a

particularly overwhelming showing in at least one of the factors, the Commission may find that a stay is warranted notwithstanding the absence of another one of the factors.

4. The Bureau agrees that a temporary stay of paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling* is appropriate under the circumstances presented. Specifically, the Bureau concludes that a stay will further the public interest. The Bureau notes that Sorenson and other providers have raised several concerns, including their asserted inability to contact users for emergency or consumer protection-related purposes, that, if borne out by further Commission examination, may cause the Commission to reconsider the language of paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling*. In order to provide the Commission with sufficient time to consider the arguments presented by Sorenson and others, the Bureau finds that a temporary stay of those paragraphs is warranted. The Bureau therefore finds that it is in the public interest to grant the requested stay for a period of 90 days, starting February 7, 2008.

Ordering Clause

Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and the authority delegated under §§ 0.141 and 0.361 of the Commission's rules, 47 CFR 0.141, 0.361, the Request for Stay filed by Sorenson Communications, Inc. on January 28, 2008, is *granted*, and will remain in effect for a period of 90 days, starting February 7, 2008.

Federal Communications Commission.

Nicole McGinnis,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. E8–8793 Filed 4–22–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 201

Defense Federal Acquisition Regulation Supplement; Technical Amendments

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

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal

Acquisition Regulation Supplement (DFARS) to update a subpart heading and a reference to a DoD publication.

EFFECTIVE DATE: April 23, 2008.

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

SUPPLEMENTARY INFORMATION:

This final rule amends DFARS text as follows:

○ *Subpart 201.6.* Revises the subpart heading for consistency with the corresponding subpart of the Federal Acquisition Regulation.

○ *Section 201.603–2.* Updates references to a DoD publication addressing career development.

List of Subjects in 48 CFR Part 201

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 201 is amended as follows:

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for 48 CFR Part 201 continues to read as follows:

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

■ 2. The heading of subpart 201.6 is revised to read as follows:

Subpart 201.6—Career Development, Contracting Authority, and Responsibilities

■ 3. Section 201.603–2 is amended by revising the second sentence of paragraph (2)(iii) and the second sentence of paragraph (3) to read as follows:

201.603–2 Selection.

* * * * *

(2) * * *

(iii) * * * Information on developmental opportunities is contained in DoD Instruction 5000.66, Operation of the Defense Acquisition, Technology, and Logistics Workforce Education, Training, and Career Development Program.

(3) * * * Information on waivers is contained in DoD Instruction 5000.66.

[FR Doc. E8–8698 Filed 4–22–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 212**

RIN 0750-AF93

Defense Federal Acquisition Regulation Supplement; Extension of Authority To Carry Out Certain Prototype Projects (DFARS Case 2008-D008)

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

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 823 of the National Defense Authorization Act for Fiscal Year 2008. Section 823 provides a 5-year extension of the authority for DoD to carry out a pilot program for transition to follow-on contracting after use of other transaction authority.

EFFECTIVE DATE: April 23, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Felisha Hitt, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0310; facsimile 703-602-7887. Please cite DFARS Case 2008-D008.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule implements Section 823 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 823 amended Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (as amended by Section 847 of the National Defense Authorization Act for Fiscal Year 2004) (10 U.S.C. 2371 note), to provide a 5-year extension of the authority for DoD to carry out a pilot program for follow-on contracting for the production of items or processes begun as prototype projects under other transaction agreements. Items or processes that do not otherwise meet the definition of "commercial item" may be treated as commercial items in the award of contracts and subcontracts under the pilot program. In addition, items or processes acquired under the pilot program may be treated as developed in part with Federal funds and in part at private expense for purposes of negotiating rights in technical data.

The pilot program is addressed in DFARS Subpart 212.70. Accordingly, DFARS Subpart 212.70 is amended to reflect the extended expiration date, from September 30, 2008, to September 30, 2013.

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

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008-D008.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 212

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 212 is amended as follows:

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 1. The authority citation for 48 CFR part 212 continues to read as follows:

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

212.7002-1 [Amended]

■ 2. Section 212.7002-1 is amended in paragraph (a)(4) by removing "2008" and adding in its place "2013".

212.7002-2 [Amended]

■ 3. Section 212.7002-2 is amended in paragraph (a)(3) by removing "2008" and adding in its place "2013".

[FR Doc. E8-8695 Filed 4-22-08; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 225 and 252**

RIN 0750-AF91

Defense Federal Acquisition Regulation Supplement; Deletion of Obsolete Restriction on Acquisition of Vessel Propellers (DFARS Case 2007-D027)

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

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove text addressing an obsolete restriction on the acquisition of vessel propellers from foreign sources. The statute upon which the restriction was based applied only to acquisitions using fiscal year 2000 or 2001 funds.

EFFECTIVE DATE: April 23, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0328; facsimile 703-602-7887. Please cite DFARS Case 2007-D027.

SUPPLEMENTARY INFORMATION:**A. Background**

The text at DFARS 225.7010 through 225.7010-4, and the corresponding contract clause at DFARS 252.225-7023, were added on December 13, 2000 (65 FR 77827), to implement provisions of Section 8064 of the Fiscal Year 2001 DoD Appropriations Act (Pub. L. 106-259) relating to vessel propellers. Section 8064 prohibited the use of fiscal year 2000 or 2001 DoD appropriated funds for the procurement of vessel propellers, other than those produced by a domestic source and of domestic origin, unless an exception applied or a waiver was granted. This prohibition was not repeated in subsequent appropriations acts and, therefore, is removed from the DFARS.

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

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating

procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2007–D027.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

- Therefore, 48 CFR parts 225 and 252 are amended as follows:
- 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

225.7010 [Removed and Reserved]

- 2. Section 225.7010 is removed and reserved.

225.7010–1 through 225.7010–4 [Removed]

- 3. Sections 225.7010–1 through 225.7010–4 are removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7023 [Removed and Reserved]

- 4. Section 252.225–7023 is removed and reserved.

[FR Doc. E8–8694 Filed 4–22–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 234, 242, and 252

RIN 0750–AF19

Defense Federal Acquisition Regulation Supplement; Earned Value Management Systems (DFARS Case 2005–D006)

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

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements for DoD contractors to establish and maintain earned value management systems. The rule also eliminates requirements for DoD contractors to submit cost/schedule status reports.

EFFECTIVE DATE: April 23, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0302; facsimile 703–602–7887. Please cite DFARS Case 2005–D006.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates DFARS text addressing earned value management policy for DoD contracts. The rule supplements the final FAR rule published at 71 FR 38238 on July 5, 2006, and establishes DoD-specific earned value management requirements, as permitted by the FAR. The DFARS rule is consistent with the policy in the memorandum issued by the Under Secretary of Defense (Acquisition, Technology, and Logistics) on March 7, 2005, *Subject:* Revision to DoD Earned Value Management Policy (available at http://www.acq.osd.mil/dpap/ops/policy_vault.html).

The DFARS changes in this rule include the following:

- For cost or incentive contracts and subcontracts valued at \$20,000,000 or more, the rule requires an earned value management system that complies with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA–748).

- For cost or incentive contracts and subcontracts valued at \$50,000,000 or more, the rule requires an earned value management system that has been determined by the cognizant Federal agency (as defined in FAR 2.101) to be in compliance with the guidelines in ANSI/EIA–748.

- For cost or incentive contracts and subcontracts valued at less than \$20,000,000, the rule provides that application of earned value management is optional and is a risk-based decision.

- For firm-fixed-price contracts and subcontracts of any dollar value, the rule discourages the application of earned value management.

- The Defense Contract Management Agency is assigned responsibility for

determining earned value management compliance when DoD is the cognizant Federal agency.

- Requirements for contractor cost/schedule status reports are eliminated.

DoD published a proposed rule at 71 FR 3449 on January 23, 2006. Five sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* One respondent stated that the \$20,000,000 threshold for earned value management (EVM) further aggravates the ability to mitigate cost, schedule, and technical risks, since receiving EVM data below that threshold would be helpful in assisting leadership to make affordable decisions.

DoD Response: The rule allows for EVM below the \$20,000,000 threshold when its application is determined to be appropriate as the result of a cost-benefit analysis.

2. *Comment:* Two respondents stated that the rule should be revised to specifically state that EVM requirements do not apply to time-and-materials, labor-hour, and level-of-effort contracts.

DoD Response: The rule requires EVM to be applied only on cost and incentive type contracts and subcontracts over certain thresholds. EVM is discouraged on firm-fixed-price contracts and subcontracts of any dollar value. Further, performance-based acquisition management on developmental efforts, as described in OMB Circular A–11, Part 7, focuses on the use of EVM on cost and incentive type contracts.

3. *Comment:* One respondent expressed support of the rule, but urged that the Defense Acquisition Regulations Council work with the Civilian Agency Acquisition Council to ensure that the final FAR rule is consistent with the DFARS rule. In particular, the respondent stated that the FAR rule should be revised in four areas to make it consistent with the DFARS rule as follows: Explicitly limit application of EVM requirements to cost or incentive contracts; establish a fixed dollar value for the applicability of EVM requirements; limit integrated baseline reviews to contract post-award; and establish an executive agency (such as the Defense Contract Management Agency (DCMA)) within the Government responsible for Government-wide EVM system compliance reviews.

DoD Response: The respondent's recommendations regarding the FAR were addressed in the preamble to the FAR rule published at 71 FR 38238 on July 5, 2006. Additional changes have been made to the DFARS rule for consistency with the FAR rule. Those changes include:

- Relocation of EVM policy from Part 242 to Part 234.

- For cost or incentive contracts and subcontracts valued at \$50,000,000 or more, replacement of the requirement for a contracting officer's formal validation and acceptance with the requirement for an EVM system that has been determined by the cognizant federal agency to be in compliance with the guidelines in ANSI/EIA-748. DCMA is assigned responsibility for determining EVM system compliance when DoD is the cognizant Federal agency.

- Elimination of the text included in the proposed rule at 252.242-7006(b), which specified that the terms for compliance with ANSI/EIA-748 for contracts below \$50,000,000 may be subject to negotiation between the contractor and the contracting officer; compliance with the guidelines in ANSI/EIA-748 is not subject to negotiation.

- Addition of text in the solicitation provision at 252.234-7001(a)(2)(ii) and (iii) to require an offeror proposing to use a system that has not been determined to be in compliance with ANSI/EIA-748, to provide information and assistance as required by the contracting officer to support review of the offeror's plan for compliance and to provide milestones that indicate when the offeror will be compliant.

- Elimination of a separate provision and clause to address requirements for contracts valued at \$20,000,000 or more but less than \$50,000,000. The provision and clause at 252.234-7001 and 252.234-7002 address requirements for contracts above or below \$50,000,000.

4. *Comment:* One respondent recommended that the contract clause for EVM compliance be modified to indicate that the contract performance report may be tailored in accordance with the DoD Earned Value Management Implementation Guide, in order to reduce the burden on contractors while still ensuring that DoD managers receive useful information. The memorandum issued by the Under Secretary of Defense (Acquisition, Technology, and Logistics) on March 7, 2005, indicates that the contract performance report may be tailored, based on guidance in the implementation guide, for cost or incentive contracts valued at \$20 million or more but less than \$50 million.

DoD Response: DoD does not believe it is necessary to address tailoring of the contract performance report within the contract clause. The contracting officer may tailor the report in accordance with the DoD Earned Value Management

Implementation Guide. A reference to the guide has been added to the DFARS companion resource, Procedures, Guidance, and Information. Any tailoring of contract performance reports for a particular contract will be documented in the contract data requirements list to ensure the contractual requirements are clear.

5. *Comment:* One respondent recommended that language be added to the contract clause to state that the contractor is responsible for ensuring that selected subcontractors comply with ANSI/EIA-748.

DoD Response: Paragraph (h) of the contract clause in the final rule specifies that the contractor must require certain subcontractors (or subcontractor effort if subcontractors have not been selected) to comply with the EVM requirements of the clause. This includes compliance with the EVM guidelines in ANSI/EIA-748.

6. *Comment:* One respondent recommended adding the following language to the contract clause for consistency with language included in the solicitation provision: "The terms for compliance with ANSI/EIA-748 may be subject to negotiation between the contractor and subcontractor. The conduct of the integrated baseline reviews also may be subject to negotiation between the contractor and subcontractor."

DoD Response: The cited language has been excluded from the final rule. The clause at 252.234-7002 requires contractors to ensure subcontractor compliance with the EVM requirements of the clause, to include compliance with the guidelines in ANSI/EIA-748. Likewise, contractors are required to ensure that any necessary participation by a subcontractor in the performance of integrated baseline reviews is in accordance with the clause. However, since integrated baseline reviews are a joint assessment between the contractor and the Government, the timing of such reviews will necessarily be coordinated between the parties.

7. *Comment:* One respondent indicated that emphasis should be placed on establishing a system that requires a company-wide commitment to standardized actual collection systems, budgeting systems, scheduling systems, status systems, change management systems, and reporting systems, rather than simply emphasizing what threshold should be used to apply EVM.

DoD Response: The Government can not mandate contractor management and budgetary control systems used outside of Government contracts. However, contractors that are frequently

awarded Government contracts that require EVM may find it in their best interests to establish company-wide standardized EVM systems that are in compliance with ANSI/EIA-748.

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

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This final rule amends the DFARS to update requirements for DoD contractors to establish and maintain earned value management systems. The rule revises the dollar thresholds at which DoD applies earned value management policy, and eliminates requirements for DoD contractors to submit cost/schedule status reports.

The rule supplements the FAR rule published at 71 FR 38238 on July 5, 2006. The FAR rule provides standard earned value management policy, consistent with the requirements of OMB Circular A-11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets, and the supplement to Part 7, the Capital Programming Guide. The OMB Circular and its supplement implement statutory requirements for the Government to define the cost, performance, and schedule, and schedule goals for major acquisitions and to achieve, on the average, 90 percent of the established goals.

The FAR rule permits agency supplementation with regard to earned value management applicability criteria, post-award review requirements, and procedures for implementation of the guidelines in American National Standards Institute/Electronic Industries Alliance Standard 748 (ANSI/EIA-748), Earned Value Management Systems. This DFARS rule establishes the DoD-specific earned value management requirements.

The FAR rule permits agency supplementation with regard to earned value management applicability criteria, post-award review requirements, and procedures for implementation of the guidelines in American National Standards Institute/Electronic Industries Alliance Standard 748 (ANSI/EIA-748), Earned Value Management Systems. This DFARS rule establishes the DoD-specific earned value management requirements.

The threshold at which a DoD contractor previously was required to

have an earned value management system that complied with ANSI/EIA-748 was \$73 million for contracts and subcontracts funded with research, development, test and evaluation funding; and \$315 million for contracts and subcontracts funded with operation and maintenance or procurement funding. This DFARS rule lowers those thresholds to a single \$20 million for all cost or incentive contracts and subcontracts, regardless of funding type, and establishes a new threshold of \$50 million for an earned value management system that has been determined by the Government to be in compliance with ANSI/EIA-748. The rule discourages the application of earned value management requirements to fixed-price contracts and subcontracts of any dollar value.

During fiscal year 2006, DoD awarded 8,266 cost or incentive contracts to small business concerns, with only 16 of those contracts exceeding \$20 million in value. During the same fiscal year, DoD awarded 53,585 fixed-price type contracts to small business concerns, with only 70 of those contracts exceeding \$20 million in value. The use of earned value management requirements in fixed-price contracts is expected to be rare.

The DFARS rule mitigates the impact on small businesses by establishing a \$20 million contract threshold for earned value management requirements, and discouraging the application of earned value management requirements to fixed-price contracts and subcontracts, thereby establishing a very small subset of the small business community for which the rule would be applicable. The cost for a small business concern to establish a compliant earned value management system would be a one-time cost that the concern may offset through cost reimbursement on the resulting Government contract.

C. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The contract performance reports required by the rule are approved under OMB Clearance Number 0704-0188, Acquisition Management Systems and Data Requirements Control List.

List of Subjects in 48 CFR Parts 234, 242, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 234, 242, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 234, 242, and 252 continues to read as follows:

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

PART 234—MAJOR SYSTEM ACQUISITION

§ 234.005 [Removed]

■ 2. Section 234.005 is removed.

■ 3. Subpart 234.2 is added to read as follows:

Subpart 234.2—Earned Value Management System

Sec.

234.201 Policy.

234.203 Solicitation provisions and contract clause.

Subpart 234.2—Earned Value Management System

§ 234.201 Policy.

(1) DoD applies the earned value management system requirement as follows:

(i) For cost or incentive contracts and subcontracts valued at \$20,000,000 or more, the earned value management system shall comply with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748).

(ii) For cost or incentive contracts and subcontracts valued at \$50,000,000 or more, the contractor shall have an earned value management system that has been determined by the cognizant Federal agency to be in compliance with the guidelines in ANSI/EIA-748.

(iii) For cost or incentive contracts and subcontracts valued at less than \$20,000,000—

(A) The application of earned value management is optional and is a risk-based decision;

(B) A decision to apply earned value management shall be documented in the contract file; and

(C) Follow the procedures at PGI 234.201(1)(iii) for conducting a cost-benefit analysis.

(iv) For firm-fixed-price contracts and subcontracts of any dollar value—

(A) The application of earned value management is discouraged; and

(B) Follow the procedures at PGI 234.201(1)(iv) for obtaining a waiver

before applying earned value management.

(2) When an offeror proposes a plan for compliance with the earned value management system guidelines in ANSI/EIA-748, follow the review procedures at PGI 234.201(2).

(3) The Defense Contract Management Agency is responsible for determining earned value management system compliance when DoD is the cognizant Federal agency.

(4) See PGI 234.201(4) for additional guidance on earned value management.

234.203 Solicitation provisions and contract clause.

For cost or incentive contracts valued at \$20,000,000 or more, and for other contracts for which EVMS will be applied in accordance with 234.201(1)(iii) and (iv)—

(1) Use the provision at 252.234-7001, Notice of Earned Value Management System, instead of the provisions at FAR 52.234-2, Notice of Earned Value Management System—Pre-Award IBR, and FAR 52.234-3, Notice of Earned Value Management System—Post-Award IBR, in the solicitation; and

(2) Use the clause at 252.234-7002, Earned Value Management System, instead of the clause at FAR 52.234-4, Earned Value Management System, in the solicitation and contract.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 4. Section 242.1106 is amended by revising paragraph (a) to read as follows:

242.1106 Reporting requirements.

(a) See DoDI 5000.2, Operation of the Defense Acquisition System, for reporting requirements for defense technology projects and acquisition programs.

* * * * *

242.1107-70 [Removed]

■ 5. Section 242.1107-70 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Sections 252.234-7001 and 252.234-7002 are added to read as follows:

252.234-7001 Notice of Earned Value Management System.

As prescribed in 234.203(1), use the following provision:

Notice of Earned Value Management System (Apr 2008)

(a) If the offeror submits a proposal in the amount of \$50,000,000 or more—

(1) The offeror shall provide documentation that the Cognizant Federal Agency (CFA) has determined that the proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748) (current version at time of solicitation). The Government reserves the right to perform reviews of the EVMS when deemed necessary to verify compliance.

(2) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a)(1) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines in ANSI/EIA-748.

(i) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract, and how the proposed EVMS complies with the EVMS guidelines in ANSI/EIA-748;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines;

(C) Describe the management system and its application in terms of the EVMS guidelines;

(D) Describe the proposed procedure for administration of the EVMS guidelines as applied to subcontractors; and

(E) Describe the process the offeror will use to determine subcontractor compliance with ANSI/EIA-748.

(ii) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(iii) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVMS will be compliant with the guidelines in ANSI/EIA-748.

(b) If the offeror submits a proposal in an amount less than \$50,000,000—

(1) The offeror shall submit a written description of the management procedures it will use and maintain in the performance of any resultant contract to comply with the requirements of the Earned Value Management System clause of the contract. The description shall include—

(i) A matrix that correlates each guideline in ANSI/EIA-748 (current version at time of solicitation) to the corresponding process in the offeror's written management procedures; and

(ii) The process the offeror will use to determine subcontractor compliance with ANSI/EIA-748.

(2) If the offeror proposes to use an EVMS that has been determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748, the offeror may submit a copy of the documentation of such determination instead of the written description required by paragraph (b)(1) of this provision.

(c) The offeror shall identify the subcontractors (or the subcontracted effort if subcontractors have not been selected) to whom the EVMS requirements will apply. The offeror and the Government shall agree to the subcontractors or the subcontracted

effort selected for application of the EVMS requirements. The offeror shall be responsible for ensuring that the selected subcontractors comply with the requirements of the Earned Value Management System clause of the contract.

(End of provision)

252.234-7002 Earned Value Management System.

As prescribed in 234.203(2), use the following clause:

Earned Value Management System (Apr 2008)

(a) In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748); and

(2) Management procedures that provide for generation of timely, reliable, and verifiable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the CPR and IMS data items of this contract.

(b) If this contract has a value of \$50,000,000 or more, the Contractor shall use an EVMS that has been determined by the Cognizant Federal Agency (CFA) to be in compliance with the EVMS guidelines as stated in paragraph (a)(1) of this clause. If, at the time of award, the Contractor's EVMS has not been determined by the CFA to be in compliance with the EVMS guidelines as stated in paragraph (a)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(c) If this contract has a value of less than \$50,000,000, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts. The Government will allow the use of a Contractor's EVMS that has been formally reviewed and determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748.

(d) The Contractor shall submit notification of any proposed substantive changes to the EVMS procedures and the impact of those changes to the CFA. If this contract has a value of \$50,000,000 or more, unless a waiver is granted by the CFA, any EVMS changes proposed by the Contractor require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If the CFA waives the advance approval requirements, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(e) The Government will schedule integrated baseline reviews as early as practicable, and the review process will be conducted not later than 180 calendar days after (1) contract award, (2) the exercise of significant contract options, and (3) the incorporation of major modifications. During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(f) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (a) of this clause.

(g) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(h) The Contractor shall require its subcontractors to comply with EVMS requirements as follows:

(1) For subcontracts valued at \$50,000,000 or more, the following subcontractors shall comply with the requirements of this clause:

[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]

(2) For subcontracts valued at less than \$50,000,000, the following subcontractors shall comply with the requirements of this clause, excluding the requirements of paragraph (b) of this clause:

[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]

(End of clause)

252.242-7001 and 252.242-7002 [Removed and Reserved]

■ 7. Sections 252.242-7001 and 252.242-7002 are removed and reserved.

252.242–7005 and 252.242–7006
[Removed]

■ 8. Sections 252.242–7005 and 252.242–7006 are removed.

[FR Doc. E8–8706 Filed 4–22–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XH33

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to fully use the 2008 total allowable catch (TAC) of Pacific ocean perch in this area specified for vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 18, 2008, through 2400 hrs, A.l.t., December 31, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., May 5, 2008.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by “RIN 0648–XH33,” by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- Fax: (907) 586–7557; or

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Jennifer Hogan, 907–586–7228.

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

NMFS closed the directed fishery for Pacific ocean perch by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI on March 19, 2008 (73 FR 15458, March 24, 2008).

NMFS has determined that approximately 59 mt of the 2008 TAC of Pacific ocean perch for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2008 TAC of Pacific ocean perch in this area specified for vessels participating in the BSAI trawl limited access fishery, NMFS is terminating the previous closure and is reopening directed fishing for Pacific ocean perch by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI. The opening is effective 1200 hrs, A.l.t., April 18, 2008, through 2400 hours, December 31, 2008.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Pacific ocean perch fishery in the Eastern Aleutian District of the BSAI for vessels participating in the BSAI trawl limited access fishery. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 17, 2008.

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

Without this inseason adjustment, NMFS could not allow the Pacific ocean perch fishery in the Eastern Aleutian District of the BSAI for vessels participating in the BSAI trawl limited access fishery to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until May 5, 2008.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: April 17, 2008.

William D. Chappell

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 08–1173 Filed 4–18–08; 1:37 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 73, No. 79

Wednesday, April 23, 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-2008-0470; Directorate Identifier 2008-CE-026-AD]

RIN 2120-AA64

Airworthiness Directives; APEX Aircraft Model CAP 10 B Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

An internal review evidenced that the flight controls tie rod bolts currently installed on the airplane are not in accordance with the design data. Indeed the bolt shank length has been determined too short and the material properties of the spacers have been found inadequate according to the prescribed torque value.

Therefore, bolts' threads could be subject to excessive wear, which might induce play in flight controls and consequently, induce vibrations in the control surfaces and reduce the airplane handling.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 23, 2008.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0470; Directorate Identifier 2008-CE-026-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European

Community, has issued AD No. 2008-0060, dated April 1, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

An internal review evidenced that the flight controls tie rod bolts currently installed on the airplane are not in accordance with the design data. Indeed the bolt shank length has been determined too short and the material properties of the spacers have been found inadequate according to the prescribed torque value.

Therefore, bolts' threads could be subject to excessive wear, which might induce play in flight controls and consequently, induce vibrations in the control surfaces and reduce the airplane handling.

To prevent this condition, the present Airworthiness Directive (AD) mandates replacement of the tie rod bolts and spacers. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

APEX Aircraft has issued Service Bulletin No. 040206, dated September 21, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed 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 proposed 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 proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 31 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$100 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$10,540, or \$340 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 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 this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA 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 AD:

APEX Aircraft: Docket No. FAA-2008-0470; Directorate Identifier 2008-CE-026-AD.

Comments Due Date

- (a) We must receive comments by May 23, 2008.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Model CAP 10 B airplanes, serial numbers (SN) 300 through 317 that have incorporated APEX change 000302 (carbon fibre wing spars), certificated in any category.

Subject

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

Reason

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

An internal review evidenced that the flight controls tie rod bolts currently installed on the airplane are not in accordance with the design data. Indeed the bolt shank length has been determined too short and the material properties of the spacers have been found inadequate according to the prescribed torque value.

Therefore, bolts' threads could be subject to excessive wear, which might induce play in flight controls and consequently, induce vibrations in the control surfaces and reduce the airplane handling.

To prevent this condition, the present Airworthiness Directive (AD) mandates replacement of the tie rod bolts and spacers.

Actions and Compliance

- (f) Unless already done, do the following actions:

- (1) Within 50 hours time-in-service after the effective date of this AD, remove tie rod bolts part number (P/N) 95.56.11.066 and spacers P/N 11.56.27.038 and replace them with tie rod bolts P/N 95.56.11.418 and

spacers P/N 11.56.27.138, following APEX Aircraft Service Bulletin No. 040206, dated September 21, 2007.

- (2) As of the effective date of this AD, do not install any tie rod bolt P/N 95.56.11.066 or spacer P/N 11.56.27.038.

FAA AD Differences

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

Other FAA AD Provisions

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

- (1) Alternative Methods of Compliance (AMOCs): The Manager, 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; 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.

Related Information

- (h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2008-0060, dated April 1, 2008; and APEX Aircraft Service Bulletin No. 040206, dated September 21, 2007, for related information.

Issued in Kansas City, Missouri, on April 17, 2008.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-8752 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0449; Directorate Identifier 2007-SW-10-AD]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for Bell Helicopter Textron Canada (Bell) Model 222, 222B, 222U, 230, and 430 helicopters. That AD currently requires visually inspecting the main rotor hydraulic actuator support (support) to verify the presence of all dowel pins and sealant between the support and transmission and verifying the proper torque of each attaching nut (nut). This action would require the same actions as the existing AD but would also require the repetitive actions at intervals not to exceed 600 hours time-in-service (TIS) or 12 months, whichever occurs first. This proposal is prompted by the discovery that the 12-month compliance requirement was correctly included in the Emergency AD (EAD) that we issued but was inadvertently omitted when we published the Final rule; request for comments following the issuance of the EAD. The actions specified by the proposed AD are intended to prevent failure of the support and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 23, 2008.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from Bell

Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437-2862 or (800) 363-8023, fax (450) 433-0272.

You may examine the comments to this proposed AD in the AD docket on the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Tyrone Millard, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 222-5439, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the caption **ADDRESSES**. Include the docket number "FAA-2008-0449, Directorate Identifier 2007-SW-10-AD" at the beginning 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 rulemaking. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. 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 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 economic evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

On January 5, 2001, we issued EAD 2001-01-51 for Bell Model 222, 222B,

222U, 230, and 430 helicopters which requires, at specified time intervals, visually inspecting the support for the presence of all dowel pins and sealant between the support and transmission and verifying the proper torque of each nut. That action was prompted by the failure of a support resulting in an accident of a Bell Model 222U helicopter. All retaining studs and shear pins were found sheared or pulled out at the junction between the support and transmission case. The requirements of that EAD are intended to prevent failure of the support and subsequent loss of control of the helicopter.

On February 2, 2001, we issued AD 2001-01-51, Amendment 39-12105, Docket No. 2000-SW-54-AD as a Final rule; request for comments (66 FR 10361, February 15, 2001). Since issuing that AD, we discovered that we inadvertently omitted the phrase "or 12 months, whichever occurs first," from compliance paragraph (a) of the published final rule AD. Because the two versions of AD 2001-01-51 have different compliance times, we are proposing to supersede that AD to include the correct compliance time.

The previously described unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, the proposed AD would supersede AD 2001-01-51 to require the following:

- Within 25 hours TIS, and thereafter at intervals not to exceed 600 hours TIS or 12 months, whichever occurs first:
- Visually inspect the support, part number (P/N) 222-040-125-001, for the presence of all dowel pins and for sealant between the support and transmission. If any pin is missing or if no sealant is visible, before further flight, remove the support and further inspect the support, transmission case, studs, and dowel pins. Repair or replace any unairworthy support, transmission case, stud, or dowel pin before further flight.
- Verify the torque of the nuts. Upper nuts must not rotate at a torque less than 40 in-lbs. Lower nuts must not rotate at a torque less than 90 in-lbs.
- If two or more upper nuts rotate at a torque less than 40 in-lbs. or two or more lower nuts rotate at a torque less than 90 in-lbs., before further flight, remove the support and further inspect the support, transmission case, studs, and dowel pins. Repair or replace any unairworthy part before further flight.
- If less than two upper nuts rotate at a torque less than 40 in-lbs. or less than two lower nuts rotate at a torque less than 90 in-lbs., before further flight, retorquer the upper nut to 50 to 70 in-

lbs. plus tare and the lower nut to 100 to 140 in-lbs. plus tare.

- At not less than 20 hours TIS nor more than 30 hours TIS after reinstalling a support for any reason, verify the torque of the nuts.

We have reviewed Bell Alert Service Bulletin Nos. 222-00-86, 222U-00-57, 230-00-18, and 430-00-17, all dated May 19, 2000 (ASB's), which specify, within 25 hours TIS, conducting a one-time inspection of the support installation by accomplishing a torque check of the support attaching nuts. In addition, a revision to the maintenance manual will introduce a recurring torque check of the nuts. Transport Canada classified these ASB's as mandatory and issued AD No. CF-2000-29 dated September 6, 2000, to ensure the continued airworthiness of these helicopters in Canada.

We estimate that this proposed AD would affect 145 helicopters of U.S. registry. It would take approximately 1/2 work hour per helicopter to inspect for proper torque, and the average labor rate is \$80 per work hour. The cost for the inspection is estimated to be \$5,800. Assuming 15 helicopters require removing the support for additional inspections, it would take approximately 6 additional work hours at \$80 per work hour and \$50 for parts at an additional total cost of \$7,950. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be \$13,750, assuming no supports must be replaced.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, 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, I certify that the proposed regulation:

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by removing Amendment 39-12105 (66 FR 10361, February 15, 2001) and by adding a new airworthiness directive (AD), to read as follows:

Bell Helicopter Textron Canada: Docket No. FAA-2008-0449; Directorate Identifier 2007-SW-10-AD. Supersedes AD 2001-01-51, Amendment 39-12105, Docket No. 2000-SW-54-AD.

Applicability: Model 222, 222B, 222U, 230, and 430 helicopters, with a main rotor hydraulic actuator support (support), part number (P/N) 222-040-125-001, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the support and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) and thereafter at intervals not to exceed 600 hours TIS or 12 months, whichever occurs first, accomplish the following:

(1) Visually inspect the support for the presence of all dowel pins and for sealant

between the support and transmission. If any pin is missing, or if no sealant is visible, before further flight, remove the support and further inspect the support, transmission case, studs, and dowel pins in accordance with the Accomplishment Instructions, paragraphs 5 through 7, of the applicable Bell Helicopter Textron Alert Service Bulletin Nos. 222-00-86, 222U-00-57, 230-00-18, or 430-00-17, all dated May 19, 2000 (ASB's). Repair or replace any unairworthy support, transmission case, stud, or dowel pin before further flight.

(2) Verify the torque of the support attaching nuts (nuts). Upper nuts must not rotate at a torque less than 40 in-lbs. Lower nuts must not rotate at a torque less than 90 in-lbs.

(i) If two or more upper nuts rotate at a torque less than 40 in-lbs. or two or more lower nuts rotate at a torque less than 90 in-lbs., before further flight, remove the support and further inspect the support, transmission case, studs, and dowel pins in accordance with the Accomplishment Instructions, paragraph 5 through 7, of the applicable ASB's. Repair or replace any unairworthy support, transmission case, stud, or dowel pin before further flight.

(ii) If less than two upper nuts rotate at a torque less than 40 in-lbs. or less than two lower nuts rotate at a torque less than 90 in-lbs., before further flight, retorquer the upper nut to 50 to 70 in-lbs. plus tare and the lower nut to 100 to 140 in-lbs. plus tare.

(b) At not less than 20 hours TIS nor more than 30 hours TIS after reinstalling a support for any reason, verify the torque of the nuts in accordance with paragraph (a)(2) of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Standards Staff, FAA, ATTN: Tyrone Millard, telephone (817) 222-5439, fax (817) 222-5961, for information about previously approved alternative methods of compliance.

Note: The subject of this AD is addressed in Transport Canada (Canada) AD CF-2000-29, dated September 6, 2000.

Issued in Fort Worth, Texas, on April 14, 2008.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8-8754 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2008-0450; Directorate Identifier 2007-SW-39-AD]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 230 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for BHTC Model 230 helicopters. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The aviation authority of Canada, with which we have a bilateral agreement, states in the MCAI:

It has been determined that the existing rigging procedures for the tail rotor pitch change mechanism have to be changed due to possibility of parts interference.

The cumulative effect of individual part tolerances resulting in the total assemblage of those parts being out of tolerance could result in the tail rotor yoke striking another part other than the flapping stop (parts interference) as cited in the MCAI. Also, the misalignment of the tail rotor counterweight bellcrank may result in higher tail rotor pedal forces and a higher pilot workload after failure of the No. 1 hydraulic system. Both parts interference and the misaligned counterweight bellcrank create an unsafe condition. The proposed AD would require actions that are intended to address these unsafe conditions.

DATES: We must receive comments on this proposed AD by May 23, 2008.

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

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

and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437-2862 or (800) 363-8023, fax (450) 433-0272.

Examining the 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 economic evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Tyrone Millard, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111, telephone (817) 222-5439, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:**Streamlined Issuance of AD**

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated helicopters.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0450; Directorate Identifier 2007-SW-39-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the

closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2007-12, dated August 24, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for this Canadian-certificated product. The MCAI states:

It has been determined that the existing rigging procedures for the tail rotor pitch change mechanism have to be changed due to possibility of parts interference.

Because the cumulative effect of the tolerances on the various parts may result in the total assemblage outboard of the counterweight bellcrank being out of tolerance, the tail rotor yoke may contact the nut, P/N 222-012-731-001, before contacting the flapping stop, resulting in less tail rotor travel. Additionally, the manufacturer has indicated that the tail rotor counterweight bellcranks may be misaligned, resulting in higher tail rotor pedal forces and higher pilot workload after failure of the No. 1 hydraulic system. Both the parts interference and the higher pedal forces constitute unsafe conditions.

You may obtain further information by examining the manufacturer's service bulletin and the MCAI in the AD docket.

Relevant Service Information

Bell Helicopter Textron has issued Alert Service Bulletin 230-07-36, dated January 9, 2007. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Determination and Proposed Requirements

This product has been approved by the aviation authority of Canada, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Differences Between This AD and the MCAI

We have reviewed the MCAI and related service information and, in general, agree with their substance. The compliance times in this proposed AD differ from the MCAI in that compliance would be required within the next 150 hours time-in-service or at the next annual inspection, whichever occurs first, instead of "at the next 150 hour or annual inspection but no later than 31 December 2007." In making these changes, we do not intend to differ substantively from the information provided in the MCAI. This difference is highlighted in the "Differences Between the FAA AD and the MCAI" section in the proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 20 helicopters of U.S. registry. We also estimate that it would take about 2 work-hours per helicopter to adjust the rigging of the tail rotor pitch change mechanism. The average labor rate is \$80 per work-hour. A replacement yoke would cost about \$21,218, assuming the part is no longer under warranty. However, because the service information lists this part as covered under warranty, we have assumed that there will be no charge for this part, if needed. Therefore, as we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these assumptions and figures, we estimate the cost of the proposed AD on U.S. operators to be \$3,200, or \$160 per helicopter.

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 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 this proposed regulation:

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA 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 AD:

Bell Helicopter Textron Canada: Docket No. FAA-2008-0450; Directorate Identifier 2007-SW-39-AD.

Comments Due Date

- (a) We must receive comments by May 23, 2008.

Other Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Bell Helicopter Textron Canada (BHTC) Model 230 helicopters, certificated in any category.

Reason

- (d) The mandatory continuing airworthiness information (MCAI) states:

It has been determined that the existing rigging procedures for the tail rotor pitch change mechanism have to be changed due to possibility of parts interference.

This "possibility of parts interference" occurs because the cumulative effect of the tolerances on the various parts may result in the total assemblage outboard of the counterweight bellcrank being out of tolerance and the tail rotor yoke may contact nut, P/N 222-012-737-001, before contacting the flapping stop. Further, the manufacturer has indicated that the tail rotor counterweight bellcranks may be misaligned resulting in higher tail rotor pedal forces and higher pilot workload after failure of the No. 1 hydraulic system. Both the parts interference and the higher pedal forces constitute unsafe conditions.

(e) Within the next 150 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, unless already done, do the following actions.

(1) Adjust the rigging of the tail rotor pitch change mechanism in accordance with the Accomplishment Instructions, Paragraphs 1 and 2, in Bell Helicopter Textron Alert Service Bulletin 230-07-36, dated January 9, 2007 (ASB).

(2) If either at full left pedal position or full right pedal position a gap exists between the tail rotor yoke and the flapping stop, replace the tail rotor yoke with an airworthy tail rotor yoke.

(3) If no gap exists between the tail rotor yoke and the flapping stop at either full right or full left pedal position, measure the gap between the tail rotor yoke and nut, P/N 222-012-731-001, adjust the tail rotor pitch change mechanism, and adjust the tail rotor pedal forces in accordance with the Accomplishment Instructions, Paragraphs 4. through 6. of the ASB.

Differences Between the FAA AD and the MCAI

(f) This AD requires compliance within the next 150 hours TIS or at the next annual inspection, whichever occurs first, instead of "at the next 150 hour or annual inspection but no later than 31 December 2007."

Subject

(g) Air Transport Association of America (ATA) Code JASC 6720, Tail Rotor Control System, Tail Rotor Pitch Change.

Other Information

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Safety Management Group, 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: Tyrone Millard, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111, telephone (817) 222-5439, fax (817) 222-5961.

(2) *Airworthy Product:* Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the

provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(i) MCAI Transport Canada Airworthiness Directive CF-2007-12, dated August 24, 2007, contains related information.

Issued in Fort Worth, Texas, on April 14, 2008.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8-8755 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2008-0330; Airspace Docket No. 08-AWP-4]

Proposed Amendment of Class E Airspace; Salyer Farms, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Salyer Farms, CA. The El Rico Airport mentioned in the published description has been abandoned, making it necessary to realign the Class E airspace area at Salyer Farms Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at Salyer Farms Airport, Salyer Farms, CA.

DATES: Comments must be received on or before June 9, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366-9826. You must identify FAA Docket No. FAA-2008-0330; Airspace Docket No. 08-AWP-4, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2008-0330 and Airspace Docket No. 08-AWP-4) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2008-0330 and Airspace Docket No. 08-AWP-4". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Federal Register's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area,

System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Salyer Farms Airport, Salyer Farms, CA. The El Rico Airport mentioned in the published description has been abandoned, making it necessary to realign the Salyer Farms Airport. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for 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 additional controlled airspace at Salyer Farms Airport, Salyer Farms, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AWP CA E5 Salyer Farms, CA [Amended]

Salyer Farms Airport, CA

(Lat. 36°05'20" N., long. 119°32'33" W.)

Salyer Farms NDB.

(Lat. 36°03'58" N., long. 119°32'14" W.)

That airspace extending upward from 700 feet above the surface within 6.6-mile radius of Salyer Farms Airport and within 2 miles each side of the 149° bearing from the Salyer Farms NDB, extending from the 6.6-mile radius to 7 miles southeast of the Salyer Farms NDB.

* * * * *

Issued in Seattle, Washington, on April 10, 2008.

Clark Desing,

Manager, System Support Group, Western Service Area.

[FR Doc. E8–8727 Filed 4–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2008–0068; Airspace Docket No. 08–AWP–1]

Proposed Establishment of Class E Airspace; Carson City, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Carson City, NV. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Carson City Airport, Carson City, NV, has made this proposal necessary. The FAA is proposing this action to enhance the safety and management of aircraft operations at Carson City Airport, Carson City, NV.

DATES: Comments must be received on or before June 9, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2008–0068; Airspace Docket No. 08–AWP–1, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2008–0068 and Airspace Docket No. 08–AWP–1) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: “Comments to FAA Docket No. FAA–2008–0068 and Airspace Docket No. 08–AWP–1”. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA’s Web page at <http://www.faa.gov> or the Federal Register’s Web page at <http://www.gpoaccess.gov/fr/index.html>.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA’s Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Carson City, NV. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at Carson City Airport. This action would enhance the safety and management of aircraft operations at Carson City Airport, Carson City, NV.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an

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

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for 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 controlled airspace at Carson City Airport, Carson City, NV.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AWP NV, E5 Carson City, NV [New]

Carson City Airport, NV
(Lat. 39°11’32” N., long. 119°44’04” W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Carson City Airport.

* * * * *

Issued in Seattle, Washington, on April 10, 2008.

Clark Desing,

Manager, System Support Group, Western Service Area.

[FR Doc. E8–8725 Filed 4–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08–3–000]

Mandatory Reliability Standard for Nuclear Plant Interface Coordination; Notice of Extension of Time

April 16, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking; extension of comment period.

SUMMARY: On March 20, 2008, the Commission issued a Notice of Proposed Rulemaking proposing to approve the Nuclear Plant Interface Coordination Reliability Standard developed by the North American Electric Reliability Corporation (NERC). The date for filing comments on the proposed rule is being extended at the request of the Edison Electric Institute and the Nuclear Energy Institute.

DATES: Comments are due May 13, 2008.

ADDRESSES: Interested persons may submit comments, identified by Docket No. RM08–3–000, by any of the following methods:

- **eFiling:** Comments may be filed electronically via the eFiling link on the Commission’s Web site at <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in the native application or print-to-PDF format and not in a scanned format. This will enhance document retrieval for both the Commission and the public. The Commission accepts most standard word processing formats and commenters may attach additional files

with supporting information in certain other file formats. Attachments that exist only in paper form may be scanned. Commenters filing electronically should not make a paper filing. Service of rulemaking comments is not required.

- **Mail/Hand Delivery:** Commenters that are not able to file electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures section of this document.

FOR FURTHER INFORMATION CONTACT:

Richard M. Wartchow (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8744. Christy Walsh (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6523. Robert Snow (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6716.

SUPPLEMENTARY INFORMATION: On April 15, 2008, the Edison Electric Institute (EEI) and the Nuclear Energy Institute (NEI) filed a joint motion for an extension of the date for filing comments on the Commission’s Notice of Proposed Rulemaking issued March 20, 2008, in the above-referenced proceeding. *Mandatory Reliability Standard for Nuclear Plant Interface Coordination*, 122 FERC ¶ 61,254 (March 20, 2008) (NOPR). In support of this request, the motion states that EEI and NEI members, who will be required to comply with the Reliability Standard proposed in the Commission’s NOPR, represent a broad spectrum of the nation’s shareholder-owned electric companies, international affiliates and all levels of the commercial nuclear energy industry. EEI and NEI state that because of the complex nature of the issues addressed in the NOPR and the importance of submitting a well-developed response, additional time is needed to file comments on the Commission’s proposed rulemaking.

Upon consideration, notice is hereby given that an extension of time for filing comments on the Commission’s NOPR

is granted to and including May 13, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-8615 Filed 4-22-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-139236-07]

RIN 1545-BH07

Measurement of Assets and Liabilities for Pension Funding Purposes; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on a notice of proposed rulemaking preparing guidance on the determination of plan assets and benefit liabilities for purposes of the funding requirements that apply to single employer defined benefit plans.

These regulations affect sponsors, administrators, participants, and beneficiaries of single employer defined benefit plans.

DATES: The public hearing is being held on May 29, 2008, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by May 8, 2008.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC: PA: LPD: PR (REG-139236-07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC: PA: LPD: PR (REG-139236-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lauson C. Green or Linda S. F. Marshall at (202) 622-6090; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at

Richard.A.Hurst@irs.counsel.treas.gov or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG-139236-07) that was published in the **Federal Register** on Monday, December 31, 2007 (72 FR 74215).

Persons who wish to present oral comments at the hearing that submitted written comments must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by May 8, 2008.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue NW, entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8-8816 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-147290-05]

RIN 1545-BF08

Nuclear Decommissioning Funds; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to deductions for contributions to trusts maintained for decommissioning nuclear power plants.

DATES: The public hearing is being held on Tuesday, June 17, 2008, at 10 a.m.

The IRS must receive outlines of the topics to be discussed at the public hearing by Tuesday, May 20, 2008.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

Send submissions to CC:PA:LPD:PR (REG-147290-05), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG-147290-05), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-147290-05).

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Patrick Kirwan (202) 622-3110; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Funmi Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG-147290-05) that was published in the **Federal Register** on Monday, December 31, 2007 (72 FR 74213).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by March 31, 2008, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic (Signed original and eight copies).

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Ave., NW., entrance, 1111 Constitution Ave., NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER**

INFORMATION CONTACT section of this document.

LaNita Vandyke,

Chief, Publications and Regulations Branch,
Legal Processing Division, Associate Chief
Counsel, (Procedure and Administration).

[FR Doc. E8-8815 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-109367-06]

RIN 1545-BF52

Section 1221(a)(4) Capital Asset Exclusion for Accounts and Notes Receivable

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Withdrawal of notice of
proposed rulemaking.

SUMMARY: This document withdraws a
notice of proposed rulemaking relating
to the circumstances in which accounts
or notes receivable are "acquired * * *
for services rendered" within the
meaning of section 1221(a)(4).

FOR FURTHER INFORMATION CONTACT: K.
Scott Brown, (202) 622-7454 (not a toll-
free call).

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2006, the Treasury
Department and the IRS published in
the **Federal Register** (71 FR 44600)
proposed regulations § 1.1221-1(e)
under section 1221(a)(4) of the Internal
Revenue Code. These regulations sought
to clarify the circumstances in which
accounts or notes receivable are
"acquired * * * for services rendered"
within the meaning of section
1221(a)(4).

Written comments were received from
interested parties, and public hearings
to discuss these regulations were held
on November 7, 2006, and August 22,
2007. Most of the comments focused on
the decisions in *Burbank Liquidating
Corp. v. Commissioner*, 39 T.C. 999
(1963), *acq. sub nom. United Assocs.,
Inc.*, 1965-1 C.B. 3, *aff'd in part and
rev'd in part on other grounds*, 335 F.2d
125 (9th Cir. 1964) and *Federal National
Mortgage Association v. Commissioner*,
100 T.C. 541 (1993). The Treasury
Department and the IRS considered the
comments and have decided to
withdraw the proposed regulations.

The IRS will not challenge return
reporting positions of taxpayers under

section 1221(a)(4) that apply existing
law, including *Burbank Liquidating;
Federal National Mortgage Association;
and Bielfeldt v. Commissioner*, 231
F.3d 1035 (7th Cir. 2000), *cert. denied*,
534 U.S. 813 (2001). *See also* Rev. Rul.
80-56 (1980-1 C.B. 154) and Rev. Rul.
80-57 (1980-1 C.B. 157). The IRS and
the Treasury Department will continue
to study this area and may issue
guidance in the future.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and
recordkeeping requirement.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of
26 U.S.C. 7805, the notice of proposed
rulemaking (REG-109367-06) published
in the **Federal Register** on August 7,
2006 (71 FR 44600) is withdrawn.

Linda E. Stiff,

Deputy Commissioner for Services and
Enforcement.

[FR Doc. E8-8817 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Office of International Investment

31 CFR Part 800

RIN 1505-AB88

Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons

AGENCY: Department of the Treasury.

ACTION: Proposed Rule; Notice of
Inquiry and Public Meeting.

SUMMARY: This proposed regulation
amends regulations in part 800 of 31
CFR that implement section 721 of the
Defense Production Act of 1950, as
amended. The proposed regulations
would implement amendments made by
the Foreign Investment and National
Security Act of 2007 to section 721 of
the Defense Production Act of 1950
("section 721"). While the proposed
regulations retain many features of the
existing regulations, a number of
changes have been made to increase
clarity, reflect developments in business
practices over the past several years,
and make additional improvements
based on experiences with the existing
regulations.

DATES: *Comment Date:* Written
comments must be received by June 9,
2008.

Public Meeting Date: The public
meeting will be held from 10 a.m. until
12 p.m. on May 2, 2008.

ADDRESSES: *Comments:* Written
comments on the proposed regulations
may be submitted electronically via the
federal government E-Rulemaking
Portal: www.regulations.gov. Written
comments may be submitted by mail to:
Nova Daly, Deputy Assistant Secretary,
U.S. Department of the Treasury, 1500
Pennsylvania Avenue, NW.,
Washington, DC 20220. All comments
and attachments submitted are part of
the public record and subject to
disclosure. Do not include any material
in your comments that you consider to
be confidential or inappropriate for
public disclosure.

You may view copies of this proposed
rule and any comments we receive
about this proposal at

www.regulations.gov. You may
personally inspect and photocopy
comments at the Department of the
Treasury Library, Room 1428, Main
Treasury Building, 1500 Pennsylvania
Avenue, NW., Washington, DC. You can
make an appointment to inspect
comments by calling (202) 622-0990.

A link to written comments will be
established on the following Web site:
[http://www.treas.gov/offices/
international-affairs/cfius/index.shtml](http://www.treas.gov/offices/international-affairs/cfius/index.shtml).

Public Meeting Address: The public
meeting will be held in the Cash Room
of the Treasury Building, at 1500
Pennsylvania Avenue, NW.,
Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: For
questions about this Proposed Rule or
the Notice of Inquiry and Public
Meeting, contact: Nova Daly, Deputy
Assistant Secretary, U.S. Department of
the Treasury, 1500 Pennsylvania
Avenue, NW., Washington, DC 20220;
telephone: (202) 622-2752; or e-mail:
Nova.Daly@do.treas.gov, or Welby
Leaman, Senior Advisor; telephone:
(202) 622-0099; or e-mail:
Welby.Leaman@do.treas.gov.

SUPPLEMENTARY INFORMATION:

I. Background With Regard to the Notice of Inquiry and Public Meeting

The President has directed the
Secretary of the Treasury to issue
regulations implementing section 721 of
the Defense Production Act of 1950, as
amended. On October 24, 2007, the
Department of the Treasury convened a
public meeting at the Department of the
Treasury to solicit a wide array of views
on several broad topics, including from
businesses and professionals active in
international mergers and acquisitions,
in order to inform regulatory
development. The purpose of this
second notice of inquiry and public
meeting is to continue to seek public
input on these important matters,

particularly in light of the publication of the proposed regulations.

Treasury announces a public meeting to be held from ten until twelve o'clock (10 a.m.–12 p.m.) on May 2, 2008, in the Cash Room of the Treasury Building, at 1500 Pennsylvania Avenue, NW., Washington, DC 20220, to discuss issues associated with these proposed regulations. The meeting will be open to the public on a first-come, first-served basis. Space is limited. Due to security requirements and to facilitate entry to the meeting site, anyone wishing to attend must contact Ms. Barbara Vaughn at Barbara.Vaughn@do.treas.gov or (202) 622–1935 no later than April 25, 2008, in order to provide the necessary clearance information: Full name, business affiliation, date of birth, and Social Security number. For foreign nationals: Full name, business affiliation, date of birth, passport number, and the country where the passport was issued. When arriving for the meeting, attendees must present photo or passport identification and/or a U.S. Government building pass, if applicable, and should arrive at least one-half hour prior to the start time of the meeting. The public meeting is physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation, are asked to indicate this to Ms. Vaughn.

II. Background

The Statute

The Foreign Investment and National Security Act of 2007, Public Law 110–49, 121 Stat. 246 (“FINSA”), which amends section 721 of the Defense Production Act of 1950 (50 U.S.C. App. § 2170 *et seq.*) (“DPA”), requires the issuance of regulations implementing its provisions, following public notice and comment.

FINSA was passed by Congress as H.R. 556, which adopted the language of S. 1610. S. Rep. 110–80, accompanying S. 1610, provides a useful history of the various bills leading to the enactment of FINSA. President Bush signed FINSA into law on July 26, 2007, and it became effective on October 24, 2007.

Section 721 authorizes the President to review mergers, acquisitions, and takeovers by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States, to determine the effects of such transactions on the national security of the United States. FINSA codifies aspects of the structure, role, process, and responsibilities of the Committee on Foreign Investment in the United States

(“CFIUS”) and the role of executive branch departments, agencies, and offices in CFIUS’s review of transactions for national security concerns. A brief summary of major aspects of the statute follows.

FINSA formally establishes CFIUS in statute, as CFIUS had existed only by executive order. FINSA specifies the following as members of CFIUS: The Secretary of the Treasury (who serves as chairperson), the Attorney General, and the Secretaries of Homeland Security, Commerce, Defense, State, and Energy. FINSA also provides that CFIUS may include, generally or on a case-by-case basis as the President deems appropriate, the heads of any other executive department, agency, or office. The President has designated additional members of CFIUS in Executive Order 11858, as amended by Executive Order 13456 on January 23, 2008. FINSA also establishes the Director of National Intelligence (“DNI”) and the Secretary of Labor as *ex officio* members of CFIUS. FINSA specifies that the DNI is to provide independent analyses of any national security threats posed by transactions, and is to have no other policy role. FINSA requires that the role of the Secretary of Labor, with respect to mitigation agreements, be defined by regulations. FINSA further anticipates that, for each transaction before CFIUS, the Department of the Treasury shall designate, as appropriate, one or more lead agencies. The lead agency, on behalf of CFIUS, may negotiate, enter into or impose, and enforce mitigation agreements or conditions with parties to the transaction to address any threats to national security posed by the transaction.

FINSA also formalizes the process by which CFIUS conducts national security reviews of any transaction that could result in foreign control of a person engaged in interstate commerce in the United States, which FINSA refers to as a “covered transaction.” Specifically, FINSA provides for a 30-day CFIUS review of covered transactions to determine the effect of the transactions on national security, and address any threat. Subject to certain exceptions (discussed below), FINSA requires an additional 45-day investigation in the following types of cases: (1) Where the transaction threatens to impair U.S. national security and that threat has not been mitigated prior to or during the 30-day review; (2) where the transaction is a foreign government-controlled transaction; (3) transactions that would result in foreign control over critical infrastructure and that CFIUS determines could impair national security, if that impairment has not been

mitigated; or (4) where the lead agency recommends, and CFIUS concurs, that an investigation be undertaken.

To ensure high-level accountability for CFIUS decisions, FINSA requires that a high-level official of the Department of the Treasury and at the lead agency certify to Congress that, for any covered transaction on which CFIUS has concluded action under section 721, CFIUS has determined that there are no unresolved national security concerns. The certification must be made at the Assistant Secretary level or above for transactions on which CFIUS concludes action under section 721 after a review, and at the Deputy Secretary level or above for transactions on which CFIUS concludes action under section 721 after an investigation. If it is the President who concludes action on a transaction under section 721, then he must announce his decision publicly.

In addition, in order for CFIUS to conclude action under section 721 for a foreign government-controlled transaction without proceeding beyond a review to an investigation, the Department of the Treasury and the lead agency must determine, at the Deputy Secretary level or above, that the transaction will not impair national security. Similarly, under sections 721(b)(2)(B)(i)(III) and 721(b)(2)(D)(i), in cases where the transaction would result in foreign control over critical infrastructure that could impair national security, and such impairment has not been mitigated during the review period, CFIUS may conclude action under section 721 without proceeding beyond a review if the Department of the Treasury and the lead agency determine, at the Deputy Secretary level or above, that the transaction will not impair national security.

Where a covered transaction does present national security concerns, FINSA provides statutory authority for CFIUS, or a lead agency acting on behalf of CFIUS, to enter into mitigation agreements with parties to the transaction or impose conditions on the transaction to address such concerns. This authority enables CFIUS to mitigate any national security risk posed by a transaction, rather than recommending to the President that the transaction be prohibited because it could impair U.S. national security.

FINSA provides that CFIUS may reopen its review of a transaction on which it previously concluded action under section 721 if a party to the transaction submitted false or misleading material information or omitted material information. CFIUS may also reopen a review where a party to a transaction intentionally and

materially breaches a mitigation agreement or condition, and there are no other remedies available to address the breach. Any decision by CFIUS to reopen a review must be made at the Under Secretary level or above. FINSA also provides CFIUS with authority to impose civil penalties for violations of section 721, including violations of any mitigation agreement. Finally, FINSA increases CFIUS's reporting to Congress concerning the work it has undertaken pursuant to section 721. In addition to the certifications described previously, which CFIUS must provide to Congress after concluding action on a transaction under section 721, CFIUS must also provide annual reports on its work, including a list of the transactions it has reviewed or investigated in the preceding 12 months, analysis related to foreign direct investment and critical technologies, and a report on foreign direct investment from certain countries.

III. Discussion of Proposed Regulations

Overview

The proposed CFIUS regulations retain many of the basic features of the existing regulations, which were adopted after the 1988 enactment of the Exon-Florio provision of the DPA. The system continues to be based on voluntary notices to CFIUS by parties to transactions, although CFIUS retains the authority to review a transaction of which it has not been voluntarily notified. The principal new development with regard to the procedures for filing notice to CFIUS is that the proposed regulations make explicit CFIUS's current practice of encouraging parties to contact and engage with CFIUS before formally filing. By consulting with the Staff Chairperson in advance of filing and, where appropriate, providing CFIUS with a draft notice or some portion of the information that may later be included in the notice, parties can help ensure that their notice, once submitted, will provide the information CFIUS needs to do its work. Such pre-notice consultations can help ensure that reviews of covered transactions are concluded as efficiently as possible. In addition to these regulations, the Committee is preparing guidance on certain transactions, pursuant to section 721(b)(2)(E). The guidance is to include a discussion of, among other things, certain types of information the Committee considers useful for companies filing a notice to provide, based on past experience.

The provisions of Subpart D pertaining to the contents of a voluntary

notice have been expanded to reflect questions that CFIUS now routinely asks of notifying parties. By laying out these questions in the regulations, and having the relevant information included in each notification, CFIUS will be better prepared to conduct an efficient and in-depth analysis as soon as a notice is accepted. As noted in the proposed regulations, personal identifier information, which is needed to examine the backgrounds of members of the boards of directors and senior company officials of entities in the ownership chain of the foreign acquirer, should be submitted in conjunction with each notification, and should be marked clearly and provided as a separate document to ensure that distribution of the personal identifier information is as limited as possible, as well as to facilitate deletion of this information from CFIUS's records once action under section 721 is concluded. In addition to the new information requirements, the proposed regulations, consistent with FINSA, also require each of the parties to a notified transaction to provide certifications regarding the accuracy and completeness of their notices, with regard to information about the party making the certification (including certain affiliated entities), the transaction, and all follow-up information. A notice will not be deemed complete if it lacks certifications that comply with these requirements, and CFIUS may reject a notice that has previously been accepted if the final certification required under section 800.701(d) has not been received. Furthermore, material misstatements or omissions made by a party in connection with a section 721 review or investigation may result in the rejection of the notice, or the reopening of a completed review or investigation.

Consistent with the new authority provided by FINSA, the proposed regulations provide for penalties for breach of section 721 or of mitigation agreements or conditions. The proposed regulations also provide that a mitigation agreement may include provisions establishing liquidated damages for violations of the agreement. (See § 800.801.) Parties that receive a notice of the imposition of penalties will have the opportunity to appeal the imposition of the penalties to CFIUS.

Certain changes to the existing regulations have been made, including revisions to or deletions of existing examples or provisions, to take into account FINSA and other applicable law.

Covered Transaction

FINSA introduced the term "covered transaction" to identify the types of transactions that are subject to review and investigation by CFIUS. The statutory definition of covered transaction maintains the scope of section 721 as pertaining to any merger, acquisition, or takeover by or with a foreign person which could result in foreign control of any person engaged in interstate commerce in the United States.

These proposed regulations further clarify the meaning of the term "covered transaction" (see § 800.206) by specifying the scope of important elements of the term, including "transaction," "control," "U.S. business," and "foreign person." The definitions and clarification of these terms appear in Subpart B (Definitions) and in Subpart C (Coverage).

Transaction

The term "transaction" is defined in section 800.224, and implements the statutory requirement that a covered transaction be one that involves a "merger, acquisition, or takeover" that is proposed or consummated. This definition continues to exclude greenfield investment, and includes only a very limited type of long-term lease.

Control

FINSA does not define "control," but rather requires that CFIUS prescribe a definition by regulation. (See FINSA, Pub. L. 110-49, section 2, adding § 721(a)(2).) "Control" is and always has been a key threshold concept in section 721, as the authority provided under that section, from the authority to review or investigate a notified transaction to the authority of the President to take action to suspend or prohibit a transaction, is predicated on the existence of foreign *control* of a person engaged in interstate commerce in the United States. This focus on control suggests a fundamental congressional judgment that national security risks are potentially highest in transactions that entail the acquisition of control of an entity operating in the United States. Indeed, Congress made clear in the 1988 Conference Report that accompanied the original Exon-Florio provision that "the Conferees in no way intend to impose barriers to foreign investment. Section 721 is not intended to authorize investigations on investments that could not result in foreign control of persons engaged in interstate commerce." (See H.R. Rep. No. 100-576 at 926.) Nothing in FINSA

or its legislative history suggests any departure from this focus on control. Indeed, FINSA introduces the new term “covered transaction,” which, as discussed above, incorporates the concept of control in its definition.

The proposed regulations adopt the long-standing approach of defining “control” in functional terms as the ability to exercise certain powers over important matters affecting a business. Specifically, “control” is defined as the “power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding * * * important matters affecting an entity[.]” (See §§800.203(a).) Two points should be emphasized concerning this definition. First, it eschews bright lines. Consistent with the existing regulations, control is not defined in terms of a specified percentage of shares or numbers of board seats. Although share holding and board seats are relevant to a control analysis, neither factor on its own is necessarily determinative. Instead, all relevant factors are considered together in light of their potential impact on a foreign person’s ability to determine direct, or decide important matters affecting a company. Second, echoing the congressional views expressed in the conference report accompanying the original legislation in 1988, the focus of the statute and therefore these regulations is *control*. Even acknowledging the considerable flexibility necessarily inherent in a national security regulation, the statutory standard is not satisfied by anything less than control. Acquisition of influence falling short of the definition of control over a U.S. business is not sufficient to bring a transaction under section 721.

In light of the significance of the concept of control to this regulatory framework, control appears in several different places throughout the regulations, both in those regulations that define the nature of the acquirer and those that define the transaction itself. For example, control is a key concept in the definitions of “foreign person” and “foreign government-controlled transaction.” (See §§ 800.216 and 800.214, respectively.) A foreign person is any foreign national (*i.e.*, a natural person who is a citizen of

another country), foreign government, or foreign entity, or any “entity over which *control* is exercised or exercisable by a foreign national, foreign government or foreign entity.” A foreign government-controlled transaction is one that “could result in the *control* of a U.S. business by a foreign government or a person *controlled by* or acting on behalf of a foreign government.” Similarly, “covered transaction” is defined in these proposed regulations as “any transaction that is proposed or pending after the effective date [*i.e.*, August 23, 1988] by or with any foreign person, which could result in *control* of any person engaged in interstate commerce in the United States.”

Conversely, transactions that will not result in foreign control over a person engaged in interstate commerce in the United States are not subject to section 721. Thus, a start-up or “greenfield” investment is not subject to section 721. (See § 800.301(c), example 3.) Moreover, as noted below, a foreign person does not control an entity if it holds 10 percent or less of the voting interest in the entity and it holds that interest “solely for the purpose of investment,” as that term is defined in § 800.223. (See § 800.302(c).) This rule would not apply if only the first prong is satisfied. For example, a transaction involving a foreign person with an interest of nine percent in a U.S. business who has bargained for rights to determine, direct, take, reach, or cause decisions regarding important matters affecting that business, would be a covered transaction. Thus, the regulations do not provide, and never have provided, an exemption based solely on whether an investment is 10 percent or less in a U.S. business.

Section 800.203 lays out the basic definition of “control,” provides an exemplary list of matters that are deemed to be important, states that CFIUS will consider certain relationships between persons in evaluating whether an entity is considered to be controlled by a foreign person, and identifies minority shareholder protections that are not considered in themselves to confer control over an entity. The regulations add a number of examples to provide greater clarity on the application of this definition.

U.S. Business

Section 800.227 defines “U.S. business,” which is included in the definition of “covered transaction,” to mean any entity engaged in interstate commerce in the United States, but only to the extent of its activities in interstate commerce in the United States. In

determining whether a person is a U.S. business, CFIUS will consider whether the entity (which is defined to include any branch, partnership, group or subgroup, association, estate, trust, corporation or division of a corporation, organization, assets operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services, even though those assets may not be organized as a separate legal entity, or government) that is the subject of the acquisition is engaged in interstate commerce.

Foreign Person

The term “foreign person” is defined in section 800.216. The only significant revision that the proposed regulations make to the definition of foreign person is to introduce the new concept of a “foreign entity,” further discussed in the section-by-section analysis below (see § 800.212), and to specify that an entity that qualifies as a foreign entity will be deemed a foreign person.

Transactions That Are and Are Not Covered Transactions

Sections 800.301 and 800.302 illustrate the types of transactions that are and are not covered transactions, respectively. Section 800.301(a) further develops the reference in section 800.203 to “exercisable” power by making clear that, if a foreign person has the ability to exercise control over a U.S. business at the time a transaction is consummated, at will, or after a particular period of time, then the person cannot avoid a determination that “control” exists for purposes of section 721 by voluntarily forbearing from, or delaying, the exercise of control.

Section 800.302(c) provides a special, but very limited, qualification to the application of the general control principle. Pursuant to section 800.302(c), a foreign person does not control an entity if it satisfies a two-pronged test: (1) It holds 10 percent or less of the voting interest in the entity, and (2) its interest is held solely for the purpose of investment. Section 800.223 lays out the test for whether an interest is held solely for the purpose of investment. Under that test, an interest would not be held solely for the purpose of investment if the foreign person has the capability and an intention to control the entity, possesses or develops any purpose other than investment, or acts in a way that is inconsistent with an intent to hold the interest solely for the purpose of investment. This special rule applies to all types of investors equally, rather than assuming that

certain types of institutions are passive investors.

Sections 800.301(b) and 800.302(d) further illustrate the extent to which greenfield investments, the acquisition of branch offices, assets from multiple sources, and defunct businesses, and the entry into commodity purchase contracts, service contracts, and technology license agreements, are covered transactions. Section 800.301(d) addresses joint ventures, which may be covered only if they involve the contribution of a U.S. business.

Sections 800.302(e), (f), and (g) and 800.303 establish special rules with regard to securities underwriting, insurance, and lending, to clarify certain circumstances in which a foreign person may, in the ordinary course of its business, obtain an interest in an entity that may not be considered control of that entity because of those circumstances.

Section-by-Section Discussion of Proposed Changes

Section 800.201. The term *certification* has been added as part of the implementation of a provision in FINSA stating that parties that file voluntary notices must certify the accuracy and completeness of their filings with CFIUS. This new requirement applies both to notices and to any follow-up information provided to CFIUS. The Staff Chairperson may reject at any time during a review or investigation a voluntary notice that does not include certifications that comply with the requirements of these regulations. An inaccurate or incomplete certification may give rise, in certain circumstances, to the imposition of penalties under section 800.801(a) and other applicable laws.

Section 800.203. The definition of *control* has been clarified and refined to remove unnecessary wording, but is substantively similar to the prior definition. The remaining changes are generally intended to clarify that control can be exercised in a number of ways, both affirmatively and, in some cases, negatively. At the same time, the definition recognizes that certain types of negative rights that are intended only to protect the investment-backed expectations of minority shareholders, and that do not affect strategic decisions on business policy or day-to-day management of an entity or other important matters affecting the entity, do not constitute control. The focus of CFIUS's analysis of whether a particular transaction could result in the acquisition of foreign control is on the ability of a foreign person to determine, direct, or decide important matters

affecting a U.S. business, including to determine, direct, take, reach, or cause decisions regarding important matters affecting the U.S. business. Numerous examples have been added to illustrate the operation of these principles.

Section 800.207. In defining *critical infrastructure*, the proposed regulations state that a transaction involves critical infrastructure where the incapacity or destruction of the particular assets at issue in the particular transaction under review would have a debilitating impact on national security.

Section 800.208. FINSA requires that regulations implementing section 721 include a definition of critical technologies. The proposed regulations define critical technologies with reference to existing regulatory regimes that deal with the trade or handling of sensitive goods, technology, and services. Section 800.402(c)(4) requires voluntary notices to identify, among other things, any critical technologies produced or traded by the U.S. business that is the subject of the covered transaction.

Section 800.209. This section defines *duly authorized designee*, which the definition of *certification* in section 800.201 uses to identify additional persons besides the chief executive officer who may complete the certifications required by the regulations. This definition makes clear that certifications must come from specified knowledgeable, high-level individuals who have the authority to bind an organization. CFIUS will not accept a certification signed only by outside counsel.

Section 800.211. The term *entity* encompasses the range of persons, other than natural persons, that can comprise a "person" for purposes of section 721. An entity need not have a distinct legal personality, as the term includes branches, partnerships, groups or sub-groups, associations, estates, trusts, corporations or divisions of corporations, organizations, governments, or assets operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services, regardless of whether they are organized as a legal matter. Accordingly, an operating unit or sub-unit of a business—particularly one that includes the business' production facilities, customer or vendor relationships, technology, staff, know-how or other tangible or intangible assets—may be an entity, even if that operating unit or sub-unit is not legally organized.

Section 800.212. A new term, *foreign entity*, has been added to refer to entities organized outside the United States that

CFIUS considers to be foreign persons because of their substantial foreign ownership, even though ownership is widely dispersed among different foreign persons and no single foreign person may control the entity.

Section 800.216. The definition of *foreign person* has been expanded to include "foreign entity." In addition, a number of examples have been added to provide further guidance.

Section 800.218. The definition of *lead agency* specifies, pursuant to FINSA and Executive Order 11858, as amended by Executive Order 13456, that the Department of the Treasury may designate an agency as being responsible for all or any portion of a matter under section 721, including the review, investigation, and negotiation or monitoring of mitigation agreements and conditions. The Department of the Treasury may appoint more than one lead agency for a single transaction.

Section 800.219. The definition of the term *parent* includes immediate, intermediate, and ultimate parents of an entity.

Section 800.224. The term *transaction* replaces the term *acquisition* in order to harmonize the terminology of the regulations with that of the statute. In addition to general clarifications to the definition, the proposed regulations add certain joint ventures and long-term leases as types of transactions. The current regulations already provide that joint ventures involving the contribution of a U.S. person could be covered transactions, though joint ventures are not actually listed in the definition of *acquisition*. Long-term leases are covered when, because of the terms of the lease and the extent of the lessee's authority over the U.S. business, the lease is effectively a transaction for purposes of section 721. A "transaction" is only a "covered transaction" if the other elements of the definition of "covered transaction" are also present.

Section 800.227. The term *U.S. business* replaces and expands upon the term *United States person*, in the manner and for the reasons described above.

Section 800.301. This section is revised to further clarify the types of transactions that are covered transactions under section 721. The principal substantive change in this section relates to joint ventures. The proposed regulations revise section 800.301(d) to harmonize the control standard for joint ventures with the standard used for all other transactions. If the joint venture would result in "control" of a U.S. business by a foreign person under the definition of "control"

in section 800.203, then the joint venture is a covered transaction.

Section 800.302. Paragraph (b) clarifies factors that CFIUS will take into account in determining whether the acquisition of convertible instruments, rather than the conversion of such instruments, would be the transaction that is potentially a covered transaction. The time at which control is conferred, whether at acquisition or conversion, will depend, among certain other factors, on the extent to which the acquirer can control the timing of the conversion. In either case, control will depend on what rights the convertible interests, once converted, will convey to their holder.

Paragraph (c) has been revised and an example added to clarify that the 10 percent threshold is determinative only if the foreign person's acquisition is solely for the purpose of investment, as that term is defined in section 800.223. If the acquisition is not solely for the purpose of investment—which may be reflected by the foreign person's actions, its negotiation of special rights, or other factors—then the rule that an ownership interest of 10 percent or less does not confer control does not apply.

Paragraph (d) combines two previous provisions that addressed the “U.S. business” element of the “covered transaction” definition. In particular, this paragraph elaborates upon the provision in the “entity” definition that an entity, and therefore a U.S. business, may involve the acquisition of assets of an entity, provided that those assets are bound together in a sufficiently cohesive relationship such that they themselves could be readily operated as a separate, stand-alone business.

Section 800.401. The procedures for voluntary notice have been expanded to make explicit the opportunity for interaction between CFIUS and the parties to a transaction before a notice is formally filed. After two decades of experience implementing section 721, CFIUS believes that the review process is most effective and efficient when a notice provides CFIUS with full information regarding a transaction, rather than requiring CFIUS to ask for additional information after the notice is filed. This experience is the reason for the additions to this section and section 800.402, which lays out the required contents of voluntary notice. In particular, with regard to the procedures for notice, CFIUS encourages parties to consult with CFIUS prior to filing a notice. Information provided to CFIUS as part of a pre-notice consultation becomes part of the formal notice and is accorded the confidentiality protections of section 721(c). This gives CFIUS an

opportunity to understand the transaction, and to suggest information that the parties should include in their notice, thereby helping CFIUS resolve any national security issues as efficiently as possible. These new provisions also make clear the circumstances under which CFIUS may contact parties that have not yet filed a notice, and request that they provide information to help CFIUS determine whether a filing may be appropriate.

Section 800.402. This section, which describes the information that must be included in a voluntary notice to CFIUS, is expanded to require additional data that CFIUS routinely has requested of parties. Information submitted to CFIUS in connection with a voluntary notice is entitled to confidentiality under section 800.702, and is exempt from disclosure under 5 U.S.C. 552.

Paragraph (a) has been revised to make clear that a voluntary notice will not be considered complete if any required information is missing. However, in the case of a hostile takeover where a voluntary notice is filed by fewer than all of the parties to a transaction, paragraph (b) provides that CFIUS may accept an otherwise complete notice that does not provide complete information on each non-notifying party, so long as it provides the portion of that information that is known or reasonably available to the notifying parties. (See also § 800.403(b), providing that the Staff Chairperson may require the parties to provide certain information pertaining to the transaction within seven days of the Staff Chairperson's request for such information.)

Paragraph (c) specifies the details relating to the transaction that must be described in a voluntary notice. While the regulations previously required parties to submit many of these details in voluntary notices, some specified in paragraph (c) are newly required. These include, for example, additional information regarding ultimate and intermediate parents of the foreign person making the acquisition; transaction value information; identification of other persons with a role in the transactions; additional information regarding contracts with and goods supplied directly or indirectly to the government; additional product information; identification of any special government rights over the foreign person making the acquisition; description of any agreements among foreign persons to act in concert with respect to parties to the transaction; and personal identifier information for certain key personnel. Subparagraph (c)(ii) requires that the notice include

certain export-control related information, including the identification of emergent technologies that may be designated or determined to be covered by the United States Munitions List, which is set forth in the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and therefore be critical technologies, as defined in section 800.208(a).

Other paragraphs in this section contain new informational requirements for parties filing voluntary notices. These include paragraph (j), which requires an organization chart showing the relationship between the foreign person making the acquisition and its parents, affiliates, and subsidiaries; and paragraph (k), which requires the parties to indicate whether either party has been involved previously in a transaction notified to CFIUS, and whether either party is a party to a mitigation agreement entered into under section 721. Paragraph (j) also requires the parties to provide a full statement of their view as to whether (1) the acquirer is controlled by a foreign government, (2) the acquirer is a foreign person, and (3) the transaction will result in foreign control of a U.S. person.

Paragraph (i), which requires the provision of the purchase agreement or other similar documents establishing the terms of the agreement, has been revised to reflect that such documents must reflect terms as to which there is an actual agreement between the parties, particularly with respect to matters relating to post-closing control and governance. CFIUS reserves the right to reject a voluntary notice in cases in which the deal terms regarding such matters are undecided.

Section 800.403. It is CFIUS's expectation that, in light of the added questions pertaining to the contents of voluntary notice (see § 800.402), the need to request follow-up information from the parties will be reduced. However, in cases where CFIUS requests follow-up information, such information must be provided promptly. This section makes clear that a party's failure to provide promptly any follow-up information requested by CFIUS is grounds for rejecting the notice. If such information cannot be provided within two business days of CFIUS's request, the parties should request an extension of time in writing.

Section 800.501. A new paragraph (c) has been added to this section to clarify the Chairperson's role in overseeing the secretariat function for CFIUS. Parties contemplating filing notices or that have filed notices should therefore work with the Staff Chairperson, who may arrange

contacts or meetings with other member agencies as appropriate.

Section 800.502. Provisions on commencing review (which were previously in section 800.404 of subpart D) have been consolidated with provisions regarding the beginning of the 30-day review period in section 800.502. The proposed regulations also provide that the 30-day review period will commence on the next business day after the Staff Chairperson has determined that the notice is complete and has disseminated the notice to all CFIUS members, which the Staff Chairperson is required to do promptly.

Section 800.503. This section now specifies the triggers for commencing an investigation, which are drawn from FINSA and Executive Order 11858, as amended.

Section 800.506. Executive Order 11858, as amended, specifies the circumstances under which CFIUS will forward a transaction to the President for a final decision. This section repeats these requirements. In all other cases, where CFIUS concludes deliberative action without referring the matter to the President, the Department of the Treasury will send written advice to the parties of the determination to conclude action under section 721. When the President makes the final decision on a transaction, FINSA requires that that decision be announced publicly.

Section 800.507. As under the prior regulations, parties may request that their notices be withdrawn from CFIUS consideration at any time prior to the conclusion of all deliberative action under section 721. However, section 800.507 incorporates the new procedures that FINSA requires CFIUS to follow with regard to withdrawn transactions, including tracking of withdrawn transactions and the establishment of interim protections, as appropriate, to address national security concerns.

Section 800.508. FINSA requires that the regulations provide for an appropriate role for the Secretary of Labor with respect to mitigation agreements. Under the proposed regulations, the Secretary of Labor will identify for CFIUS any risk mitigation provisions proposed to or by CFIUS that would violate U.S. labor laws.

Section 800.601. This section has been substantially shortened to delete provisions pertaining to the President's authority that are not necessary to include in regulation because they are already addressed in FINSA.

Section 800.701. FINSA includes an important provision that requires each notifying party to certify in writing that the information it provides to CFIUS is

complete and accurate as it relates to itself and the transaction. This requirement pertains both to the information in the voluntary notice (*see* § 800.402(k)) and to follow-up information. CFIUS may consider a party's failure to provide a certification with regard to follow-up information to be a material omission. (*See* § 800.601(e).)

Section 800.702. The confidentiality protections have been clarified to emphasize that they apply to information provided to CFIUS during the course of a withdrawal or with regard to a notice that is rejected under section 800.403. (As noted in § 800.401(f), information provided during the course of pre-notice consultations is also protected by the confidentiality provisions of section 721(c) and this section of the regulations.) In addition, paragraph (c) makes clear that the Chairperson's public statements may reflect information that the parties to the transaction have already themselves publicly disclosed.

Section 800.801. This new section implements the FINSA requirement that the regulations provide for the imposition of civil penalties for any violation of section 721, including a violation of any mitigation agreement entered into or conditions subsequent imposed pursuant to section 721(l). This section extends civil monetary penalties to transactions entered into on or after the effective date of FINSA, October 24, 2007. In addition, paragraph (c) authorizes CFIUS to include in any mitigation agreement described in section 721(l) a liquidated damages provision tied to the harm to the national security that could result from a breach.

Executive Order 12866

These regulations are not subject to the requirements of Executive Order 12866 because they relate to a foreign and military affairs function of the United States.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking (in particular, sections 800.401 and 800.402) have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to

Nova Daly, Deputy Assistant Secretary, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Comments on the collection of information should be received by June 23, 2008.

In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public concerning this collection of information to:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology.

The burden of the information collections in this proposed rule is estimated as follows:

Estimated total annual reporting and/or recordkeeping burden: 1200 hours.

Estimated average annual burden per respondent: 100 hours.

Estimated number of respondents: 120 per year.

Estimated annual frequency of responses: Not applicable.

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies when an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)), or any other law. As set forth below, because regulations issued pursuant to the Defense Production Act of 1950 (50 U.S.C. App 2170) are not subject to the Administrative Procedure Act, or other law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

This regulation implements Section 721 of the DPA. Section 709 of the DPA (50 U.S.C. App. 2159 as amended by section 136 of the Defense Production Act Amendments of 1992 (Pub. L. 102–558)), provides that the regulations issued under it are not subject to the rulemaking requirements of the Administrative Procedure Act. Section 709 of the DPA instead provides that any regulation issued under the DPA be published in the **Federal Register** and opportunity for public comment be provided for not less than 30 days. (Similarly, FINSA requires the President to direct the issuance of implementing regulations subject to notice and comment.) Section 709 of the DPA also provides that all comments received during the public comment period be considered and the publication of the final regulation contain written responses to such comments. Legislative history demonstrates that Congress intended that regulations under the DPA be exempt from the notice and comment provisions of the Administrative Procedure Act and instead provided that the agency include a statement that interested parties were consulted in the formulation of the regulation (*see* H.R. Conf. Rep. 102–1028 and H.R. Rep. 102–208(II)). The limited public participation procedures described in the DPA do not require a general notice of proposed rulemaking as set forth in the RFA. Further, the mechanism for publication and public participation is sufficiently different to distinguish the DPA procedures from a rule that requires a general notice of proposed rulemaking. Moreover, in explaining the DPA amendments in 1992, Congress expressed its concerns about the potential threat to our national security preparedness posed by foreign domination of key dual use technologies. In providing the President with the authority to suspend or prohibit the acquisition, merger, or takeover of a domestic firm by a foreign firm if such action would threaten to impair the national security, Congress could not have contemplated that regulations implementing such authority would be subject to RFA analysis. For these reasons, the RFA does not apply to these regulations.

Notwithstanding the inapplicability of the Regulatory Flexibility Act, we certify that this rule would not have a significant economic impact on a substantial number of small entities. These regulations provide for a voluntary system of notification, and historically less than ten percent of all foreign acquisitions of U.S. businesses are notified to CFIUS. Typically, some

of the notices filed with CFIUS concern U.S. companies that would qualify as small entities. It is estimated that an average filing requires about 100 hours of preparation time. Based on the number of filings in 2007 and the number filed thus far in 2008, it is estimated that an average of 120 notices can be expected annually over the next few years. Of these notices, it is unlikely that more than 12 will be subject to protracted investigation or a mitigation agreement. As such, a substantial number of entities are not impacted by these rules regardless of their size. We also note that these proposed regulations, to a substantial degree, merely provide a detailed explanation of the current burdens of complying with CFIUS procedures and do not impose significant new burdens on entities subject to CFIUS.

List of Subjects in 31 CFR Part 800

Foreign investments in United States, Investigations, National defense, Reporting and recordkeeping requirements.

Accordingly, under the authority at 50 U.S.C. Appendix 2170(h), for the reasons stated in the preamble, the Department of the Treasury proposes to amend 31 CFR chapter VIII as follows:

Chapter VIII—Office of Investment Security, Department of the Treasury

1. The heading for chapter VIII is revised to read as set forth above.
2. Part 800 is revised to read as follows:

PART 800—REGULATIONS PERTAINING TO MERGERS, ACQUISITIONS, AND TAKEOVERS BY FOREIGN PERSONS

Subpart A—General

- Sec.
- 800.101 Scope.
 - 800.102 Effect on other laws.
 - 800.103 Applicability.
 - 800.104 Transactions or devices for avoidance.

Subpart B—Definitions

- 800.201 Certification.
- 800.202 Committee; Chairperson of the Committee; Staff Chairperson.
- 800.203 Control.
- 800.204 Conversion.
- 800.205 Convertible voting instrument.
- 800.206 Covered transaction.
- 800.207 Critical infrastructure.
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- 800.209 Duly authorized designee.
- 800.210 Effective date.
- 800.211 Entity.
- 800.212 Foreign entity.
- 800.213 Foreign government.
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- 800.215 Foreign national.
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- 800.217 Hold.
- 800.218 Lead agency.
- 800.219 Parent.
- 800.220 Party or parties to a transaction.
- 800.221 Person.
- 800.222 Section 721.
- 800.223 Solely for the purpose of investment.
- 800.224 Transaction.
- 800.225 United States.
- 800.226 U.S. national.
- 800.227 U.S. business.
- 800.228 Voting interests.

Subpart C—Coverage

- 800.301 Transactions that are covered transactions.
- 800.302 Transactions that are not covered transactions.
- 800.303 Lending transactions.

Subpart D—Notice

- 800.401 Procedures for notice.
- 800.402 Contents of voluntary notice.
- 800.403 Deferral, rejection, or disposition of certain voluntary notices.

Subpart E—Committee Procedures: Review and Investigation

- 800.501 General.
- 800.502 Beginning of thirty-day review period.
- 800.503 Determination of whether to undertake an investigation.
- 800.504 Determination not to undertake an investigation.
- 800.505 Commencement of investigation.
- 800.506 Completion or termination of investigation and report to the President.
- 800.507 Withdrawal of notice.
- 800.508 Role of the Secretary of Labor.

Subpart F—Presidential Action

- 800.601 Finality of actions under section 721.

Subpart G—Provision and Handling of Information

- 800.701 Obligation of parties to provide information.
- 800.702 Confidentiality.

Subpart H—Penalties

- 800.801 Penalties.
- Appendix to Part 800—Preamble to Regulations on Mergers, Acquisitions, and Takeovers by Foreign Persons (Published [date to be determined], 2008.)

Authority: Section 721 of Pub. L. 100–418, 102 Stat. 1107, made permanent law by section 8 of Pub. L. 102–99, 105 Stat. 487 (50 U.S.C. App. 2170) and amended by section 837 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102–484, 106 Stat. 2315, 2463; E.O. 12661, 54 FR 779, 3 CFR, 1988 Comp., p. 618, and Pub. L. 110–49, 121 Stat. 246 (the Foreign Investment and National Security Act of 2007).

Subpart A—General

§ 800.101 Scope.

The regulations in this part implement section 721 of title VII of the

Defense Production Act of 1950, as amended, hereinafter referred to as “section 721” (see § 800.222). The definitions in this part are applicable to section 721 and these regulations. The principal purpose of section 721 is to authorize the President to suspend or prohibit any covered transaction when, in the President’s judgment, there is credible evidence to believe that the foreign person exercising control over a U.S. business (as defined in these regulations at § 800.227) might take action that threatens to impair the national security, and provisions of law other than section 721 and the International Emergency Economic Powers Act, do not, in the President’s judgment, provide adequate and appropriate authority for the President to protect the national security in the matter before the President. It is also a purpose of section 721 to authorize the Committee to mitigate any threat to the national security of the United States that arises as a result of a covered transaction.

§ 800.102 Effect on other laws.

Nothing in this part shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.

§ 800.103 Applicability.

Section 721 and the regulations in this part apply to transactions proposed or pending on or after the effective date (as defined in § 800.210).

§ 800.104 Transactions or devices for avoidance.

Any transaction or other device entered into or employed for the purpose of avoiding section 721 shall be disregarded, and section 721 and the regulations in this part shall be applied to the substance of the transaction.

Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards avoiding possible application of section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a U.S. business. That transaction is subject to section 721.

Subpart B—Definitions

§ 800.201 Certification.

The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of a party to a transaction filing

a notice or information, certifying that the notice or information filed:

(a) fully complies with the requirements of section 721, the regulations in this part, and any agreement or condition entered into with the Committee or any member of the Committee, and

(b) Is accurate and complete in all material respects, as it relates to:

(1) The transaction, and

(2) The party providing the certification, including its parents, subsidiaries, and any other related entities described in the notice or information.

A sample certification may be found at the Committee’s section of the Department of the Treasury Web site at <http://www.treas.gov/offices/international-affairs/cfius/index.shtml>.

§ 800.202 Committee; Chairperson of the Committee; Staff Chairperson.

The term *Committee* means the Committee on Foreign Investment in the United States. *The Chairperson of the Committee* is the Secretary of the Treasury. *The Staff Chairperson of the Committee* is the Department of the Treasury official so designated by the Secretary of the Treasury or by the Secretary’s designee.

§ 800.203 Control.

(a) The term *control* means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following matters, or any other similarly important matters affecting an entity:

(1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;

(2) The reorganization, merger, or dissolution of the entity;

(3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity;

(4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;

(5) The selection of new business lines or ventures that the entity will pursue;

(6) The entry into, termination, or non-fulfillment by the entity of significant contracts;

(7) The policies or procedures of the entity governing the treatment of non-public technical, financial, or other proprietary information of the entity;

(8) The appointment or dismissal of officers or senior managers;

(9) The appointment or dismissal of employees with access to sensitive technology or classified U.S. Government information; or

(10) The amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of the entity with respect to the matters described in paragraphs (a)(1) through (9) of this section.

(b) In examining questions of control in situations where more than one foreign person has an ownership interest in an entity, consideration will be given to factors such as whether the foreign persons are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) The following minority shareholder protections shall not in themselves be deemed to confer control over an entity:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of an entity;

(2) The power to prevent an entity from entering into contracts with majority investors or their affiliates;

(3) The power to prevent an entity from guaranteeing the obligations of majority investors or their affiliates;

(4) The power to purchase additional shares to prevent the dilution of an investor’s *pro rata* interest in an entity in the event that the entity issues additional interests; or

(5) The power to prevent the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity with respect to the matters described in paragraphs (c)(1) through (4) of this section.

(d) The Committee will consider, on a case-by-case basis, whether minority shareholder protections other than those listed in paragraph (c) of this section do not confer control over an entity.

Example 1. Corporation A is a U.S. business. A U.S. investor owns 50 percent of the voting interest in Corporation A, and the remaining voting interest is owned in equal

shares by five unrelated foreign investors. The foreign investors jointly financed their investment in Corporation A and vote as a single block on matters affecting Corporation A. The foreign investors have an informal arrangement to act in concert with regard to Corporation A, and, as a result, the foreign investors control Corporation A.

Example 2. Same facts as in Example 1 with regard to the composition of Corporation A's shareholders. The foreign investors in Corporation A have no contractual or other commitments to act in concert, and have no informal arrangements to do so. Assuming no other relevant facts, the foreign investors do not control Corporation A.

Example 3. Corporation A, a foreign person, is a private equity fund that routinely acquires substantial interests in companies and manages them for a period of time. Corporation B is a U.S. business. In addition to its acquisition of seven percent of Corporation B's voting shares, Corporation A acquires the right to terminate significant contracts of Corporation B. Corporation A controls Corporation B.

Example 4. Corporation A, a foreign person, is acquiring a nine percent interest in the shares of Corporation B, a U.S. business. As part of the transaction, Corporation A is also acquiring certain veto rights that determine important matters affecting Corporation B, including the right to veto the dismissal of senior executives of Corporation B. Corporation A controls Corporation B.

Example 5. Corporation A, a foreign person, acquires an 11 percent interest in the shares of Corporation B, a U.S. business. Under a minority shareholder protection agreement, Corporation A receives the right to participate *pro rata* in future share issuances to prevent dilution of its percentage interest. Corporation A receives no other positive or negative rights with respect to Corporation B. Assuming no other relevant facts, Corporation A does not control Corporation B.

Note to § 800.203: See § 800.302(c) regarding the Committee's treatment of cases where a foreign person acquires 10 percent or less of the outstanding voting interests in a U.S. business solely for the purpose of investment.

§ 800.204 Conversion.

The term *conversion* means the exercise of a right inherent in the ownership or holding of particular financial instruments to exchange any such instruments for voting instruments.

§ 800.205 Convertible voting instrument.

The term *convertible voting instrument* means a financial instrument that currently does not entitle its owner or holder to voting rights but is convertible into a voting instrument.

§ 800.206 Covered transaction.

The term *covered transaction* means any transaction that is proposed or

pending after the effective date by or with any foreign person, which could result in control of a U.S. business by a foreign person.

§ 800.207 Critical infrastructure.

The term *critical infrastructure* means, in the context of a particular covered transaction, systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of the particular systems or assets of the entity over which control is acquired pursuant to that covered transaction would have a debilitating impact on national security.

§ 800.208 Critical technologies.

The term *critical technologies* means:

(a) Defense articles or defense services covered by the United States Munitions List (USML), which is set forth in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130);

(b) Those items specified on the Commerce Control List (CCL) set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 CFR parts 730–774) that are controlled pursuant to multilateral regimes (*i.e.*, for reasons of national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology), as well as those that are controlled for reasons of regional stability or surreptitious listening;

(c) Specially designed and prepared nuclear equipment, parts and components, materials software and technology specified in the Assistance to Foreign Energy Activities regulations (10 CFR part 810), and nuclear facilities, equipment, and material specified in the Export and Import of Nuclear Equipment and Materials regulations (10 CFR part 110); and

(d) Select agents and toxins specified in the Export and Import of Select Agents and Toxins regulations (7 CFR part 331, 9 CFR part 121, and 42 CFR part 73).

§ 800.209 Duly authorized designee.

(a) The term *duly authorized designee* means:

(1) In the case of a partnership, any general partner thereof;

(2) In the case of a corporation, any officer or director thereof;

(3) In the case of an entity lacking officers, directors, or partners, any individual within the organization exercising similar executive functions; and

(4) In the case of an individual, such individual.

(b) In each case described in paragraphs (a)(1) through (a)(4) of this

section, such designee must possess actual authority to make the relevant certification on behalf of the person filing a notice or information.

§ 800.210 Effective date.

The term *effective date* means August 23, 1988, the date section 721 became effective.

§ 800.211 Entity.

The term *entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization (whether or not organized under the laws of any State); assets operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services, even though those assets may not be organized as a separate legal entity; and any government (including a foreign national or subnational government, the United States Government, a subnational government within the United States, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency).

§ 800.212 Foreign entity.

The term *foreign entity* means:

(a) A public company organized under the laws of a foreign state whose equity securities are primarily traded on one or more foreign exchanges; or

(b) Any other entity organized under the laws of a foreign state in which foreign nationals hold, directly or indirectly, at least 50 percent of the outstanding ownership interest in an entity.

§ 800.213 Foreign government.

The term *foreign government* means any government or body exercising governmental functions, other than the government of the United States, a State of the United States, or a political subdivision of the United States or a State. The term includes, but is not limited to, national and subnational governments, including their respective departments, agencies, and instrumentalities, as well as individuals acting as non-elected heads of state with governmental responsibilities.

§ 800.214 Foreign government-controlled transaction.

The term *foreign government-controlled transaction* means any covered transaction that could result in control of a U.S. business by a foreign government or a person controlled by or acting on behalf of a foreign government.

§ 800.215 Foreign national.

The term *foreign national* means any individual other than a U.S. national.

§ 800.216 Foreign person.

The term *foreign person* means:

- (a) Any foreign national, foreign government, or foreign entity; or
- (b) Any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.

Example 1. Corporation A is organized under the laws of a foreign state and is only engaged in business outside the United States. All of its shares are held by Corporation X, which controls Corporation A. Corporation X is organized in the United States, and is wholly owned and controlled by U.S. nationals. Assuming no other relevant facts, Corporation A, although organized and only operating outside the United States, is not a foreign person.

Example 2. Same facts as in the first sentence of Example 1. The foreign state under whose laws Corporation A is organized exercises control over Corporation A, through government interveners. Corporation A is a foreign person.

Example 3. Corporation A is organized in the United States, is engaged in interstate commerce in the United States, and is controlled by Corporation X. Corporation X is organized under the laws of a foreign state, and 50 percent of its shares are held by foreign nationals and 50 percent of its shares are held by U.S. nationals. Both Corporation A and Corporation X are foreign persons. Corporation A is also a U.S. business.

Example 4. Corporation A is organized under the laws of a foreign state and is owned and controlled by a foreign national. Through a branch, Corporation A engages in interstate commerce in the United States. Corporation A (including its branch) is a foreign person. The branch also is a U.S. business.

Example 5. Corporation A is a corporation organized under the laws of a foreign state. Forty-five percent of the voting interests in Corporation A are owned in equal shares by numerous unrelated foreign investors, none of whom has control. The foreign investors have no formal or informal arrangement, with regard to Corporation A, to act in concert with any other holder of voting interests in Corporation A. The remainder of the voting interests in Corporation A is held by U.S. investors. Assuming no other relevant facts, Corporation A is not a foreign person.

Example 6. Same facts as Example 5, except that foreign investors own 55 percent of the voting interests in Corporation A. Assuming no other relevant facts, Corporation A is a foreign entity and, therefore, a foreign person.

§ 800.217 Hold.

The terms *hold(s)* and *holding* mean legal or beneficial ownership, whether direct or indirect, through fiduciaries, agents, or other means.

§ 800.218 Lead agency.

The term *lead agency* means an agency designated by the Chairperson of the Committee to have primary responsibility, on behalf of the Committee, for the specific activity for which the Chairperson designates it a lead agency, including all or a portion of a review, investigation, or negotiation or monitoring of mitigation agreements or conditions.

§ 800.219 Parent.

(a) The term *parent* means a person who or which directly or indirectly:

- (1) Holds or will hold at least 50 percent of the outstanding voting interest in an entity; or
- (2) Holds or will hold the right to at least 50 percent of the profits of an entity, or has or will have the right in the event of the dissolution to at least 50 percent of the assets of that entity.

(b) Any entity that meets the conditions of paragraphs (a)(1) or (2) of this section with respect to another entity (*i.e.*, an intermediate parent) is also a parent of any other entity of which the intermediate parent is a parent.

Example 1. Corporation P holds 50 percent of the voting securities of Corporations R and S. Corporation R holds 40 percent of the voting securities of Corporation X; Corporation S holds 50 percent of the voting securities of Corporation Y, which in turn holds 50 percent of the voting securities of Corporation Z. Corporation P is a parent of Corporations R, S, Y and Z, but not of Corporation X. Corporation S is a parent of Corporations Y and Z, and Corporation Y is a parent of Corporation Z.

Example 2. Corporation A holds warrants, exercisable at its sole discretion, which when exercised will entitle it to vote 50 percent of the outstanding shares of Corporation B. Corporation A is a parent of Corporation B.

§ 800.220 Party or parties to a transaction.

The terms *party to a transaction* and *parties to a transaction* mean:

- (a) In the case of an acquisition of an ownership interest in an entity, the person acquiring the ownership interest, and the person from which such ownership interest is acquired, without regard to any person providing brokerage or underwriting services for the transaction;
- (b) In the case of a merger, the surviving entity, and the entity or entities that are merged into that entity as a result of the transaction;
- (c) In the case of a consolidation, the entities being consolidated, and the new consolidated entity;
- (d) In the case of a proxy solicitation, the person soliciting proxies, and the person who issued the voting interest;
- (e) In the case of the conversion of convertible voting instruments, the

issuer and the person holding the convertible voting instruments; and

(f) In the case of any other type of transaction, any person who is in a role comparable to that of a person described in paragraphs (a) through (e) of this section.

§ 800.221 Person.

The term *person* means any individual or entity.

§ 800.222 Section 721.

The term *section 721* means section 721 of title VII of the Defense Production Act of 1950, 50 U.S.C. App. 2170, as added by section 5021 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107, and as amended by Pub. L. 102–484, 106 Stat. 2463, and the Foreign Investment and National Security Act of 2007, Public Law 110–49, 121 Stat. 246.

§ 800.223 Solely for the purpose of investment.

Ownership interests are held or acquired “solely for the purpose of investment” if the person holding or acquiring such interests has no plans or intention of exercising control, does not possess or develop any purpose other than investment, and does not take any action inconsistent with acquiring or holding such interests solely for the purpose of investment. (See § 800.302(c).)

§ 800.224 Transaction.

The term *transaction* means a proposed or consummated merger, acquisition, or takeover. It includes:

- (a) The acquisition of an ownership interest in an entity.
- (b) The acquisition or conversion of convertible voting instruments of an entity.
- (c) The acquisition of proxies from holders of a voting interest in an entity.
- (d) A merger or consolidation.
- (e) The formation of a joint venture.
- (f) A long-term lease under which a lessee makes substantially all business decisions concerning the operation of a leased entity, as if it were the owner.

Example. Corporation A, a foreign person, signs a concession agreement to operate the toll road business of Corporation B, a U.S. business, for 99 years. However, Corporation B is required under the agreement to perform safety and security functions with respect to the business and to monitor compliance by Corporation A with the operating requirements of the agreement on an ongoing basis. Corporation B may terminate the agreement or impose other penalties for breach of these operating requirements. Assuming no other relevant facts, this is not a transaction.

§ 800.225 United States.

The term *United States* or U.S. means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, or any subdivision of the foregoing, and includes the Outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1131(a)). For purposes of these regulations and their examples, an entity organized under the laws of the United States of America, one of the States, the District of Columbia, or a commonwealth, territory, dependency or possession of the United States, is an entity organized "in the United States."

§ 800.226 U.S. national.

The term *U.S. national* means a citizen of the United States or an individual who, although not a citizen of the United States, owes permanent allegiance to the United States.

§ 800.227 U.S. business.

The term *U.S. business* means any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United States, but only to the extent of its activities in interstate commerce.

Example 1. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. It engages in interstate commerce in the United States through a branch or subsidiary. Its branch or subsidiary is a U.S. business. Each is also a foreign person for purposes of acquiring a U.S. business.

Example 2. Same facts as in the first sentence of Example 1. Corporation A, however, does not have a branch office, subsidiary or fixed place of business in the United States. It exports and licenses technology to an unrelated company in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

Example 3. Corporation A, a company organized under the laws of a foreign state, is wholly owned and controlled by Corporation X. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Corporation A does not have a branch office, subsidiary, or fixed place of business in the United States. It exports goods to Corporation X and to unrelated companies in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

§ 800.228 Voting interests.

The term *voting interests* means any interests in an entity that entitle the owner or holder thereof to vote for the election of directors of the entity (or, with respect to unincorporated entities, individuals exercising similar functions) or to vote on other matters affecting the entity.

Subpart C—Coverage**§ 800.301 Transactions that are covered transactions.**

Transactions that are covered transactions include, without limitation:

(a) A transaction which, irrespective of the actual arrangements for control provided for in the terms of the transaction, results or could result in control of a U.S. business by a foreign person.

Example 1. Corporation A, a foreign person, proposes to purchase all the shares of Corporation X, which is a U.S. business. As the sole owner, Corporation A will have the right to elect directors and appoint other primary officers of Corporation X, and those directors will have the right to make decisions about the closing and relocation of particular production facilities, and the termination of significant contracts. The directors also will have the right to propose to Corporation A, the sole shareholder, the dissolution of Corporation X and the sale of its principal assets. The proposed transaction is a covered transaction.

Example 2. Same facts as in Example 1, except that Corporation A plans to retain the existing directors of Corporation X, all of whom are U.S. nationals. Although Corporation A may choose not to exercise its power to elect new directors for Corporation X, Corporation A nevertheless retains that exercisable power. The proposed transaction is a covered transaction.

Example 3. Corporation A, a foreign person, proposes to purchase 50 percent of the shares in Corporation X, a U.S. business, from Corporation B, also a U.S. business. Corporation B would retain the other 50 percent of the shares in Corporation X, and Corporation A and Corporation B would contractually agree that Corporation A would not exercise its voting and other rights for ten years. The proposed transaction is a covered transaction.

(b) A transaction in which a foreign person conveys its control of a U.S. business to another foreign person.

Example. Corporation X is a U.S. business, but is wholly owned and controlled by Corporation Y, a foreign person. Corporation Z, also a foreign person, but not related to Corporation Y, seeks to acquire Corporation X from Corporation Y. The proposed transaction is a covered transaction because it could result in control of Corporation X, a U.S. business in this context, by another foreign person, Corporation Z.

(c) A transaction that results or could result in control by a foreign person of assets that constitute a U.S. business. (See § 800.302(d).)

Example 1. Corporation A, a foreign person, proposes to buy a branch office in the United States of Corporation X, which is a foreign person. Corporation X is a U.S. business to the extent of its branch office in the United States. The proposed transaction is a covered transaction.

Example 2. Corporation A, a foreign person, buys a branch office located entirely

outside the United States of Corporation Y, which is incorporated in the United States. Assuming no other relevant facts, the branch office of Corporation Y is not a U.S. business, and the transaction is not a covered transaction.

Example 3. Corporation A, a foreign person, makes a start-up, or "greenfield," investment in the United States. That investment involves such activities as separately arranging for the financing of and the construction of a plant to make a new product, buying supplies and inputs, hiring personnel and purchasing the necessary technology. The investment may involve the acquisition of shares in a newly incorporated subsidiary. Assuming no other relevant facts, Corporation A will not have acquired a U.S. business, and its greenfield investment is not a covered transaction.

Example 4. Corporation A, a foreign person, purchases substantially all the assets of Corporation B. Corporation B, which is incorporated in the United States, was in the business of producing industrial equipment, but stopped producing and selling such equipment one week before Corporation A purchased substantially all of its assets. At the time of the transaction, Corporation B continued to have employees on its payroll, maintained know-how in producing the industrial equipment it previously produced, and maintained relationships with its prior customers, all of which were transferred to Corporation A. The acquisition of substantially all of the assets of Corporation B by Corporation A is a covered transaction.

Example 5. Corporation A, a foreign person, owns businesses both outside the United States and in the United States. Corporation B, a foreign person, acquires Corporation A. The acquisition of Corporation A by Corporation B is a covered transaction with respect to Corporation A's businesses in the United States.

Example 6. Corporation X, a foreign person, seeks to acquire from Corporation A, a U.S. business, an empty warehouse facility located in the United States. The acquisition would be limited to the physical facility, and would not include customer lists, intellectual property, or other proprietary information, or other intangible assets or the transfer of personnel. Assuming no other relevant facts, the facility is not an entity and therefore not a U.S. business, and the proposed acquisition of the facility is not a covered transaction.

Example 7. Same facts as Example 6, except that, in addition to the proposed acquisition of Corporation A's warehouse facility, Corporation X would acquire the personnel, customer list, equipment, and inventory management software used to operate the facility. Under these facts, Corporation X is acquiring a U.S. business, and the proposed acquisition is a covered transaction.

(d) A joint venture in which the parties enter into a contractual or other similar arrangement, including an agreement on the establishment of a new entity, but only if one of the parties contributes a U.S. business and a foreign person gains control over that U.S. business by means of the joint venture.

Example 1. Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes only cash and Corporation X contributes a U.S. business. Each owns 50 percent of the shares of JV Corporation and, under the Articles of Incorporation of JV Corporation, both Corporation A and Corporation X have veto power over all of the matters affecting JV Corporation identified under § 800.203(a)(1) through (10), giving them both control over JV Corporation. The formation of JV Corporation is a covered transaction.

Example 2. Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes funding and managerial and technical personnel, while Corporation X contributes certain land and equipment that do not in this example constitute a U.S. business. Corporations A and B each have a 50 percent interest in the joint venture. Assuming no other relevant facts, the formation of JV Corporation is not a covered transaction.

§ 800.302 Transactions that are not covered transactions.

Transactions that are not covered transactions include, without limitation:

(a) A stock split or pro rata stock dividend that does not involve a change in control.

Example. Corporation A, a foreign person, holds 10,000 shares of Corporation B, a U.S. business, constituting 10 percent of the stock of Corporation B. Corporation B pays a 2-for-1 stock dividend. As a result of this stock split, Corporation A holds 20,000 shares of Corporation B, still constituting 10 percent of the stock of Corporation B. Assuming no other relevant facts, the acquisition of additional shares is not a covered transaction.

(b) An acquisition of convertible voting instruments that does not involve control. In determining whether an acquisition of convertible voting instruments may involve control, consideration will be given to factors such as whether the date of conversion has been agreed upon by the parties or is within the power of the acquiring entity to determine, and whether the amount of voting interests that would be acquired upon conversion can be reasonably determined at the time of the acquisition of the instruments.

Example 1. Corporation A, a foreign person, buys debentures, options and warrants of Corporation X, a U.S. business. By their terms, the debentures are convertible into common stock, and the options and warrants can be exercised for common stock, only upon the occurrence of an event the timing of which is not in the control of the holder of the stock. Assuming no other relevant facts, the acquisition of those debentures, options and warrants is not a covered transaction. The conversion of those debentures into, or the exchange of those options and warrants for, common stock

could be a covered transaction, depending on what percentage of Corporation X's voting securities Corporation A receives and what powers those securities confer on Corporation A pursuant to § 800.203.

Example 2. Same facts as Example 1, except that the securities at issue are convertible or exercisable at the sole discretion of Corporation A after one year, and if converted, would represent a 50 percent interest in Corporation X. The acquisition of these debentures, options and warrants by Corporation A is a covered transaction.

(c) A transaction that results in a foreign person holding ten percent or less of the outstanding voting interests in a U.S. business (regardless of the dollar value of the interests so acquired), but only if the transaction is solely for the purpose of investment (see § 800.223).

Example 1. In an open market purchase solely for the purpose of investment, Corporation A, a foreign person, acquires seven percent of the voting securities of Corporation X, which is a U.S. business. Assuming no other relevant facts, the acquisition of the securities is not a covered transaction.

Example 2. Corporation A, a foreign person, acquires nine percent of the voting shares of Corporation X, a U.S. business. Corporation A also negotiates contractual rights that give it the power to control important matters of Corporation X. The acquisition by Corporation A of the voting shares of Corporation X is not solely for the purpose of investment, and therefore constitutes a covered transaction.

Example 3. Corporation A, a foreign person, acquires five percent of the voting shares in Corporation B, a U.S. business. In addition to the securities, Corporation A obtains the right to appoint one out of 11 seats on Corporation B's Board of Directors. The acquisition by Corporation A of Corporation B's securities is not solely for the purpose of investment. Whether the transaction is a covered transaction would depend on whether Corporation A obtains control of Corporation B as a result of the transaction.

(d) An acquisition of assets or any part of an entity in the United States that does not constitute a U.S. business. (See § 800.301(c).)

Example 1. Corporation A, a foreign person, acquires, from separate U.S. nationals: (a) products held in inventory, (b) land, and (c) machinery for export. Assuming no other relevant facts, Corporation A has not acquired a U.S. business, and this acquisition is not a covered transaction.

Example 2. Corporation X produces armored personnel carriers in the United States. Corporation A, a foreign person, seeks to acquire the annual production of those carriers from Corporation X under a long-term contract. Assuming no other relevant facts, this transaction is not a covered transaction.

Example 3. Same facts as Example 2, except that Corporation X, a U.S. business,

has developed important technology in connection with the production of armored personnel carriers. Corporation A seeks to negotiate an agreement under which it would be licensed to manufacture using that technology. Assuming no other relevant facts, neither the proposed acquisition of technology pursuant to that license agreement, nor the actual acquisition, is a covered transaction.

Example 4. Same facts as Example 2, except that Corporation A enters into a contractual arrangement to acquire the entire armored personnel carrier business operations of Corporation X, including production facilities, customer lists, technology and staff. This transaction is a covered transaction.

Example 5. Same facts as Example 2, except that Corporation X suspended all activities of its armored personnel carrier business a year ago and currently is in bankruptcy proceedings. Existing equipment provided by Corporation X is being serviced by another company, which purchased the service contracts from Corporation X. The business's production facilities are idle but still in working condition, some of its key former employees have agreed to return if the business is resuscitated, and its technology and customer and vendor lists are still current. Corporation X's personnel carrier business constitutes a U.S. business, and its purchase by Corporation A is a covered transaction.

(e) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(f) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business.

(g) An acquisition of a security interest, but not control, in the voting securities or assets of a U.S. business at the time a loan or other financing is extended. (See § 800.303.)

§ 800.303 Lending transactions.

(a) The extension of a loan or similar financing by a foreign person to a U.S. business, accompanied by the creation in the foreign person of a secured interest in securities or other assets of the U.S. business, does not, by itself, constitute a covered transaction. However, if control over a U.S. business is acquired by the foreign person at the time the loan or other financing is extended, then the transaction is a covered transaction.

(1) The Committee will accept notices concerning transactions that involve loans or financing by foreign persons only when, because of imminent or actual default or other condition, there is a significant possibility that the

foreign person may obtain control of the U.S. business.

(2) For purposes of this section, in determining whether a transaction of the type described in paragraph (1) that involves a foreign person that makes loans in the ordinary course of business is a covered transaction, the Committee will take into account whether the foreign person has made any arrangements to transfer management decisions or day-to-day control over the U.S. business to U.S. nationals.

(b) Control will not be deemed to be acquired in cases involving an acquisition of voting interests or assets of a U.S. business by a foreign person upon default, or other condition, involving a loan or other financing, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lender (or lenders) in the syndicate:

(1) Needs the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-à-vis the debtor; or

(2) Does not have a lead role in the syndicate, and is subject to a provision in the loan or financing documents limiting its ability to control the debtor such that control for purposes of § 800.203 could not be acquired.

Example 1. Corporation A, which is a U.S. business, borrows funds from Corporation B, a bank organized under the laws of a foreign state and controlled by foreign persons. As a condition of the loan, Corporation A agrees not to sell or pledge its principal assets to any other person. Assuming no other relevant facts, this lending arrangement does not constitute a covered transaction.

Example 2. Same facts as in Example 1, except that Corporation A defaults on its loan from Corporation B and seeks bankruptcy protection. Corporation A has no funds with which to satisfy Corporation B's claim, which is greater than the value of Corporation A's principal assets. Corporation B's secured claim constitutes the only secured claim against Corporation A's principal assets, creating a high probability that Corporation B will receive title to Corporation A's principal assets, which constitute a U.S. business. Assuming no other relevant facts, the Committee would accept a notice of the impending bankruptcy court adjudication transferring control of Corporation A's principal assets to Corporation B, which would constitute a covered transaction.

Subpart D—Notice

§ 800.401 Procedures for notice.

(a) A party or parties to a proposed or completed transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending:

(1) One paper copy of the notice to the Staff Chairperson, Office of Investment

Security, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, that includes, in English only, the information set out in § 800.402, including the certification required under paragraph (l) of that section; and

(2) One electronic copy of the same information required in paragraph (a)(1) of this section. See the Committee's section of the Department of the Treasury Web site, at <http://www.treas.gov/offices/international-affairs/cfius/index.shtml> for electronic submission instructions.

(b) If the Committee determines that a transaction for which no voluntary notice has been filed under paragraph (a) of this section may be a covered transaction and raises national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction to provide to the Committee the information necessary to determine whether the transaction is a covered transaction, and if the Committee determines that the transaction is a covered transaction, to file a notice under paragraph (a) of such covered transaction.

(c) Any member of the Committee, at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding a transaction for which no voluntary notice has been filed under paragraph (a) of this section if that member has reason to believe that the transaction is a covered transaction and may raise national security considerations. Notices filed under this paragraph are deemed accepted upon their receipt by the Staff Chairperson. In the event that an agency notice is filed, the Staff Chairperson will promptly furnish the parties to the transaction with written advice of such notice. No agency notice under this paragraph shall be made with respect to a transaction more than three years after the date of the completion of the transaction, unless the Chairperson of the Committee, in consultation with other members of the Committee, requests such an agency notice.

(d) No communications other than those described in paragraphs (a) and (c) of this section shall constitute notice for purposes of section 721.

(e) Upon receipt of the certification required by § 800.402(l) and an electronic copy of a notice filed under paragraph (a) of this section, the Staff Chairperson shall promptly inspect such notice for completeness.

(f) Parties to a transaction are encouraged to consult with the Committee in advance of filing a notice

and, in appropriate cases, to file with the Committee a draft notice or other appropriate documents to aid the Committee's understanding of the transaction and to provide an opportunity for the Committee to request additional information to be included in the notice. Any such pre-notice consultation should take place, or any draft notice should be provided, at least five business days before the filing of a voluntary notice. All information and documentary material made available to the Committee pursuant to this paragraph shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 800.702, and shall be considered part of any notice filed under section 721(b).

(g) Information and other documentary material provided by the parties to the Committee after the filing of a voluntary notice under § 800.401 shall be part of the notice, and shall be subject to the certification requirements of § 800.402(l).

§ 800.402 Contents of voluntary notice.

(a) If the parties to a transaction file a voluntary notice, they shall provide in detail the information set out in this section, which must be accurate and complete with respect to all parties and to the transaction. (See also paragraph (l) of this section and § 800.701(d) regarding certification requirements.)

(b) In the case of a hostile takeover, if fewer than all the parties to a transaction file a voluntary notice, each notifying party shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to each non-notifying party.

(c) A voluntary notice filed pursuant to § 800.401(a) shall describe:

(1) The transaction in question, including:

(i) A summary setting forth the essentials of the transaction, including a statement of the purpose of the transaction, and its scope, both within and outside of the United States;

(ii) The nature of the transaction, for example, whether the acquisition is by merger, consolidation, the purchase of voting interests, or otherwise;

(iii) The name, United States address (if any), Web site address (if any), nationality (for individuals) or place of incorporation or other legal organization (for entities), and address of the principal place of business of each foreign person that is a party to the transaction;

(iv) The name, address, Web site address (if any), principal place of

business, and place of incorporation or other legal organization of the U.S. business that is the subject of the transaction;

(v) The name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of:

(A) The immediate parent, the ultimate parent, and each intermediate parent, if any, of the foreign person that is a party to the transaction;

(B) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(C) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent.

(vi) The name, address, Web site address (if any), and nationality (for individuals) or place of incorporation or other legal organization (for entities) of the person that will ultimately control the U.S. business being acquired;

(vii) The expected date for completion of the transaction, or the date it was completed;

(viii) The price paid for the interest in the U.S. business in U.S. dollars, or, where the price does not accurately reflect the full value provided for the interest in the U.S. business, a statement of such value and a description of how it was derived; and

(ix) The name of any and all financial institutions involved in the transaction, including as advisors, underwriters, or a source of financing for the transaction.

(2) With respect to a transaction structured as an acquisition of assets of a business, a detailed description of the assets of the U.S. business being acquired, including the approximate value of those assets in U.S. dollars;

(3) With respect to the U.S. business that is the subject of the transaction, and any entity of which that U.S. business is a parent that is also a subject of the transaction:

(i) Their respective business activities, as, for example, set forth in annual reports, and the product or service lines of each, including an estimate of U.S. market share for primary product or service lines and an explanation of how that estimate was derived, and a list of direct competitors for those primary product or service lines;

(ii) The street address (or mailing address, if different) within the United States and Web site address (if any) of each facility that is manufacturing classified or unclassified products or producing services described in paragraph (c)(3)(v) of this section, their respective Commercial and Government Entity Code (CAGE Code), assigned by the Department of Defense, their Dun

and Bradstreet identification (DUNS) number, and their North American Industry Classification System (NAICS) Code, if any;

(iii) Each contract (identified by agency and number) that is currently in effect or was in effect within the past five years, with any agency of the United States Government involving any information, technology or data that is classified under Executive Order 12958, as amended, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(iv) Any other contract (identified by agency and number) currently in effect, or that was in effect within the past three years, with any agency of the United States Government, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(v) Any products or services (including research and development):

(A) That it supplies, directly or indirectly, to any agency of the United States Government, including as a prime contractor or first tier subcontractor; a supplier to any such prime contractor or subcontractor; or, if known by the parties filing the notice, a subcontractor at any tier;

(B) If known by the parties filing the notice, for which it is a single qualified source (*i.e.*, other acceptable suppliers are readily available to be so qualified) or a sole source (*i.e.*, no other supplier has needed technology, equipment, and manufacturing process capabilities) of a particular product or service for such agencies and whether there are other suppliers in the market that are available to be so qualified.

(vi) Any products or services (including research and development) that:

(A) It supplies to third parties and it knows are rebranded by the purchaser or incorporated into the products of another entity, and the names or brands under which such rebranded products or services are sold; and

(B) In the case of services, it provides on behalf of, or under the name of, another entity, and the name of any such entities;

(vii) For the prior three years—

(A) The number of priority rated contracts or orders under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) that the U.S. business that is the subject of the transaction has received and the level of priority of such contracts or orders (“DX” or “DO”); and

(B) The number of such priority rated contracts or orders that the U.S. business has placed with other entities

and the level of priority of such contracts or orders, and its plan to ensure that any new entity formed at the completion of the notified transaction complies with the DPAS regulation;

(viii) A description and copy of the cyber security plan, if any, that will be used to protect against cyber attacks on the operation, design, and development of the U.S. business’s services, networks, systems, data storage, and facilities.

(4) Whether the U.S. business that is being acquired produces or trades in:

(i) Items that are subject to EAR and, if so, a description (which may group similar items into general product categories) of the items and a list of the relevant commodity classifications set forth on the CCL (*i.e.*, Export Control Classification Numbers (ECCNs) or EAR99 designation);

(ii) Defense articles and defense services, and related technical data covered by the USML in the ITAR, and, if so, the category of the USML, including:

(A) Defense articles, services, and technical data for which commodity jurisdiction determinations (22 CFR 120.4) are pending; and

(B) Defense articles, services, and technical data that have not been, but may be, designated or determined to be covered by the USML, pursuant to 22 CFR 120.3;

(iii) Products and technology that are subject to export authorization administered by the Department of Energy (10 CFR part 810), or export licensing requirements administered by the Nuclear Regulatory Commission (10 CFR part 110); or

(iv) Select Agents and Toxins (7 CFR part 331, 9 CFR 121, and 42 CFR part 73);

(5) Whether the U.S. business that is the subject of the transaction:

(i) Possesses any licenses, permits, or other authorizations other than those under the regulatory authorities listed in paragraph (4) of this section that have been granted by an agency of the United States Government (if applicable, identification of the relevant licenses shall be provided); or

(ii) Has technology that has military applications (if so, an identification of such technology and a description of such military applications shall be included).

(6) With respect to the foreign person engaged in the transaction and its parents:

(i) The business or businesses of the foreign person and its ultimate parent, as such businesses are described, for example, in annual reports. Provide

CAGE codes, NAICS codes, and DUNS numbers, if any, for such businesses;

(ii) The plans of the foreign person for the U.S. business with respect to:

(A) Reducing, eliminating, or selling research and development facilities;

(B) Changing product quality;

(C) Shutting down or moving outside of the United States facilities that are within the United States;

(D) Consolidating or selling product lines or technology;

(E) Modifying or terminating contracts referred to in paragraphs (c)(3)(iii) and (iv) of this section; or

(F) Eliminating domestic supply by selling products solely to non-domestic markets.

(iii) Whether the foreign person is controlled by or acting on behalf of a foreign government, including as an agent or representative, or in some similar capacity;

(iv) Whether a foreign government or a person controlled by or acting on behalf of a foreign government:

(A) Has or controls ownership interests or convertible voting instruments of the acquiring foreign person or any parent of the acquiring foreign person, and if so, the nature and percentage amount of any such instruments;

(B) Has the right or power to appoint any of the principal officers or the members of the board of directors of the acquiring foreign person or any parent of the foreign person that is a party to the transaction;

(C) Holds any contingent interest (for example, such as might arise from a lending transaction) in the foreign acquiring party and, if so, the rights that are covered by this contingent interest, and the manner in which they would be enforced; or

(D) Has any other affirmative or negative rights or powers that could be relevant to the Committee's determination of whether the notified transaction is a foreign government-controlled transaction; and if there are any such rights or powers, describe their source (for example, a "golden share," shareholders agreement, contract, statute, or regulation) and the mechanics of their operation;

(v) A description of any formal or informal arrangements among foreign ownership interest holders of the foreign person or between the foreign person and other persons to act in concert on particular matters affecting the U.S. business that is the subject of the transaction and a copy of any documents that establish those rights or describe those arrangements;

(vi) Biographical information of members of the board of directors,

senior management, and the ultimate beneficial owner of five percent or more of the following:

(A) The foreign person engaged in the transaction;

(B) The immediate parent of the foreign person engaged in the transaction; and

(C) The ultimate parent of the foreign person engaged in the transaction.

(vii) The following "personal identifier information," which, for privacy reasons, and to ensure limited distribution, shall be set forth in a separate document, not in the main notice, with regard to current members of the board or boards of directors (including boards comprised partially or entirely of external members) and senior executives of the immediate acquirer and its ultimate parent, and any other entities in the same chain of ownership that could exercise control over the U.S. business being acquired, and any natural person having an ownership interest of five percent or more in the ultimate parent of the acquirer:

(A) Full name (last, first, middle name);

(B) All other names and aliases used;

(C) Business address;

(D) Country and city of residence;

(E) Date of birth;

(F) Place of birth;

(G) U.S. Social Security number (where applicable);

(H) National identity number, including nationality, date and place of issuance and expiration date (where applicable);

(I) U.S. and foreign passport number (if more than one, all must be fully disclosed), nationality, date and place of issuance and expiration date and, if a U.S. visa holder, the visa type and number, date and place of issuance and expiration date; and

(J) Dates and nature of foreign government and foreign military service (where applicable);

(viii) The following "business identifier information" for parents of the immediate acquirer, including the ultimate parent, and any other entities in the same chain of ownership that could exercise control over the U.S. business that is the subject of the transaction:

(A) Business name, including all names under which the business is known to be or has been doing business;

(B) Business address;

(C) Business phone number, fax number, and e-mail address;

(D) Employer identification number or other domestic tax or corporate identification number; and

(E) For each branch, the information required in paragraphs (c)(6)(viii)(B) through (D) of this section, if applicable.

(d) The voluntary notice shall list any filings with, or reports to, agencies of the United States Government that have been or will be made with respect to the transaction prior to its closing indicating the agencies concerned, the nature of the filing or report, the date on which it was filed or the estimated date by which it will be filed, and a relevant contact point and/or telephone number within the agency, if known.

Example. Corporation A, a foreign person, intends to acquire Corporation X, which is wholly owned and controlled by a U.S. national and which has a Facility Security Clearance under the Department of Defense Industrial Security Program. See Department of Defense, "Industrial Security Regulation," DOD 5220.22-R, and "Industrial Security Manual for Safeguarding Classified Information," DOD 5220.22-M. Corporation X accordingly files a revised Form DD 441s, and enters into discussions with the Defense Investigative Service about effectively insulating its facilities from the foreign person. Corporation X may also have made filings with the Securities and Exchange Commission, the Department of Commerce, the Department of State, or other federal departments and agencies. Paragraph (d) of this section requires that certain specific information about these filings be reported to the Committee in a voluntary notice.

(e) In the case of the establishment of a joint venture, information for the voluntary notice shall be prepared on the assumption that the foreign person that is party to the joint venture has made an acquisition of the existing U.S. business that the other party to the joint venture is contributing or transferring to the joint venture. The voluntary notice shall describe the name and address of the joint venture and the entities that established, or are establishing, the joint venture.

(f) In the case of acquisitions of some but not all of the assets of a person, § 800.402(c) requires submission of the specified information with respect to the assets in the United States that have been or are proposed to be acquired.

(g) Persons filing a voluntary notice shall, with respect to the foreign person that is a party to the transaction, its immediate parent, the U.S. business that is the subject of the transaction, and each entity of which the foreign person is a parent, append to the voluntary notice the most recent annual report of each such entity, in English. Separate reports are not required for any entity whose financial results are included within the consolidated financial results stated in the annual report of any parent of any such entity, unless the transaction involves the acquisition of a U.S. business whose parent is not being acquired, in which case the notice shall include the most recent audited

financial statement of the U.S. business that is the subject of the transaction. If a U.S. business does not prepare an annual report and its financial results are not included within the consolidated financial results stated in the annual report of a parent, the filing shall include, if available, the entity's most recent audited financial statement (or, if an audited financial statement is not available, the unaudited financial statement).

(h) Persons filing a voluntary notice shall, during the time that the matter is pending before the Committee or the President, promptly advise the Staff Chairperson of any material changes in plans, facts and circumstances addressed in the notice, and information provided or required to be provided to the Committee under § 800.402, and shall file amendments to the notice to reflect such material changes. Such amendments shall become part of the notice filed by such persons under § 800.401, and the certification required under § 800.402(l) shall apply to such amendments. (See also § 800.701(d).)

(i) Persons filing a voluntary notice shall include a copy of the most recent asset or stock purchase agreement or other document establishing the agreed terms of the transaction.

(j) Persons filing a voluntary notice shall include:

(1) An organizational chart illustrating all of the entities or individuals above the foreign person that is a party to the transaction up to the person or persons having ultimate control of that person, including the percentage of shares held by each; and

(2) A full statement of the view of the person as to whether:

(A) It is a foreign person;

(B) It is controlled by a foreign government; and

(C) The transaction has resulted or will result in control of a U.S. business by a foreign person, and the reasons for its view, focusing in particular on any powers (for example, by virtue of a shareholders agreement, contract, statute, or regulation) that the foreign person will have with regard to the U.S. business, and how those powers can or will be exercised.

(k) Persons filing a voluntary notice shall include information as to whether:

(1) Any party to the transaction is, or has been, a party to a mitigation agreement entered into or condition imposed under section 721, and if so, shall specify the date and purpose of such agreement or condition and the United States Government signatories; and

(2) Any party to the transaction was ever party to a transaction previously notified to the Committee.

(l) Each party filing a voluntary notice shall provide a certification of the notice consistent with § 800.201. A sample certification may be found on the Committee's section of the Department of the Treasury Web site, available at <http://www.treas.gov/offices/international-affairs/cfius/index.shtml>.

(m) Persons filing a voluntary notice shall include with the notice a list identifying each document provided as part of the notice, including all documents provided as attachments or exhibits to the narrative response.

§ 800.403 Deferral, rejection, or disposition of certain voluntary notices.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any voluntary notice that does not comply with § 800.402 and so inform the parties promptly in writing;

(2) Reject in writing any voluntary notice at any time, and so inform the parties promptly in writing, if, after the notice has been submitted and before action by the Committee or the President has been concluded:

(i) There is a material change in the transaction as to which notification has been made; or

(ii) Information comes to light that contradicts material information provided in the notice by the parties;

(3) Reject in writing any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the party or parties that have submitted the voluntary notice do not provide follow-up information requested by the Staff Chairperson within two business days of the request, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing; or

(4) Reject in writing any voluntary notice before the conclusion of a review or investigation and so inform the parties promptly in writing, if the party submitting the voluntary notice has not submitted the final certification required by § 800.701(d).

(b) Notwithstanding the authority of the Staff Chairperson under paragraph (a) of this section to reject an incomplete notice, the Staff Chairperson may defer acceptance of the notice, and the beginning of the thirty-day review period, to obtain any information required under this section that has not been submitted by the notifying party or parties or other parties to the transaction. Where necessary to obtain such information, the Staff Chairperson may inform any non-notifying party or

parties that notice has been filed with respect to a proposed transaction involving the party, and request that certain information required under this section, as specified by the Staff Chairperson, be provided to the Committee within seven days after receipt of the Staff Chairperson's request.

(c) The Staff Chairperson shall notify the parties when the Committee has found that the transaction that is the subject of a voluntary notice is not a covered transaction.

Example 1. The Staff Chairperson receives a joint notice from Corporation A, a foreign person, and Corporation X, a company that is owned and controlled by U.S. nationals, with respect to Corporation A's intent to purchase all of the shares of Corporation X. The joint notice does not contain any information described under § 800.402(d)(3)(iv) and (v) concerning classified materials and products or services supplied to the U.S. military services. The Staff Chairperson may reject the notice or defer the start of the thirty-day review period until the parties have supplied the omitted information.

Example 2. Same facts as in first sentence of Example 1, except that the joint notice indicates that Corporation A does not intend to purchase Corporation X's Division Y, which is engaged in classified work for a U.S. Government agency. Corporations A and X notify the Committee on the 25th day of the 30-day notice period that Division Y will also be acquired by Corporation A. This fact constitutes a material change with respect to the transaction as originally notified, and the Staff Chairperson may reject the notice.

Example 3. The Staff Chairperson receives a joint notice by Corporation A, a foreign person, and Corporation X, a company that is owned and controlled by U.S. nationals, indicating that Corporation A intends to purchase five percent of the voting securities of Corporation X. Under the particular facts and circumstances presented, the Committee concludes that Corporation A's purchase of this interest in Corporation X could not result in foreign control of Corporation X. The Staff Chairperson shall advise the parties in writing that the transaction as presented is not subject to section 721.

Example 4. The Staff Chairperson receives a voluntary notice involving the acquisition by Company A, a foreign person, of the entire interest in Company X, a U.S. business. The notice mentions the involvement of a second foreign person in the transaction, Company B, but states that Company B is merely a passive investor in the transaction. During the course of the review, the parties provide information that clarifies that Company B's approval would be required before Company X can pursue certain lines of business. This contradicts the material assertion in the notice that Company B is a passive investor. The Committee may reject this notice without concluding review under section 721.

Subpart E—Committee Procedures: Review and Investigation

§ 800.501 General.

(a) The Committee's review or investigation (if necessary) shall examine, as appropriate, whether:

(1) The transaction is by or with any foreign person and could result in foreign control of a U.S. business;

(2) There is credible evidence to support a belief that any foreign person exercising control of that U.S. business might take action that threatens to impair the national security of the United States; and

(3) Provisions of law, other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), provide adequate and appropriate authority to protect the national security of the United States.

(b) During the thirty-day review period or during an investigation, the Staff Chairperson may invite the parties to a notified transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction. During an investigation, a party to the investigated transaction may request a meeting with the Committee staff; such a request ordinarily will be granted.

(c) The Staff Chairperson shall be the point of contact for receiving material filed with the Committee, including notices.

(d) Where more than one lead agency is designated, communications on material matters between a party to the transaction and a lead agency shall include all lead agencies designated with regard to those matters.

§ 800.502 Beginning of thirty-day review period.

(a) The Staff Chairperson of the Committee shall accept a voluntary notice the next business day after the Staff Chairperson has:

(1) Determined that the notice complies with § 800.402; and

(2) Disseminated the notice to all members of the Committee.

(b) A thirty-day period for review of a transaction shall commence on the date on which the voluntary notice has been accepted, agency notice has been received by the Staff Chairperson of the Committee, or the Chairperson of the Committee has requested a review pursuant to § 800.601(b). Such review shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

(c) The Staff Chairperson shall promptly and in writing advise all

parties to a transaction that have filed a voluntary notice of:

(1) The acceptance of the notice;

(2) The date on which the review begins; and

(3) The designation of any lead agency or agencies.

(d) Within two business days after its receipt by the Staff Chairperson, the Staff Chairperson shall send written advice of an agency notice to the parties to a covered transaction. Such written advice shall identify the date on which the review began.

(e) The Staff Chairperson shall promptly circulate to all Committee members any draft pre-filing notice, any agency notice, any accepted notice, and any subsequent information filed by the parties.

§ 800.503 Determination of whether to undertake an investigation.

(a) After a review of a covered transaction under § 800.502, the Committee shall undertake an investigation of any covered transaction if:

(1) A member of the Committee (other than a member designated as *ex officio* under section 721(k)) advises the Staff Chairperson that the member believes that the transaction threatens to impair the national security of the United States and that the threat has not been mitigated; or

(2) The lead agency recommends, and the Committee concurs, that an investigation be undertaken.

(b) The Committee shall also undertake, after a review of a covered transaction under § 800.502, an investigation to determine the effects on national security of any covered transaction that:

(1) Is a foreign government-controlled transaction; or

(2) Would result in control by a foreign person of critical infrastructure of or within the United States, if the Committee determines that the transaction could impair the national security and such impairment has not been mitigated.

(c) The Committee shall undertake an investigation as described in paragraph (b) of this section unless the Chairperson (or the Deputy Secretary of the Treasury) and the head of any lead agency (or his or her delegate at the Deputy Secretary or equivalent level) designated by the Chairperson determine at the conclusion of the review that such transaction will not impair the national security of the United States.

§ 800.504 Determination not to undertake an investigation.

If the Committee determines, during the review period described in § 800.502, not to undertake an investigation of a notified covered transaction, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly send written advice to the parties to a covered transaction of a determination of the Committee not to undertake an investigation, and to conclude action under section 721.

§ 800.505 Commencement of investigation.

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the thirty-day review period described in § 800.502.

(b) An official of the Department of the Treasury shall promptly send written advice to the parties to a covered transaction of the commencement of an investigation.

§ 800.506 Completion or termination of investigation and report to the President.

(a) The Committee shall complete an investigation no later than the forty-fifth day after the date the investigation commences, or, if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(b) Upon completion or termination of any investigation, the Committee shall send a report to the President requesting the President's decision if:

(1) The Committee recommends that the President suspend or prohibit the transaction;

(2) The members of the Committee (other than a member designated as *ex officio* under section 721(k)) are unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(3) The Committee requests that the President make a determination with regard to the transaction.

(c) In circumstances when the Committee sends a report to the President requesting the President's decision upon completion or termination of an investigation, such report shall include information relevant to sections 721 (d)(4)(A) and (B), and shall present the Committee's recommendation. If the Committee is unable to reach a decision to present a single recommendation to the President, the Chairperson shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

(d) If the Committee determines to conclude all deliberative action under

section 721 with regard to a notified covered transaction without sending a report to the President upon completion or termination of an investigation, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly send written advice to the parties to a covered transaction of a determination to conclude action.

§ 800.507 Withdrawal of notice.

(a) A party (or parties) to a transaction that has filed notice under § 800.401(a) may, at any time prior to conclusion of all action under section 721, request in writing that such notice be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made. Such requests will ordinarily be granted, unless otherwise determined by the Committee. An official of the Department of the Treasury will promptly send written advice of the Committee's decision to the parties.

(b) Any request to withdraw an agency notice by the agency that filed it shall be in writing and shall be effective only upon approval by the Committee. An official of the Department of the Treasury shall provide written advice to the parties to the transaction of the Committee's decision to approve the withdrawal request within two business days of the Committee's decision.

(c) In any case where a request to withdraw a notice is granted under paragraph (a) of this section:

(1) The Staff Chairperson, in consultation with the Committee, shall establish, as appropriate:

(i) A process for tracking actions that may be taken by any party to the covered transaction before notice is refiled under § 800.401; and

(ii) Interim protections to address specific national security concerns with the transaction identified during the review or investigation of the transaction.

(2) The Staff Chairperson shall specify a time frame, as appropriate, for the parties to resubmit a notice and shall provide written advice of that time frame to the parties.

(d) Written notice of a covered transaction pursuant to paragraph (c)(2) of this section shall be deemed a new notice for purposes of the regulations in this part, including § 800.601.

§ 800.508 Role of the Secretary of Labor.

In response to a request from the Chairperson, the Secretary of Labor shall identify for the Committee any risk mitigation provisions proposed to or by the Committee that would violate U.S. labor laws.

Subpart F—Finality of Action

§ 800.601 Finality of actions under section 721.

(a) All authority available to the President or the Committee under section 721(d), including divestment authority, shall remain available at the discretion of the President with respect to covered transactions proposed or pending on or after the effective date. Such authority shall not be exercised if:

(1) The Committee, through its Staff Chairperson, has in writing advised a party (or the parties) that a particular transaction, with respect to which voluntary notice has been filed is not a covered transaction;

(2) The parties to the transaction have received written advice pursuant to § 800.504 or § 800.506(d) that the Committee has concluded all action under section 721 with respect to the covered transaction; or

(3) The President has previously announced, pursuant to section 721(d), his decision not to exercise his authority under section 721 with respect to the covered transaction.

(b) Notwithstanding any other provision in the regulations in this part, and in addition to such other penalties as may be provided by law, in any case where one or more parties to a covered transaction submits false or misleading material information to the Committee, or omits material information, including relevant information that is supplied in response to provisions of § 800.402; that is requested specifically by the President or the Committee in the course of a review, investigation, or Presidential determination; or that is actually provided by a party:

(1) The Committee may, consistent with sections 721(b)(1)(D)(ii) and (b)(1)(F), reopen its review of the transaction and exercise all its original authorities under section 721 with respect to the transaction, including revising any recommendation or recommendations submitted to the President; and

(2) The President may take action under section 721 for such time as the President deems appropriate with respect to the covered transaction, and may revise actions earlier taken.

(c) The Committee will generally not consider as material minor inaccuracies, omissions, or changes relating to financial or commercial factors not having a bearing on national security.

(d) Divestment or other relief under section 721 shall not be available with respect to transactions that were completed prior to the effective date.

Subpart G—Provision and Handling of Information

§ 800.701 Obligation of parties to provide information.

(a) Parties to a covered transaction that is notified under subpart D shall provide information to the Staff Chairperson that will enable the Committee to conduct a full review and/or investigation of the proposed transaction, and shall promptly advise the Staff Chairperson of any material changes in plans or information pursuant to § 800.402(h). If deemed necessary by the Committee, information may be obtained from parties to a covered transaction or other persons through subpoena or otherwise, pursuant to 50 U.S.C. App. 2155(a).

(b) Documentary materials or information required or requested to be filed with the Committee under this part shall be submitted in English. Supplementary materials, such as annual reports, written in a foreign language, shall be submitted in certified English translation.

(c) Any information filed with the Committee by a party to a covered transaction in connection with any action for which a report is required pursuant to section 721(l)(3)(B) with respect to the implementation of a mitigation agreement or condition described in section 721(l)(1)(A) shall be accompanied by a certification that complies with the requirements of section 721(n) and § 800.201. A sample certification may be found at the Committee's section of the Department of the Treasury Web site at <http://www.treas.gov/offices/international-affairs/cfius/index.shtml>.

(d) At the conclusion of a review or investigation, each party that has filed additional information subsequent to the original notice shall file a final certification. (See § 800.201.) A sample certification may be found at the Committee's section of the Department of the Treasury Web site at <http://www.treas.gov/offices/international-affairs/cfius/index.shtml>.

§ 800.702 Confidentiality.

(a) Any information or documentary material filed with the Committee pursuant to this part shall be exempt from disclosure under 5 U.S.C. 552 and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this part shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress, in

accordance with subsections (b)(3)(B) and (g)(2)(A) of section 721.

(b) In any case where a request to withdraw notice is granted under § 800.507, or where notice has been rejected under § 800.403, § 800.702 shall continue to apply with respect to information and documentary material filed with the Committee.

(c) Nothing in paragraph (a) of this section shall be interpreted to prohibit the public disclosure by a party of documentary material or information that it has filed with the Committee. Any such documentary material or information so disclosed may subsequently be reflected in the public statements of the Chairperson, who is authorized to communicate with the public and the Congress on behalf of the Committee.

(d) The provisions of 50 U.S.C. App. 2155(d) relating to fines and imprisonment shall apply with respect to the disclosure of information or documentary material filed with the Committee under these regulations.

Subpart H—Penalties

§ 800.801 Penalties.

(a) Any person who, intentionally or through gross negligence, submits a material misstatement or omission in a notice or makes a false certification under § 800.402(k) or 800.701(c) may be liable to the United States for a civil penalty not to exceed \$250,000 per violation. The amount of the penalty assessed for a violation shall be based on the nature of the violation.

(b) Any person who, intentionally or through gross negligence, violates a material agreement or condition entered or agreed with the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed \$250,000 per violation or the value of the transaction. Any penalty assessed under this subsection shall be based on the nature of the violation and shall be separate and apart from any damages sought pursuant to a mitigation agreement under section 721(l), or any action taken under § 800.601(b).

(c) A mitigation agreement entered into under section 721(l) may include a provision providing for liquidated or actual damages for breaches of the agreement by parties to the transaction. The Committee shall set the amount of any liquidated damages as a reasonable assessment of the harm to the national security that could result from a breach of the agreement. Any mitigation agreement containing a liquidated damages provision shall include a provision that the Committee will consider the severity of the breach in

deciding whether to seek a lesser amount than that stipulated in the contract.

(d) A determination to impose penalties under paragraphs (a) or (b) of this section must be made by the Committee. Notice of the penalty, including a written explanation of the penalized conduct and the amount of the penalty, shall be sent to the penalized party by U.S. mail.

(e) Upon receiving notice of the imposition of a penalty under paragraphs (a) or (b) of this section, the penalized party may, within 15 days of receipt of the notice of the penalty, submit a written statement of appeal to the Staff Chairperson, including a defense, justification, or explanation for the penalized conduct. The Committee will review the appeal and issue a final decision within 15 days of receipt of the appeal.

(f) The penalties authorized in paragraphs (a) and (b) of this section may be recovered in a civil action brought by the United States in federal district court.

(g) The penalties available under this section are without prejudice to other penalties, civil or criminal, available under law.

Appendix to Part 800—Preamble to Regulations on Mergers, Acquisition, and Takeovers by Foreign Persons

(Published [date to be determined], 2008.)

[Text of Appendix will appear in the final rule.]

Clay Lowery,

Assistant Secretary (International Affairs).

[FR Doc. 08–1172 Filed 4–21–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0096]

RIN 1625–AA00

Safety Zone; Festival of Sail 2008 Ship's Parade; San Diego Harbor, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a safety zone, on the navigable waters of San Diego Bay in support of the Festival of Sail 2008 Ship's Parade. This temporary safety zone is necessary to

provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before May 23, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0096 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7233. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0096), indicate the specific section of this document to which each comment

applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on "Search for Dockets," and enter the docket number for this rulemaking (USCG-2008-0096) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Maritime Museum of San Diego is sponsoring the Festival of Sail 2008 Ship's Parade, which will transit through San Diego Bay. The event is a classic naval review consisting of 15 tall ships of various classes, some of which are restricted in their maneuverability. The sponsor will provide 16 enforcement vessels to patrol this event. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes a safety zone that would be enforced from 10 a.m. to 1 p.m. on August 20, 2008. The limits of the safety zone would be as follows: The route would start at 32°37.15' N, 117°14.07' W and would proceed northeast between green Buoy #3 and red Buoy #4 at 32°38.12' N, 117°13.74' W, then north between green Buoy #5 and red Buoy #6 at 32°39.14' N, 117°13.51' W, then north through the harbor channel to 32°42.07' N, 117°13.90' W, and then northeast to 32°43.11' N, 117°12.71' W, and then east to 32°43.13' N, 117°11.12' W, and finally southeast to the Coronado Bridge at 32°41.45' N, 11°09.18' W.

This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the event and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size and location of the safety zone. Commercial vessels will be not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the San Diego Bay from 10 a.m. to 1 p.m. on August 20, 2008.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only three hours for a period of one day. Vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7233. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary “Environmental Analysis Check List” supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1225, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T11–014 to read as follows:

§ 165.T11–014 Safety Zone; Festival of Sail 2008 Ship’s Parade; San Diego Harbor, San Diego, CA.

(a) *Location.* The limits of the proposed moving safety zone are as follows: The route would start at 32°37.15′ N, 117°14.07′ W and would proceed northeast between green Buoy #3 and red Buoy #4 at 32°38.12′ N, 117°13.74′ W, then north between green Buoy #5 and red Buoy #6 at 32°39.14′ N, 117°13.51′ W, then north through the harbor channel to 32°42.07′ N, 117°13.90′ W, and then northeast to 32°43.11′ N, 117°12.71′ W, and then east to 32°43.13′ N, 117°11.12′ W, and finally southeast to the Coronado Bridge at 32°41.45′ N, 11°09.18′ W.

(b) *Enforcement period.* This section will be enforced from 10 a.m. to 1 p.m. on August 20, 2008. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

Dated: March 17, 2008.

C.V. Stangfeld,

Captain, U.S. Coast Guard, Captain of the Port, Sector San Diego.

[FR Doc. E8–8732 Filed 4–22–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165****[Docket No. USCG–2008–0272]****RIN 1625–AA87****Security Zone; Patapsco River, Middle Branch, Baltimore, MD****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary security zone on certain waters of the Patapsco River, Middle Branch, in Baltimore Harbor, Baltimore, Maryland, during the August 9, 2008, USS *Sterett* Commissioning ceremony. The security zone is necessary to provide for the security of the USS *Sterett* and the safety of life of event participants, spectators and mariners on U.S. navigable waters during the event. Entry into the zone is prohibited unless authorized by the Captain of the Port or a designated representative.

DATES: Comments and related material must reach the Coast Guard on or before May 23, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0272 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:**Public Participation and Request for Comments**

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0272), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG–2008–0272) in the Search box, and click "Go >." You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Commander, U. S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226–1791 between 8 a.m. and 3 p.m.,

Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

The Captain of the Port Baltimore is proposing to establish a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against the USS *Sterett* and a large number of participants at the South Locust Point Marine Terminal, and the surrounding waterfront areas and communities, in Baltimore, Maryland. The proposed security zone is necessary to safeguard life and property on the navigable waters immediately before, during, and after the scheduled event. This zone will

help the Coast Guard prevent vessels or persons from bypassing the security measures established on shore for the ceremony and engaging in waterborne terrorist actions during the highly-publicized event.

Discussion of Proposed Rule

On Saturday, August 9, 2008, the USS Sterett's Commissioning ceremony will be held at the South Locust Point Marine Terminal in Baltimore Harbor, Baltimore, Maryland. The U.S. Navy's new Arleigh Burke class Aegis guided missile destroyer, DDG 104, will be berthed at the facility.

The Coast Guard proposes to establish a temporary security zone from 4 p.m. through 11 p.m. on August 9, 2008, encompassing the waters of the Patapsco River, Middle Branch, from surface to bottom, by lines connecting the following points, beginning at 39°15'40" N., 076°35'23" W., thence to 39°15'24" N., 076°35'18" W., thence to 39°15'25" N., 076°35'54" W., thence to 39°15'43" N., 076°35'58" W., located approximately 1,600 yards east of the Hanover Street (SR-2) Bridge. This area includes certain waters of the Ferry Bar Channel and the Locust Point East and West Channels. Scheduled on a weekend during the summer in Baltimore, Maryland, the waterfront ceremony is expected to attract a large recreational boating fleet and will require that persons and vessels be kept at a safe distance from the USS Sterett during the event.

No person or vessel may enter or remain in the security zone at any time without the permission of the Captain of the Port Baltimore. Persons desiring to transit the area of the security zone may contact the Captain of the Port Baltimore via the Sector Baltimore Command Center by telephone at (410) 576-2693 or on marine band radio channel 16 VHF-FM (156.8 MHz) to seek permission to transit the area. U.S. Coast Guard patrol vessels will be on scene to control the movement of persons and vessels in the security zone and may be assisted in the patrol and enforcement of the zone by other Federal, State and local agencies. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his or her designated representative.

Regulatory Evaluation

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking.

Below we summarize our analysis based on 13 of these statutes or executive orders.

Executive Order 12866

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. There is little vessel traffic associated with recreational boating and commercial fishing during the effective period, and vessels may seek permission from the Captain of the Port Baltimore to enter and transit the zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Patapsco River, Middle Branch, from 4 p.m. through 11 p.m. on August 9, 2008. Smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the security zone. The duration of the security zone will be limited to seven hours. Because the zone is of limited size and duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, we will issue maritime advisories widely available to users of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576-2674 or (410) 576-2693. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Technical Standards

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

adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary "Environmental Analysis Check List" supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T08–0272 to read as follows:

§ 165.T08–0272 Security Zone; Patapsco River, Middle Branch, Baltimore, MD.

(a) *Location.* The following area is a security zone: All waters of the Patapsco River, Middle Branch, from surface to bottom, encompassed by lines connecting the following points, beginning at 39°15'40" N., 076°35'23" W., thence to 39°15'24" N., 076°35'18" W., thence to 39°15'25" N., 076°35'54" W., thence to 39°15'43" N., 076°35'58" W., located approximately 1,600 yards east of the Hanover Street (SR–2) Bridge. These coordinates are based upon North American Datum 1983.

(b) *Definitions.* As used in this section, for purposes of enforcing the security zone identified in paragraph (a) of this section, *designated representative* means on-scene Coast

Guard patrol personnel, including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by the Captain of the Port Baltimore.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones found in § 165.33 of this part.

(2) Entry into or remaining in the security zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore, Maryland or his or her designated representative.

(3) Persons desiring to transit the area of the security zone may contact the Captain of the Port Baltimore at telephone number 410–576–2674 or on marine band radio VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. On-scene Coast Guard patrol personnel operating Coast Guard vessels may be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his or her designated representative.

(d) *Effective period.* This rule is effective from 4 p.m. through 11 p.m. on August 9, 2008.

Dated: April 10, 2008.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. E8–8728 Filed 4–22–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0313; FRL–8557–3]

Revisions to the California State Implementation Plan; Pesticide Element; Ventura County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act, EPA is proposing to approve a revision of the California State Implementation Plan submitted by the California Air Resources Board on November 30, 2007. The revision would in part, and temporarily, relax a commitment to

reduce emissions of volatile organic compounds in Ventura County caused by the application of pesticides. EPA is proposing this action under the Clean Air Act obligation to take action on submittals of revisions to state implementation plans.

DATES: Any comments must arrive by May 23, 2008.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0313, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

- *E-mail:* chavira.raymond@epa.gov.
- *Mail or deliver:* Raymond Chavira (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business

hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Raymond Chavira, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4218, chavira.raymond@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

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I. Background

Under the Clean Air Act, as amended in 1990 (CAA or “Act”), many parts of the country, including California’s Ventura County, were designated as nonattainment for the ozone national ambient air quality standard (NAAQS), which, at the time, was 0.12 ppm, 1-hour average. Under the Act, States with nonattainment areas were required to develop, adopt and submit SIP revisions that included sufficient control measures to attain the 1-hour ozone NAAQS by deadlines also established in the Act. In response, in 1994, the State of California developed, adopted and submitted an ozone State Implementation Plan (SIP) (“1994 Ozone SIP”) to provide for attainment of the ozone NAAQS in all areas of California.

As part of the 1994 Ozone SIP, California adopted a Pesticide Element that committed the State to reduce volatile organic compound (VOC) emissions resulting from the application of agricultural and structural pesticides in certain ozone nonattainment areas. For the Ventura County nonattainment area (Ventura), the California Department of Pesticide Regulation (DPR) committed to adopt and submit to EPA by June 15, 1997, any regulations necessary to reduce VOC emissions from agricultural and structural

pesticides by 20 percent of the 1990 base year emissions by 2005. California further defined DPR’s commitment in Ventura under the Pesticide Element in terms of VOC emissions reductions of 2.4 tons per day by 2005.¹ See 62 FR 1150, at 1169–1170 and at 1187 (January 8, 1997); and 40 CFR 52.220(c)(204)(i)(A)(6) and 52.220(c)(236). In 1997, we approved the 1994 Ozone SIP, including the Pesticide Element. See 62 FR 1150, at 1169–1170 (January 8, 1997). In today’s document, we propose to approve a revision by California of the Pesticide Element for Ventura County.²

Meanwhile, EPA has replaced the 0.12 ppm, 1-hour ozone NAAQS with 0.08 ppm, 8-hour ozone NAAQS (62 FR 38856, July 18, 1997). EPA has also designated all areas of the country with respect to the 8-hour ozone NAAQS. In so doing, EPA designated Ventura County as nonattainment for ozone with a classification of “moderate” (69 FR 23889, April 30, 2004). On February 14, 2008,³ California requested EPA to reclassify Ventura County from “moderate” to “serious” with a new attainment date of 2012. EPA has not taken action yet on the State’s voluntary request to reclassify Ventura County to “serious,” but is mandated under the CAA to grant such request, and thus, is reviewing the subject SIP revision assuming that Ventura’s classification for the 8-hour ozone NAAQS will in the near future become “serious.” See CAA section 181(b)(3). Under EPA’s phase I implementation rule for the 8-hour ozone NAAQS, certain “applicable requirements” that applied under 1-hour ozone NAAQS planning requirements continue to apply to 8-hour ozone nonattainment areas. See 40 CFR 51.900(f). The “Pesticide Element” is not one of the applicable requirements under our phase I rule for the 8-hour ozone NAAQS but represents, instead, a “discretionary” measure, which means that California may relax or repeal it through a SIP revision so long as generally applicable procedural and substantive requirements for such revisions are met.

II. The State’s SIP Revision Submittal

A. What revisions did the State submit?

Table 1 lists the revision we are proposing to approve with the dates that

¹ Tonnage commitment is 2.37 tons per day per letter dated June 13, 1996, from James D. Boyd to David Howekamp, including “Corrections to State and Local Measures” (Attachment A) and “Summary Emission Reduction Spreadsheets” (Attachment C).

² Several environmental groups successfully sued the State of California for failure to adopt

regulations necessary to achieve the VOC emissions reduction committed to under the Pesticide Element. See *El Comite v. Helliher*, 416 F. Supp. 2d 912 (E.D.Cal. 2006). The ensuing court order has led DPR to adopt a regulation that achieves all of the VOC emission reductions previously committed to for Ventura County beginning with the peak ozone season (May through October) in 2008. We are not taking action on DPR’s regulation in today’s action,

but rather, are taking action on a revision of the Pesticide Element that, if finalized as proposed, will allow California to seek a modification to the court order followed by conforming changes to DPR’s rule.

³ See February 14, 2008 letter from CARB Executive Officer James Goldstene to Wayne Nastri, EPA Region 9 Regional Administrator.

it was revised and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED SIP REVISION PROPOSED FOR FULL APPROVAL

State agency	SIP revision	Amended	Submitted
CARB	Revised Proposed Revision to the Pesticide Element of the 1994 Ozone SIP for the Ventura County Nonattainment Area (August 13, 2007).	November 30, 2007	November 30, 2007.

CARB's November 30, 2007 SIP revision submittal package includes the "Revised Proposed Revision to the Pesticide Element of the 1994 Ozone SIP for the Ventura County Nonattainment Area (August 13, 2007)" ("Revised Pesticide Element for Ventura") as attachment 3 to Executive Order S-07-003.⁴ The November 30, 2007 SIP revision submittal also includes a copy of CARB's Resolution 07-42, dated September 27, 2007, approving the Revised Pesticide Element for Ventura, and evidence of public participation including CARB's response to public comments and a public hearing held on September 27, 2007.

As noted above, under the Pesticide Element of the 1994 Ozone SIP, DPR committed to adopt and submit to EPA by June 15, 1997, any regulations necessary to reduce VOC emissions resulting from agricultural and structural pesticides in Ventura by 20 percent of the 1990 base year emissions, and by 2.4 tons per day, by 2005. Under the Revised Pesticide Element for Ventura, CARB commits to substitute specific "surplus" emissions reductions for a portion of the existing Pesticide Element commitment for Ventura. See Table 3 of the Revised Pesticide Element for Ventura. Under the Revised Pesticide Element for Ventura, CARB reduces the amount of the substitution each year such that no substitution is made in year 2012 and thereafter, thus restoring the full VOC commitment under the Pesticide Element of the 1994 Ozone SIP. CARB cites California's ongoing mobile source emission control program, which, in CARB's view, has achieved greater-than-expected VOC emissions reductions, as the source for the substitute VOC emissions reductions.

B. Are there other versions of this SIP element?

As discussed above, we approved the Pesticide Element, including the

specific emissions reduction commitments, as part of the 1994 California Ozone SIP (62 **Federal Register** 1169–1170, January 8, 1997). We have yet to approve DPR's regulation implementing the Pesticide Element of the 1994 Ozone SIP and do not propose to do so as part of this action.

C. What is the purpose of the SIP revision?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. Ozone is formed by the interaction of directly-emitted precursor emissions, VOCs and oxides of nitrogen (NO_x), in the presence of sunlight under the influence of meteorological and topographical features of an area. California adopted the Pesticide Element as one of the commitments to help attain the ozone NAAQS in the State of California. As part of the Pesticide Element of the 1994 Ozone SIP, California adopted specific VOC emissions reduction commitments for Ventura County in support of the attainment demonstration for the ozone NAAQS in that area. California has now revised the Pesticide Element to reduce in part, and temporarily, the VOC emissions reduction commitments for Ventura County to avoid short-term, but potentially significant, economic losses by strawberry farmers and the potential for long-term loss of farmland to urban development. The State has submitted the Revised Pesticide Element for Ventura to EPA for approval as a revision of the California SIP.

III. EPA's Evaluation of the SIP Revision

A. How is EPA evaluating the revision?

Generally, SIP rules must be enforceable and must not interfere with an area's progress towards attainment or any other requirement of the Act. See CAA sections 110(a), 110(l); see also CAA section 193 (antibacksliding requirements for pre-1990 control measures). CAA section 110(l) directs EPA to disapprove any SIP revision that

would interfere with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement of the Act. CAA section 193 does not apply to this action because the Pesticide Element was not part of the pre-1990 California SIP and thus, a revision to the Pesticide Element does not modify a control requirement in effect before passage of the Clean Air Act Amendments of 1990.

B. Does the revision meet the evaluation criteria?

CAA section 110(l) provides: "Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title) or any other applicable requirement of this chapter." The term "reasonable further progress" (RFP) is defined in section 7501 (CAA section 171) as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." We interpret CAA section 110(l) as requiring EPA to ensure that the state, in seeking a revision to its SIP, does not impair its compliance with the statutory mandates applicable to the SIP.

As noted above, under the Revised Pesticide Element for Ventura, CARB substitutes "surplus" VOC emissions reductions from California's mobile source emission control program for a portion of the State's VOC emissions reduction commitments from application of pesticides. Because emissions reductions from California's mobile source emissions control program are included in the baseline for 8-hour ozone planning purposes, we do not view the emissions reductions as "surplus" With respect to RFP and attainment of the 8-hour ozone NAAQS. Rather, we view the Revised Pesticide

⁴ The Revised Pesticide Element for Ventura is also referred to as "Appendix H" because it was originally included as such for the Proposed State Strategy for California's 2007 State Implementation Plan, but was subsequently pulled from that document for separate SIP processing.

Element for Ventura as simply a reduction in the State's emissions reduction commitments leading to an increase, albeit temporarily, in VOC emissions in Ventura relative to what otherwise would occur. Specifically, we view the Revised Pesticide Element for Ventura as reducing the State's commitments by 1.3 tons per day in 2008, 1.0 tons per day in 2009, 0.7 tons per day in 2010, and 0.3 tons per day in 2011, and thereby allowing corresponding increases in VOC in those years. Under the Revised Pesticide Element for Ventura, we note that there

would be no reduction in the State's SIP commitment by year 2012 and thereafter.

We have developed two tables to present the effects of the Revised Pesticide Element for Ventura. Table 2 compares the emissions reduction commitments under the existing SIP with those that would exist under the Revised Pesticide Element and shows how CARB's substitutions link the two sets of emissions reduction commitments. Table 3 converts the emissions reduction commitments shown in Table 2 into corresponding

VOC emissions estimates in Ventura County resulting from application of pesticides. As shown in Table 3, allowable VOC emissions under the different emissions reduction commitments would increase from 3.7 to 4.3 tons per day in 2008 under the Revised Pesticide Element from 2.4 to 3.0 tons per day under the existing Pesticide Element. The increase would decline in stages to the ultimate VOC emissions cap from this source category under the emissions reduction commitments of 2.5 (rounded from 2.45) tons per day in 2012.

TABLE 2.—COMMITMENTS FOR VOC EMISSION REDUCTIONS (IN TONS PER DAY) FROM PESTICIDES UNDER THE EXISTING SIP AND REVISED PESTICIDE ELEMENT FOR VENTURA

Year	Pesticide element in existing SIP ^a			CARB substitution of VOC emission reductions under revised pesticide element	Revised pesticide element ^b		
	20 Percent reduction		Tonnage		20 Percent reduction		Tonnage
	1990	1991	2005		1990	1991	2005
2008	1.8	2.2	2.4	1.3	0.5	0.9	1.1
2009	1.8	2.2	2.4	1.0	0.8	1.2	1.4
2010	1.8	2.2	2.4	0.6	1.2	1.6	1.8
2011	1.8	2.2	2.4	0.3	1.5	1.9	2.1
2012+	1.8	2.2	2.4	0.0	1.8	2.2	2.4

^a The emissions reductions shown for 1990 and 1991 under the percent reduction commitment represent the differences between current VOC pesticide emissions (assumed to be the same as 2004, *i.e.*, 4.826 tpd) and 80 percent of 1990 (3.756 tpd) and 1991 (*i.e.*, 3.293 tpd), respectively. DPR's September 29, 2007 memorandum from Terrell Barry, Ph.D., Research Scientist III, DPR, et al to John Sanders, Ph.D., Chief, Environmental Monitoring Branch, DPR is the source for 1990, 1991, and 2004 emissions estimates. The 1994 Ozone SIP anticipated that 1991 pesticide use records would be used to adjust emissions for 1990. It is not clear whether DPR's September 29, 2007 VOC emissions estimates for 1990 or 1991 reflect the calculation method described in the 1994 Ozone SIP.

^b Calculated by subtracting CARB's substitution from the emission reduction commitments in the Pesticide Element of the Existing SIP.

TABLE 3.—VOC EMISSIONS FROM APPLICATION OF PESTICIDES IN VENTURA COUNTY UNDER EXISTING SIP COMMITMENTS AND UNDER THE REVISED PESTICIDE ELEMENT FOR VENTURA

Year	Pesticide element in existing SIP ^a			CARB substitution of VOC emission reductions under revised pesticide element	Revised pesticide element ^b		
	20 Percent reduction		Tonnage		20 Percent reduction		Tonnage
	1990	1991	2005		1990	1991	2005
2008	3.0	2.6	2.5	1.3	4.3	3.9	3.8
2009	3.0	2.6	2.5	1.0	4.0	3.6	3.5
2010	3.0	2.6	2.5	0.6	3.6	3.2	3.1
2011	3.0	2.6	2.5	0.3	3.3	2.9	2.8
2012+	3.0	2.6	2.5	0.0	3.0	2.6	2.5

^a The emissions estimates shown in these columns subtract the emission reduction commitments shown in Table 2 under the existing SIP with emissions estimated for 2004 (and assumed for planning purposes by California thereafter until 2012, *i.e.*, 4.82 tpd). See page C-2 of the Final Draft Ventura County 2007 Air Quality Management Plan (March 2008).

^b Calculated by adding CARB substitutions to the VOC emissions estimates for pesticides under the existing SIP.

Thus, the Revised Pesticide Element for Ventura would have an impact on air quality in the short term as it would slow down slightly the improvement in ozone levels as compared to fully achieving the commitments for pesticide emission reductions in the 1994 Ozone SIP. However, the revision phases out over four years ensuring that it would not interfere with Ventura's ability to attain the 8-hour ozone NAAQS by the serious area deadline in

2012. In 2012, the emissions reduction commitments are 2.4 tpd (rounded from 2.37).

For ozone, the Revised Pesticide Element would not affect attainment of the 8-hour ozone NAAQS because the revision would be phased-out by 2012. In other words, under the Revised Pesticide Element, the emissions reduction commitments under the 1994 Ozone SIP would be fully restored by 2012. Therefore, our approval of the revision would not interfere with

Ventura's attainment of the 8-hour ozone NAAQS.

The only remaining question with respect to ozone is whether the Revised Pesticide Element would interfere with 8-hour ozone RFP. Ventura has completed its Final Draft 8-hour ozone SIP, including an RFP plan,⁵

⁵ See Ventura County Air Pollution Control District "Final Draft 2007 Air Quality Management Plan", March 2008, pp. 71–74, included in the docket for this proposed rule.

demonstrating attainment of the 8-hour ozone NAAQS by the “serious” area deadline. The RFP plan includes an air quality analysis that demonstrates RFP toward attaining the 8-hour ozone NAAQS without the attribution of VOC emission reductions from pesticides. Based on the air quality analysis contained in the RFP plan, Ventura meets the RFP milestone year reductions and the three percent contingency requirements for “serious” areas in 2008, 2011, and 2012 with a combination of VOC and NO_x reductions. The State adjusted the milestone year emissions for local and state control measures already adopted through December 31, 2006. These adjustments do not include any adjustment for VOC emission reductions from pesticides.⁶

EPA approved Ventura’s 15 percent rate-of-progress plan for the 1-hour ozone NAAQS on January 8, 1997 (see 62 FR 1169). EPA’s final 8-hour ozone RFP rule does not require serious and above 8-hour ozone nonattainment areas with approved 15 percent rate-of-progress VOC plans for the 1-hour ozone standard to do another 15 percent VOC-only reduction for the 8-hour ozone standard. See 70 FR 71612 (November 29, 2005) and 73 FR 15418–9 (March 24, 2008). Rather, those areas must reduce VOC and/or NO_x emissions by an average of three percent per year for the first six-year period following the baseline year plus all remaining three-year periods out to their attainment dates. Therefore the RFP plan includes a combination of VOC and NO_x reductions. The RFP plan also includes transport contributions from the Los Angeles-South Coast Air Basin within 100 kilometers of Ventura. The State followed guidance in EPA’s fine particulate matter Implementation Rule for crediting VOC and NO_x reductions from outside the nonattainment area for RFP purposes.⁷ See 72 FR 20586 (April 25, 2007) and 73 FR 15418–9 (March 24, 2008).

This SIP revision only concerns VOC emissions. Emissions of VOCs contribute to the formation of ozone. Therefore, given that Ventura is unclassifiable/attainment for all NAAQS

other than ozone,⁸ we conclude non-interference of the SIP revision with continued attainment of NAAQS other than ozone⁹ in Ventura.

Accordingly, we conclude that this SIP revision would not interfere with any applicable requirements for attainment and reasonable further progress or any other applicable requirement of the CAA and is thus approvable under CAA section 110(l).

IV. Public Comment and Final Action

Under section 110(k) of the Clean Air Act, we are proposing to approve the Revised Pesticide Element for Ventura, submitted to EPA on November 30, 2007 by CARB. We intend to defer final action on this proposed approval until we receive a SIP revision submittal from California containing the final 8-hour ozone Ventura RFP Plan. We will consider the final plan and any related public comments on the plan, as well as comments on this proposal, before we take final action on the Pesticide Element SIP Revision.

V. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

⁸ EPA has promulgated NAAQS for the following pollutants: carbon monoxide, lead, nitrogen oxides, particulate matter, ozone and sulfur oxides (sulfur dioxide), see 40 CFR 50.

⁹ The applicable ozone NAAQS is the 8-hour standard. The 1-hour ozone NAAQS was revoked effective June 25, 2005, see 70 FR 44470.

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 15, 2008.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E8–8812 Filed 4–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0138, FRL–8557–2]

RIN 2060–AO99

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the National Emission Standards for Hazardous Air Pollutants: Organic

⁶ For all milestone years, the RFP plan assumes 4.82 tons per day from pesticides. In contrast, if the RFP plan had relied on emission reductions commitments in the Pesticide Element of the 1994 Ozone SIP or the Revised Pesticide Element proposed for approval herein, the VOC emissions from this source category would have ranged from 2.5 tons per year to 4.3 tons per day depending upon specific commitment and year. See Table 3 of this document.

⁷ See Harnett-Zaw-Mon RFP memo, October 11, 2007.

Liquids Distribution (non-gasoline) under section 112 of the Clean Air Act to clarify combustion control device compliance requirements, certain storage tank control compliance dates, and vapor balance system monitoring requirements. In addition, EPA is correcting typographical errors found in the July 28, 2006, final rule amendments notice.

DATES: *Comments.* Written comments must be received on or before June 9, 2008.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by May 5, 2008, a public hearing will be held on May 8, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0138, by mail to Air and Radiation Docket (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

We request that you also send a separate copy of each comment to the contact persons listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT:

General and Technical Information: Mr. Stephen Shedd, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), EPA, Research Triangle Park, NC 27711, telephone: (919) 541-5397, facsimile number: (919) 685-3195, e-mail address: shedd.steve@epa.gov.

Compliance Information: Ms. Marcia Mia, Office of Compliance, Air Compliance Branch (2223A), EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (202) 564-7042, facsimile number: (202) 564-0050, e-mail address: mia.marcia@epa.gov.

SUPPLEMENTARY INFORMATION: *Why is EPA issuing this proposed rule?* This document proposes to take action on the National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (non-gasoline) (OLD NESHAP). We are proposing to amend the OLD NESHAP to clarify the applicable compliance dates for certain work practice standards for storage tanks and correct typographical errors found in the July 28, 2006, final rule amendments notice. We have published a parallel direct final rule in the Regulations and Rules section of this **Federal Register** because we view this as a noncontroversial action and

anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment and no request for a public hearing on the parallel direct final rule, we will not take further action on this proposed rule. If we receive adverse comment on a distinct portion of the direct final rule, we will withdraw that portion of the rule and it will not take effect. In this instance, we would address all public comments in any subsequent final rule based on this proposed rule.

If we receive adverse comment on a distinct provision of the direct final rule, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out in the direct final rule, notwithstanding adverse comment on any other provision.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of potentially regulated entities
Industry	325211, 325192, 325188, 32411, 49311, 49319, 48611, 42269, 42271.	Operations at major sources that transfer organic liquids into or out of the plant site, including: Liquid storage terminals, crude oil pipeline stations, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with collocated OLD operations.
Federal Government		Federal agency facilities that operate any of the types of entities listed under the "industry" category in this table.

* North American Industry Classification System. Considered to be the primary industrial codes for the plant sites with OLD operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR part 63, subpart EEEE. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Research Triangle Park, NC

27711; telephone number: (919) 541-7946, e-mail address: eck.janet@epa.gov, at least 2 days in advance of the potential date of the public hearing. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. If no one contacts EPA requesting to speak at a public hearing concerning this rule by May 5, 2008, this hearing will be cancelled without further notice.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for

newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg/>. The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this **Federal Register**.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule amendments on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed rule amendments will not impose any new requirements on small entities, and, therefore, will have no significant adverse economic impact on subject small entities. The Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of the proposed rule amendments on small entities and welcome comments on issues related to such impacts.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 16, 2008.

Stephen L. Johnson,
Administrator.

[FR Doc. E8-8811 Filed 4-22-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

RIN 0750-AF90

Defense Federal Acquisition Regulation Supplement; Limitations on DoD Non-Commercial Time-and-Materials Contracts (DFARS Case 2007-D021)

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

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address review and documentation requirements with regard to the use of time-and-materials contracts for the acquisition of non-commercial services. The proposed rule provides for the same level of review for both commercial and non-commercial DoD time-and-materials contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 23, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007-D021, using any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

E-mail: dfars@osd.mil. Include DFARS Case 2007-D021 in the subject line of the message.

Fax: 703-602-7887.

Mail: Defense Acquisition Regulations System, Attn: Ms. Sandra Morris, OUSD (AT&L) DPAP (CPF), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Morris, 703-602-0296.

SUPPLEMENTARY INFORMATION:

A. Background

Section 16.601(d) of the Federal Acquisition Regulation (FAR) requires that, before using a time-and-materials contract, the contracting officer must prepare a determination and findings that no other contract type is suitable. For time-and-materials contracts for commercial services, FAR 12.207(b)(2) specifies the minimum content for the determination and findings, and FAR 12.207(c) contains additional requirements with regard to the use of indefinite-delivery contracts priced on a time-and-materials basis.

To provide for the same level of oversight in the award of all DoD time-and-materials contracts, this proposed rule amends DFARS 216.601 to establish determination and findings requirements for DoD non-commercial

time-and-materials contracts, similar to those presently required by FAR 12.207 for commercial services contracts.

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

B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule relates to internal DoD review and documentation requirements with regard to the selection of contract type. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2007-D021.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 216

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 216 as follows:

PART 216—TYPES OF CONTRACTS

1. The authority citation for 48 CFR part 216 continues to read as follows:

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

2. Section 216.601 is amended by adding paragraph (d) to read as follows:

216.601 Time-and-materials contracts.

(d) *Limitations.*

(i) The determination and findings shall contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the determination and findings shall—

(A) Include a description of the market research conducted;

(B) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty;

(C) Establish that the requirement has been structured to minimize the use of time-and-materials requirements (e.g., limiting the value or length of the time-and-materials portion of the contract or order; establishing fixed prices for portions of the requirement); and

(D) Describe the actions planned to minimize the use of time-and-materials contracts on future acquisitions for the same requirements.

(ii) For indefinite-delivery contracts, the contracting officer shall—

(A) Structure contracts that authorize time-and-materials orders to also authorize orders on a cost-reimbursement, incentive, or fixed-price basis, to the maximum extent practicable; and

(B) Execute the determination and findings for—

(1) Each order placed on a time-and-materials basis if the indefinite-delivery contract also authorizes orders on a cost-reimbursement, incentive, or fixed-price basis; or

(2) The basic contract if the indefinite-delivery contract only authorizes time-and-materials orders. The determination and findings shall—

(i) Contain sufficient facts and rationale to justify why orders on a cost-reimbursement, incentive, and fixed-price basis are not practicable; and

(ii) Be approved one level above the contracting officer.

* * * * *

[FR Doc. E8-8697 Filed 4-22-08; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 246, 252 and Chapter 2

RIN 0750-AF88

Defense Federal Acquisition Regulation Supplement; Quality Assurance Authorization of Shipment of Supplies (DFARS Case 2005-D024)

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

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the criteria under which the contract administration office may permit a contractor to release supplies for shipment without Government authorization of the shipping

documents. The proposed changes will enable the Government to provide for the appropriate level of contract quality assurance at source, based on product complexity and criticality and the contractor's record of quality control.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 23, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005-D024, using any of the following methods:

• *Federal eRulemaking Portal:*

<http://www.regulations.gov>. Follow the instructions for submitting comments.

• *E-mail:* dfars@osd.mil. Include

DFARS Case 2005-D024 in the subject line of the message.

• *Fax:* 703-602-7887.

• *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703-602-0302.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS 246.471 to provide for contractor release of supplies for shipment, without Government authorization of the shipping documents, based on criteria that consider product complexity and criticality and the contractor's record of quality control.

In addition, changes are proposed to DD Form 250, Material Inspection and Receiving Report. Since DoD forms are not published in the **Federal Register** or the Code of Federal Regulations, the proposed changes to DD Form 250 do not appear in the amendatory portion of this proposed rule, but are described as follows: The statements in Blocks 21a and 21b (Contract Quality Assurance) of DD Form 250 are proposed to be changed, from "CQA/ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents", to "CQA/ACCEPTANCE has been subject to Government contract quality assurance surveillance". The proposed changes provide for the representative signing the DD Form 250 at source to affirm that

the appropriate quality assurance activities have been accomplished. The clause at DFARS 252.246-7000, Material Inspection and Receiving Report, is amended to specify that a contractor's submission of a receiving report constitutes the contractor's affirmation that the items listed on the report conform to contract requirements.

The existing DD Form 250 is available at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>.

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

B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule primarily relates to the allocation of Government resources to quality assurance functions. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2005-D024.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 246 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 246 and 252 and Appendix F to Chapter 2 as follows:

1. The authority citation for 48 CFR parts 246 and 252 and Appendix F to subchapter I continues to read as follows:

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

PART 246—QUALITY ASSURANCE

2. Section 246.471 is amended as follows:

- a. By removing paragraph (a)(4); and
- b. By revising paragraph (b) heading and paragraph (b)(1) to read as follows:

246.471 Authorizing shipment of supplies.

* * * * *

(b) Alternative Procedures-Contractor Release for Shipment.

(1) The contract administration office may authorize, in writing, the contractor to release supplies for shipment when—

(i)(A) Products are non-complex or non-critical;

(B) Conformance will be validated by periodic assessments; and

(C) The contractor has a record of satisfactory quality; or

(ii)(A) Products are complex or critical;

(B) The authorization of the shipping papers by a representative of the contract administration office prevents expediency of shipment;

(C) The Government performs a systematic and continuing evaluation of the contractor's control of quality; and

(D) The contractor has a record of satisfactory quality, including that pertaining to preparation for shipment.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.246–7000 is amended by revising the clause date and adding paragraph (c) to read as follows:

252.246–7000 Material Inspection and Receiving Report.

* * * * *

Material Inspection and Receiving Report (XXX 2008)

* * * * *

(c) When submitting the receiving report (whether using DD Form 250 or WAWF), the Contractor is affirming that the items listed on the report conform to contract requirements, except as otherwise noted on the report.

Appendix F—Material Inspection and Receiving Report

4. Appendix F to chapter 2 is amended in Part 3, Section F–301, by revising paragraphs (b)(21)(i) and (ii), paragraph (b)(21)(iv)(A) introductory text, and paragraph (b)(21)(v)(B) introductory text to read as follows:

F–301 Preparation instructions.

* * * * *

(b) * * *

(21) * * *

(i) The words “subject to Government contract quality assurance surveillance” contained in the printed statements in Blocks 21a and 21b relate to quality and to the quantity of the items on the report. Do not modify the statements. Enter notes taking exception in Block 16 or on attached supporting documents with an appropriate block cross-reference.

(ii) When a shipment is authorized under alternative release procedures (see

246.471(b)), the contractor shall attach or include the appropriate signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate contractor certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Management Agency (DCMA).

* * * * *

(iv) * * *

(A) The authorized Government representative shall—

* * * * *

(v) * * *

(B) When CQA and acceptance or acceptance is at destination, the authorized Government representative shall—

* * * * *

[FR Doc. E8–8696 Filed 4–22–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 070920529–8571–02]

RIN 0648–AW05

Magnuson-Stevens Act Provisions; Limited Access Privilege Programs; Individual Fishing Quota Referenda Guidelines and Procedures for the New England Fishery Management Council and Gulf of Mexico Fishery Management Council

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

ACTION: Proposed guidelines and procedures; request for comments.

SUMMARY: In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, as amended (Magnuson-Stevens Act), NMFS proposes guidelines and procedures for the New England Fishery Management Council (NEFMC), the Gulf of Mexico Fishery Management Council (GMFMC) (collectively the Councils), and NMFS to follow in determining procedures and voting eligibility requirements for referenda on Individual Fishing Quota (IFQ) program proposals. The intended effect of these procedures and guidance is to ensure IFQ program referenda are fair and equitable.

DATES: Comments must be submitted in writing on or before June 23, 2008.

ADDRESSES: Copies of the Regulatory Impact Review/Initial Regulatory

Flexibility Analysis (RIR/IRFA) prepared for this action, may be obtained from the mailing address listed here or by calling Robert Gorrell, NMFS–SF, 1315 East-West Highway, Silver Spring, MD 20910. You may submit comments, identified by 0648–AW05, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Fax: 301–713–1193, Attn: Robert Gorrell.

- Mail: Alan Risenhoover, Director, Office of Sustainable Fisheries, NMFS, Attn: IFQ Referenda Guidelines, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Robert Gorrell, at 301–713–2341 or via e-mail at robert.gorrell@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 303A of the Magnuson-Stevens Act specifies general requirements for Limited Access Privilege (LAP) programs implemented in U.S. marine fisheries. A LAP is defined as a Federal limited access permit that provides a person the exclusive privilege to harvest a specific portion of a fishery's total allowable catch. This definition encompasses exclusive harvesting privileges allocated to participants under IFQ programs.

Section 303A(c)(6)(D) of the Magnuson-Stevens Act outlines specific requirements for IFQ program proposals developed by the NEFMC and GMFMC. Specifically, the Magnuson-Stevens Act requires such program proposals be approved through referenda before they may be submitted for review and implementation by the Secretary of Commerce (Secretary). Additionally, the Magnuson-Stevens Act requires the Secretary publish guidelines and procedures to determine procedures and voting eligibility requirements for IFQ program referenda and to conduct such referenda in a fair and equitable manner.

A referendum conducted on a NEFMC IFQ program proposal must be approved by more than $\frac{2}{3}$ of those voting in the referendum among eligible permit holders and other eligible voters. The Magnuson-Stevens Act requires the Secretary promulgate criteria to determine whether additional fishery participants are eligible to vote in NEFMC IFQ program referenda in order to ensure that crew members who derive a significant percentage of their total income from a proposed IFQ fishery are eligible to participate in an IFQ referendum conducted in association with the program proposal.

A referendum conducted on a GMFMC IFQ program proposal must be approved by a majority of those voting in the referendum. For Gulf of Mexico fisheries managed with multispecies permits, the Magnuson-Stevens Act limits eligible referenda voters to those permit holders who have substantially fished the species to be included in the proposed IFQ program.

This action proposes procedures for initiating, conducting, and deciding IFQ program referenda, as well as guidelines for specifying referenda voting eligibility requirements. These procedures and guidelines are intended to ensure referenda conducted on IFQ program proposals are fair and equitable, while providing the NEFMC and GMFMC the flexibility to define IFQ program referenda voting eligibility requirements on a fishery-specific basis within the constraints of the Magnuson-Stevens Act and other applicable law.

These proposed procedures and guidelines also would apply to referenda conducted in association with any IFQ program proposal advanced through a Secretarial fishery management plan (FMP) or FMP amendment under the authority of Section 304(c) of the Magnuson-Stevens Act for a New England or Gulf of Mexico fishery. Any Secretarial IFQ program proposal must be approved by a majority of the voting members, present and voting, of the appropriate Council before it can be included in a Secretarial FMP or FMP amendment.

Initiating Referenda

For the Council to initiate an IFQ referendum, these proposed guidelines and procedures would require the NEFMC or GMFMC to submit a request to NMFS by letter. The referendum initiation letter must include recommended eligibility criteria for voting in the referendum, rationale for the recommendation, and any other information that may be needed consistent with applicable law and the referenda guidelines and procedures; for

example, alternatives to the recommendation and supporting analyses of the alternatives. Any referendum initiation letter submitted by the NEFMC must also include recommended criteria for determining whether additional fishery participants, including crew members, are eligible to vote in the referendum. Specifically, NEFMC's initiation letters must include a recommendation for the percentage of a crew member's total income that, if earned in the proposed IFQ fishery, would be considered significant. Any referendum initiation letter submitted by the GMFMC for a fishery managed with multispecies permits must also include recommended criteria for defining those permit holders who have substantially fished the species to be included in the proposed IFQ program.

Following a referendum that has failed to approve the IFQ proposal, any request from a Council for a new referendum in the same fishery must include an explanation of the substantive changes to the proposed IFQ program or the changes of circumstances in the fishery that would warrant initiation of an additional referendum.

A Council may not submit a referendum initiation letter to NMFS until: (1) The Council has held public hearings on the IFQ program proposal that is the subject of the referendum initiation letter; (2) the Council has considered public comments on the proposal; and (3) the Council has selected preferred alternatives for the proposal.

NMFS is considering alternative approaches to the timing of the IFQ referendum initiation letter relative to a Council's procedure for development of the IFQ program proposal and FMP or FMP Amendment. The proposed action provides for a somewhat compressed referendum schedule by allowing the initiation request to be submitted after the Council has solicited and considered public input on an IFQ program proposal and selected preferred alternatives for the proposal. An alternative approach would require that the Council's FMP or FMP amendment document be complete, all public comment be considered and analyzed, and but for the requirement to conduct the referendum, the document be ready for submission to NMFS, before the referendum initiation request may be submitted.

Voter Eligibility

Voter eligibility requirements recommended by the Councils must provide for fair and equitable referenda. When developing recommended voter

eligibility criteria, Councils must consider the following factors: (1) The full range of entities likely to be eligible for initial allocations under the proposed IFQ program; (2) current and historic harvest and participation in the proposed IFQ fishery; and (3) any other factors determined by the Council to be relevant.

When determining whether certain crew members may be eligible to vote in NEFMC IFQ program referenda, the Council must consider, at least, the following factors: (1) A crew member's history of participation in the fishery aboard a referendum-eligible vessel; (2) the economic value of and employment practices in the proposed IFQ fishery and other economic and social factors that would help determine what percentage of a crew member's total income from the fishery should be considered significant; and (3) the availability of documentary proof of employment and income to validate eligibility. For the purposes of this action, "referendum-eligible vessel" means a vessel, the permit holder or owner of which has been determined to be eligible to vote in the referendum on the basis of such vessel's history or other characteristics meeting the prescribed voter eligibility criteria.

To be eligible to vote in a NEFMC IFQ program referendum, crew members, at a minimum: (1) Must have worked aboard a referendum-eligible vessel at sea while engaged in fishing; (2) must produce documentary proof of income and employment or service as a crew member during the eligibility periods proposed by the NEFMC (if requested); (3) must have derived a percentage of his/her income from the fishery under the proposed IFQ program that is equal to or greater than the percentage determined to be significant relative to the economic value and employment practices of the fishery during the qualifying periods proposed by the NEFMC; and (4) must meet any additional eligibility criteria promulgated by NMFS. These criteria would limit eligibility of crew members to those who have worked aboard referendum-eligible vessels. If a vessel's activity in a fishery is considered by the NEFMC to be too little or dated to warrant the permit holder's participation in the referendum, it is unreasonable to allow crew members to derive eligibility from their work on that vessel. Also, this requirement would prevent the possibility of referendum-ineligible permit holders from influencing the referendum through their subordinate associates.

The Magnuson-Stevens Act requirement to provide for the

possibility of other fishery participants, including crew members, to participate in NEFMC IFQ program referenda creates the challenge of verifying whether these individuals meet voter eligibility criteria. NMFS has records on the history of Federal fishery permits and landings, but has little information on crew member participation in fisheries. NMFS does have contact information for those crew members that have vessel operator permits, but NMFS does not collect information on individuals who serve aboard a fishing vessel as crew or in any other capacity or on the income of crew members. Nor does NMFS have historical data of this nature.

To address this problem, NMFS is proposing to include the availability of employment and income documentation as a factor the NEFMC must consider when developing recommended referendum voter eligibility criteria. Specifically, the NEFMC must consider whether documentation of service onboard a vessel as crew or in other capacities exists, and to what extent the availability of documentation should affect voter eligibility. The NEFMC may consider similar documentation limitations when evaluating the percentage of an individual's total income generated by the proposed IFQ fishery.

NMFS acknowledges the dearth of information and the irregularity of documentation in this component of the fishery. While the NEFMC may recommend and NMFS may require crew members to provide verifiable documentation as proof of meeting the voter eligibility criteria established for any given IFQ program referendum, this proposed action provides for the possibility of allowing fishery participants to certify on referendum ballots that they meet the voter eligibility criteria. Self-certification would consist of a signature attesting to one's meeting the stated criteria, and participants would be subject to prosecution for any false statements made on official forms.

NMFS interprets the Magnuson-Stevens Act requirement to ensure that certain crew members engaged in NEFMC fisheries are eligible to vote in IFQ program referenda to mean that NEFMC IFQ program referenda must provide for participation by eligible crew members.

A Council may consider criteria for weighting eligible referendum votes. Section 303A(c)(6)(D) does not explicitly mention vote weighting, but the sections's legislative history gives the example of weighting votes in Gulf of Mexico fisheries by the quantity of

fish authorized to be harvested under the permits of those voting (e.g., 200 pounds per day or 2,000 pounds per day). If a Council recommends such criteria in a letter requesting initiation of a referendum, it should fully describe in the letter its rationale and the expected effects of such weighting on the referendum. NMFS will give consideration to the reasons for the proposed criteria to determine whether they are consistent with the National Standards of the Magnuson-Stevens Act, other provisions of the Act, and other applicable legal standards.

Ensuring Referenda Are Fair and Equitable

The Magnuson-Stevens Act requires the Secretary to conduct IFQ program referenda in a fair and equitable manner. Every component of these proposed procedures and guidelines supports NMFS's compliance with that requirement. Council recommendations for voter eligibility criteria would be developed through public processes, along with any alternatives and supporting analyses or other information required by applicable law and provided in the Councils' referendum initiation letters. If NMFS finds the referendum voter eligibility criteria recommended by a Council would not provide for a fair and equitable referendum, or that they would not be consistent with National Standards under the Magnuson-Stevens Act, other provisions of the Act, and other applicable legal standards, then NMFS would deny the Council's request to conduct an IFQ program referendum and would inform the Council of the agency's finding, including reasons for the finding. The Council could then modify the voter eligibility criteria and supporting analyses to address NMFS's finding, and submit another referendum initiation letter to NMFS.

In assessing whether Council recommendations for referenda criteria are fair and equitable, NMFS, at a minimum, would be required to take into account: (1) Whether the criteria are rationally connected to or further the objectives of the proposed IFQ program; (2) whether the criteria are designed in such a way to prevent any person or other entity from obtaining an excessive share of voting privileges; (3) whether the criteria are reasonable relative to the availability of documentary evidence and the possibility of validating a participant's eligibility; and (4) whether the referendum can be administered and executed fairly and equitably within a reasonable amount of time and without subjecting industry members, the Council, or NMFS to administrative

burdens, costs, or other requirements that would be considered onerous. No voting eligibility criteria may differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their state of residence. The Council should analyze the relative benefits and hardships imposed by the voter eligibility criteria, and compare their consequences with those of alternative voter eligibility criteria.

Rulemaking to implement fishery-specific IFQ referenda must describe the internal measures NMFS shall use to ensure referenda ballots are properly distributed, evaluated, and counted, and the procedures used to conduct the referenda are fair and equitable. Referenda ballots would be considered by NMFS as fishery information submitted to NMFS and subject to the confidentiality provisions and limitations of section 402(b) of the Magnuson-Stevens Act and regulations in 50 CFR 600 subpart E.

Conducting Referenda

NMFS would initiate rulemaking to implement an IFQ program referendum as soon as practicable after receiving a Council's referendum initiation letter and finding the referendum can be conducted in a fair and equitable manner. The proposed schedules, procedures, and voter eligibility requirements associated with fishery-specific referenda would be published as proposed rules in the **Federal Register** for public comment. Final fishery-specific referenda procedures and guidelines would be implemented through final rules published in the **Federal Register**.

The Magnuson-Stevens Act requires the Secretary to conduct referenda on NEFMC and GMFMC IFQ program proposals as ultimately developed. NMFS interprets this provision to mean that NMFS may not publish a final rule implementing fishery-specific referenda procedures and guidelines until the Council determines the IFQ proposal and supporting analyses are complete and ready for Secretarial review. NMFS would inform the Council and the public through the **Federal Register** if the agency decided not to conduct a referendum, as proposed, including reasons for the decision.

NMFS would provide each eligible voter a referendum ballot and would make available associated explanatory information concerning the referendum schedule, procedures, and eligibility requirements. NMFS may require individuals who wish to vote as other fishery participants in NEFMC IFQ program referenda to provide certain

documentation and certifications in order to receive a referendum ballot. Referenda ballots must be signed by eligible voters and received by NMFS by the specified deadline. Ballots received after the specified deadline would not be considered valid or evaluated in deciding the outcome of the referendum.

NMFS interprets the Magnuson-Stevens Act to provide for permit holders to submit a ballot for each permit held.

Deciding Referenda

NMFS would evaluate and count referenda ballots and announce referenda results within 60 days of the date by which completed ballots must be received. For a NEFMC IFQ referendum to be approved, more than 2/3 of those voting in a referendum of eligible permit holders and others must vote in favor of the measure. For a GMFMC IFQ referendum to be approved, a majority of those voting must vote in favor of the referendum.

If NMFS determines an IFQ referendum to be approved, then the Council may submit the associated FMP or FMP amendment for Secretarial review, approval, and implementation. If NMFS determines an IFQ referendum to have failed, then the Council may not submit the FMP or FMP amendment for Secretarial review. However, the Council may modify its IFQ program proposal and request a new referendum on the modified proposal.

Any changes made to an IFQ program proposal that was reviewed by eligible voters through a referendum may invalidate the referendum and require the modified IFQ program proposal to be reviewed and approved through a subsequent referendum before the Council could submit the proposal for Secretarial review and implementation.

Classification

These proposed guidelines and procedures are published under the authority of, and consistent with, the Magnuson-Stevens Act.

This proposed action has been determined to be not significant for purposes of Executive Order 12866.

The Regulatory Flexibility Act requires that, for a proposed rule, an initial regulatory flexibility analysis (IRFA) be prepared unless it is determined that the rule will not have a significant economic impact on a substantial number of small entities. NMFS believes it may be appropriate to make a determination that the rule will not have a significant economic impact on a substantial number of small entities, but is interested in receiving

comments on whether it would be appropriate to make such a certification to the Chief Counsel for Advocacy of the Small Business Administration.

Therefore, an initial regulatory flexibility analysis (IRFA) was prepared for this action, and NMFS will consider any comments received when deciding whether to make this certification at the final rule stage. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. Copies of this analysis are available from NMFS (see **ADDRESSES**).

The proposed action would establish guidelines and procedures mandated by Section 303A(c)(6)(D) of the Magnuson-Stevens Act for referenda on all Individual Fishing Quota (IFQ) program proposals (with the exception of an IFQ program for the Gulf of Mexico commercial red snapper fishery) to be developed by the New England Fishery Management Council and the Gulf of Mexico Fishery Management Council. Those future IFQ program proposals must be approved by referenda before they may be submitted for review and approval by the Secretary of Commerce.

The proposed action contains guidelines and procedures (1) to determine procedures and voting eligibility, and (2) to conduct such referenda in a fair and equitable manner. At the same time, it would provide the Councils the flexibility to define IFQ program referenda voting eligibility requirements on a fishery-specific basis within the constraints of the Magnuson-Stevens Act and other applicable law. The Small Business Administration (SBA) has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of \$4 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned and cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. Because it would apply to all entities affected by NE or GOM proposal for an IFQ fishery, regardless of size, the proposed rule imposes no disproportionate impacts between large and small entities.

Using the best available information, the number and description of small entities that could be affected by the proposed action includes approximately 8,300 permit holders in Gulf of Mexico fisheries, including those who hold 1,800 commercial shrimp permits, 1,500 commercial king mackerel permits, 1,450 commercial Spanish mackerel permits, 1,350 for-hire coastal migratory pelagic permits, 9,00 commercial reef fish permits, and 1,310 for-hire reef fish permits. Approximately 14,200 captains or crew members were employed in New England states (ME, NH, MA, RI, and CT) in New England fisheries for the calendar year 2005. In addition, approximately 9,900 Mid-Atlantic residents (NY, NH, DE, MD, VA, and

NC) were captains or crew members in New England fisheries for the calendar year 2005. In total, assuming future levels of employment are similar to employment in 2005, as many as 24,000 captains or crew members could be affected by this proposed rule.

Given that the Magnuson-Stevens Act requires that the agency provide this referenda guidance, NMFS was unable to identify any significant alternatives that could meet the statutory requirements, yet minimize burdens on small entities. NMFS specifically invites public comment on this aspect of the rule.

This proposed action would merely provide guidance and set out procedures for subsequent rules and thus does not impose any direct economic impact. However, the intangible benefits of ensuring that IFQ referenda are conducted in a fair and equitable manner are believed considerable. On the other hand, because the proposed action stipulates that permit holders and other fishery participants must meet voter eligibility criteria recommended by the Council and promulgated by NMFS regulations, future referenda criteria may limit voter eligibility and would thereby adversely impact some small business entities (e.g., certain crew members may be ineligible to vote in a future NEFMC IFQ program referendum). While the program is expected to provide a net benefit, this is not quantifiable until fishery-specific IFQ referenda are proposed because the proposed action only conveys broad guidance. Detailed analysis of data and impacts on vessels, vessel revenues, port revenues, fish stock impacts, etc. are not possible in the absence of identifying specific fisheries and IFQ program proposal components. Estimated direct economic impacts would be evaluated in compliance with the Regulatory Flexibility Act and other applicable Federal law at the time fishery-specific program proposals are developed.

IFQ program referenda conducted under section 303A(c)(6)(D)(iv) of the Magnuson-Stevens Act are exempt from the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 17, 2008.

Samuel D. Rauch III,

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

For the reasons stated in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. Under part 600, add subpart O to read as follows:

Subpart O—Limited Access Privilege Programs

Sec.
600.1300 [Reserved]

600.1301 [Reserved]
 600.1302 [Reserved]
 600.1303 [Reserved]
 600.1304 [Reserved]
 600.1305 [Reserved]
 600.1306 [Reserved]
 600.1307 [Reserved]
 600.1308 [Reserved]
 600.1309 [Reserved]
 600.1310 Referenda.

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

Subpart O—Limited Access Privilege Programs

§ 600.1310 Referenda.

(a) *Purpose and scope.* This section establishes procedures and guidelines for referenda to be conducted on Individual Fishing Quota (IFQ) program proposals initiated by the New England Fishery Management Council (NEFMC), Gulf of Mexico Fishery Management Council (GMFMC), and NMFS. This section provides guidance on developing voter eligibility criteria and establishes general procedures to ensure referenda are conducted in a fair and equitable manner.

(b) *Initiating IFQ Referenda.* (1) The NEFMC and the GMFMC shall not submit, and the Secretary shall not approve, an FMP or FMP amendment that would establish an IFQ program until the IFQ program proposal, as ultimately developed, has been approved by a referendum of eligible voters. Paragraph (h) of this section provides criteria for determining the outcome of IFQ referenda.

(2) To initiate a referendum on a proposed IFQ program:

(i) The Council must have held public hearings on the FMP or FMP amendment in which the IFQ program is proposed;

(ii) The Council must have considered public comments on the proposed IFQ program proposal;

(iii) The Council must have selected preferred alternatives for the proposed IFQ program;

(iv) The chair of the Council with jurisdiction over such proposed IFQ fishery must request a referendum on the proposed IFQ program in a letter to the appropriate NMFS Regional Administrator; and

(v) The letter requesting initiation of a referendum must include, but is not limited to, recommended criteria for NMFS to use in determining who is eligible to vote in the referendum, and may also include recommended criteria for vote weighting. The letter must provide the rationale supporting the Council's recommendation, as well as such additional information and analyses as needed consistent with applicable law and these guidelines and

procedures. If a Council recommends vote weighting criteria, the letter should fully describe the expected effects of such weighting on the referendum.

(vi) In addition to the requirements specified at paragraphs (b)(2)(iv)–(v) of this section, NEFMC referenda initiation letters must also include recommended criteria for NMFS to use in determining the eligibility of other fishery participants to vote in the referendum, including a criterion setting the minimum percentage of a crew member's total income that must have been earned in the proposed IFQ fishery. Guidelines for developing such recommendations are provided in paragraph (c)(2) of this section.

(vii) In addition to the requirements specified at paragraphs (b)(2)(iv)–(v) of this section, GMFMC letters initiating referenda of multispecies permit holders in the Gulf of Mexico must include recommended criteria to be used in identifying those permit holders who have substantially fished the species proposed to be included in the proposed IFQ program, along with alternatives to the recommendation, and supporting analyses. Guidelines for developing such recommendations are provided at paragraph (c)(3) of this section.

(3) Following a referendum that has failed to approve the IFQ proposal, any request from a Council for a new referendum in the same fishery must include an explanation of the substantive changes to the proposed IFQ program or the changes of circumstances in the fishery that would warrant initiation of an additional referendum.

(c) *Referenda voter eligibility.*—(1) *Permit holders and other fishery participants.*—(i) To be eligible to vote in IFQ referenda, permit holders and other fishery participants must meet voter eligibility criteria recommended by the Council and promulgated by NMFS.

(ii) Holders of multispecies permits in the Gulf of Mexico must be determined to have substantially fished the species proposed to be included in the IFQ program to be eligible to vote in a referendum on the proposed program.

(iii) When developing recommended criteria for determining which permit holders may participate in an IFQ program, referendum, the Councils must consider, but are not limited to considering:

(A) The full range of entities likely to be eligible to receive initial quota allocation under the proposed IFQ program;

(B) Current and historical harvest and participation in the fishery; and

(C) Other factors as may be determined by the Council to be relevant to the fishery and to the proposed IFQ program.

(2) *Crew member eligibility in NEFMC IFQ referenda.*—(i) For the purposes of these procedures and guidelines, “referendum-eligible vessel” means a vessel, the permit holder or owner of which has been determined to be eligible to vote in the referendum on the basis of such vessel's history or other characteristics meeting the prescribed voter eligibility criteria.

(ii) To be eligible to vote in an NEFMC IFQ referendum, crew members must meet the following eligibility requirements:

(A) The crew member must have worked aboard a referendum-eligible vessel at sea while engaged in fishing.

(B) If requested, the crew member must produce documentary proof of employment or service as a crew member and income during the eligibility periods established by the NEFMC. Documents may include, but are not limited to, signed crew contracts, records of payment, settlement sheets, income tax records, a signed statement from the permit holder, and other documents as evidence of the period and the vessel upon which the crew member worked.

(C) During the qualifying periods established by the NEFMC, the crew member must have derived a percentage of his/her total income from the fishery under the proposed IFQ program that is equal to or greater than the percentage promulgated by NMFS and determined to be significant relative to the economic value and employment practices of the fishery.

(D) Any additional eligibility criteria promulgated by the NMFS.

(iii) When developing recommended criteria for determining whether other fishery participants, including crew members, may participate in a NEFMC IFQ referendum, the NEFMC must consider, but is not limited to considering:

(A) The full range of entities likely to be eligible to receive initial quota under the proposed IFQ program;

(B) A crew member's current and historical participation in the fishery aboard a referendum-eligible vessel;

(C) The economic value of the proposed IFQ fishery, employment practices in the proposed IFQ fishery, and other economic and social factors that would bear on a determination of what percentage of a crew member's total income from the fishery should be considered significant for the purposes of this section;

(D) The availability of documentary proof of employment and income to validate eligibility; and

(E) Any other factors as may be determined by the Council to be relevant to the fishery and the proposed IFQ program.

(3) *GMFMC's substantially fished criterion.* When developing recommended criteria for identifying those multispecies permit holders who have substantially fished the species to be included in the IFQ program proposal, the GMFMC must consider, but is not limited to considering:

(i) Current and historical harvest and participation in the fishery;

(ii) The economic value of and employment practices in the fishery; and

(iii) Any other factors determined by the Council to be relevant to the fishery and the proposed IFQ program.

(d) Council-recommended criteria under (c) may include, but are not limited to, levels of participation or reliance on the fishery as represented by landings, sales, expenditures, or other considerations. A Council may also consider criteria for weighting eligible referendum votes. In its letter requesting initiation of a referendum, a Council should fully describe its rationale for any weighting recommendation and the expected effects of such weighting on the referendum.

(e) *Actions by NMFS: Review of Council referendum criteria and Secretarial IFQ plans.* (1) NMFS shall determine whether Council recommended referendum criteria will provide for a fair and equitable referendum and will be consistent with National Standards under the Magnuson-Stevens Act, other provisions of the Act, and other applicable legal standards. The Secretary's considerations shall include, but shall not be limited to:

(i) Whether the criteria are rationally connected to or further the objectives of the proposed IFQ program;

(ii) Whether the criteria are designed in such a way to prevent any person or single entity from obtaining an excessive share of voting privileges;

(iii) Whether the criteria are reasonable relative to the availability of documentary evidence and the possibility of validating a participant's eligibility; and

(iv) Whether the referendum can be administered and executed in a fair and equitable manner in a reasonable time and without subjecting industry members, the Council, or NMFS to administrative burdens, costs, or other requirements that would be considered onerous.

(2) If NMFS determines that referendum criteria would not provide for a fair and equitable referendum, would not be consistent with National Standards under the Magnuson-Stevens Act, other provisions of the Act, and other applicable legal standards, or, in the case of a referendum request subsequent to a failed referendum in the same fishery, that the Council has not substantively amended the IFQ proposal or circumstances have not changed sufficiently to warrant initiation of a new referendum, NMFS shall inform the Council of the agency's decision to deny the referendum request and of the reasons for the decision.

(3) If NMFS determines that referendum criteria would provide for a fair and equitable referendum and would be consistent with National Standards under the Magnuson-Stevens Act, other provisions of the Act, and other applicable legal standards, then NMFS shall conduct the referendum in accordance with procedures and guidelines provided in paragraph (f) of this section.

(4) In accordance with paragraphs (2) and (3), NMFS may initiate a referendum and promulgate referendum criteria for any IFQ program proposal advanced through a Secretarial fishery management plan (FMP) or FMP amendment under the authority of Section 304(c) of the Magnuson-Stevens Act for a New England or Gulf of Mexico fishery. Such criteria must provide for a fair and equitable referendum and NMFS shall conduct the referendum in accordance with procedures and guidelines provided in paragraph (f) of this section.

(f) *Conducting IFQ referenda.* (1) NMFS shall promulgate specific referenda procedural requirements, voter eligibility requirements, and any vote weighting criteria through appropriate rulemaking. A proposed rule shall seek public comment on the specific schedule, procedures, and other requirements for the referendum process.

(2) For NEFMC IFQ program referenda, the proposed rule shall establish procedures for documenting or certifying that other fishery participants, including crew members, meet the proposed voter eligibility criteria.

(3) For GMFMC IFQ program referenda of multispecies permit holders, the proposed rule shall include criteria to be used in identifying those permit holders who have substantially fished the species that are the subject of the proposed IFQ program.

(4) If NMFS decides to proceed with the referendum after reviewing public comments, NMFS shall publish

implementing regulations through a final rule in the **Federal Register** as soon as practicable after the Council determines the IFQ program proposal and supporting analyses are complete and ready for Secretarial review. Otherwise, NMFS shall publish a notice in the **Federal Register** to inform the Council and the public of its decision not to conduct the referendum, as proposed, including reasons for the agency's decision.

(5) Upon implementation of the referendum through a final rule, NMFS shall provide eligible voters referenda ballots and shall make available information about the schedule, procedures, and eligibility requirements for the referendum process and the proposed IFQ program.

(6) NMFS shall notify the public in the region of the subject fishery of the referendum eligibility criteria.

(7) Individuals who wish to vote as other fishery participants in a NEFMC IFQ referendum must contact NMFS and produce all required documentation and certifications to receive a ballot. NMFS shall provide sufficient time in the referendum process to allow for crew members to request, receive, and submit referendum ballots.

(g) *Referenda ballots.* (1) Ballots shall be composed such that voters will indicate approval or disapproval of the preferred IFQ program proposal.

(2) NMFS may require voters to self-certify on referenda ballots that they meet voter eligibility criteria. To be considered valid, ballots that require such certification must be signed by the eligible voter.

(3) Referenda ballots shall be numbered serially or otherwise designed to guard against submission of duplicate ballots.

(4) NMFS shall allow at least 30 days for eligible voters to receive and return their ballots and shall specify a deadline by which ballots must be received. Ballots received after the deadline shall not be considered valid.

(h) *Determining the outcome of an IFQ referendum.* (1) NMFS shall tally and announce the results of the referendum within 90 days of the deadline by which completed ballots must be received. NMFS may declare a referendum invalid if the agency can demonstrate the referendum was not conducted in accordance with the guidelines and procedures established in the final rule implementing the referendum.

(2) A NEFMC IFQ program referendum shall be considered approved only if more than 2/3 of those voting submit valid ballots in favor of the referendum question.

(3) A GMFMC IFQ program referendum shall be considered approved only if a majority of those voting submit valid ballots in favor of the referendum question.

(i) *Council actions.* (1) If NMFS notifies a Council that an IFQ program proposal has been approved through a referendum, then the Council may submit the associated FMP or FMP

amendment for Secretarial review and implementation.

(2) Any changes that would modify an IFQ program proposal that was reviewed by referenda voters may invalidate the results of the referendum and require the modified program proposal to be approved through a new referendum before it can be submitted to

the Secretary for review and implementation.

(3) If NMFS notifies a Council that an IFQ referendum has failed, then the Council may modify its IFQ program proposal and request a new referendum pursuant to paragraph (b) of this section.

[FR Doc. E8-8756 Filed 4-22-08; 8:45 am]

BILLING CODE 3510-22-P

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request Form FNS-798 and FNS-798A, WIC Financial Management and Participation Report With Addendum

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections.

DATES: Written comments on this notice must be received on or before June 23, 2008.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 520, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Joan Carroll at 703-305-2196 or via e-mail to Joan.Carroll@fns.usda.gov.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 518.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection form and instructions should be directed to: Patricia N. Daniels, (703) 305-2749.

SUPPLEMENTARY INFORMATION:

Title: WIC Financial Management and Participation Report with Addendum.

OMB Number: 0584-0045.

Form Number: FNS 798 and FNS 798A.

Expiration Date: 07-31-2008.

Type of Request: Revision of a Currently Approved Collection Form.

Abstract: Section 17(f)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(4)) provides that "State agencies shall submit monthly financial reports and participation data to the Secretary" (See also 7 CFR 246.25(b)(1)). The WIC Financial Management and Participation Report with Addendum (FNS-798 and FNS-798A) are the forms State agencies complete to comply with this requirement. FNS and State agencies use the reported information for program monitoring, funds management, budget projections, monitoring caseload, policy development, and responding to requests from Congress and interested parties.

In addition, nonentitlement programs, such as the WIC Program, are required to conduct an annual closeout and reconciliation of grants. Departmental regulations at 7 CFR 3016.23(b) require that "[a] grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269)." WIC Program regulations at 7 CFR 246.17(b)(2) instruct State agencies to "submit to FNS, within 120 days after the end of the fiscal year, final fiscal year closeout reports." The final WIC Financial Management and Participation Report

(FNS-798) submitted for the year with its addendum (FNS-798A) are used as a substitute for the SF-269, because they maintain the integrity of WIC's two grant components (food and nutrition services and administration (NSA)) as well as the four NSA grant components (program management, client services, nutrition education, and breastfeeding promotion and support).

The proposed revision of the WIC Financial Management and Participation Report (FNS-798) and its addendum (FNS-798A) will: (1) identify breastfeeding women and infant participants as either fully breastfeeding or partially breastfeeding, (2) add columns corresponding to the 12 months of the fiscal year for the NSA cost section of the report, (3) delete the requirement to separately report funds spent forward to the following year attributable to vendor and participant collections, and (4) delete the requirement to report indirect cost rates and bases and the types of indirect cost rates. The revision to the participation categories is proposed so participation will correspond with revisions in participant food packages (*See Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Interim Rule, December 6, 2007*). The proposed columns in the NSA cost section will: (1) Provide a computer-generated cumulative total of NSA costs rather than having the State agency compute and report this amount, (2) make the NSA cost section consistent with the food cost and participation sections which already have columns for the 12 months, and (3) make it easier for State agencies to correct reporting errors made in prior periods. State agencies do not need to separately report the amount of funds spent forward attributable to vendor, participant and local agency collections as this amount is evident based on other data elements. State agencies will continue to report the total amount charged to the grant for indirect costs. However, it is not necessary for them to report the factors used to calculate this amount. Instead, indirect cost calculations should be validated during an audit or financial management technical assistance review. Due to the increase in the number of WIC State agencies reporting and a decrease in the number of responses per respondent,

this revision is also an adjustment in the number of respondents from 89 to 90 and the number of responses per respondent from 17 to 15.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.35 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. The total annual burden on respondents was previously 4,713 hours. This revision decreases the total annual burden by 190 hours.

Respondents: Directors or Administrators of WIC State agencies.

Estimated Number of Respondents: 90 respondents.

Estimated Number of Responses per Respondent: 15.

Estimated Total Annual Burden on Respondents: 4,523 hours.

Dated: April 16, 2008.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E8-8792 Filed 4-22-08; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Food Stamp Program Redemption Certificate, Form FNS-278B and Food Stamp Program Wholesaler Redemption Certificate, Form FNS-278-4

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is a revision of a currently approved collection.

DATES: Written comments must be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Lindy Haffey, Acting Chief, Retailer Operations Branch, Benefit Redemption Division, Food and Nutrition Service, U. S. Department of Agriculture, 3101 Park Center Drive, Room 403, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Lindy Haffey at (703) 305-2523 or via e-mail to: brdhdq-web@fns.usda.gov.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 403.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this information collection should be directed to Lindy Haffey, (703) 305-2523.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Redemption Certificate.

OMB Number: 0584-0085.

Form Number: FNS-278B and FNS-278-4.

Expiration Date: July 31, 2008.

Type of Request: Revision of a currently approved collection of information.

Abstract: The Food Stamp Act of 1977, as amended, Section 10, (7 U.S.C. 2019) states that regulations issued pursuant to the Act shall provide for the redemption of coupons accepted by retail food stores and wholesale food concerns or through selected financial institutions.

FNS provides for this redemption in 7 CFR 278.2 through 278.5. Section 278.4 outlines the procedure for redeeming coupons for wholesale food concerns retail stores. Form FNS-278B, Food Stamp Redemption Certificate, and Form FNS-278-4, Wholesaler Redemption Certificates, collectively called RCs, are required to be used by all authorized wholesalers or retailers, and are processed by financial institutions when they are presented for cash or credit. Requirements in the Food Stamp Program regulations are the basis for the information collected on Form FNS-278B, Food Stamp Redemption

Certificate, and Form FNS-278-4, Wholesaler Redemption Certificate.

The proposed revision to the information collection burden associated with this form is derived from a reduction in the number of RCs submitted by program respondents. The number of responses also declined as FNS phased-out the issuance of paper food coupons; and as the number of States with Electronic Benefit Transfer (EBT) systems increased nationwide. Currently, 100 percent of all food stamp benefits are issued electronically. Some paper food coupons remain in circulation, however, as they were issued before EBT was fully implemented in each of the States. Because there is not an expiration date on food coupons, recipients who were previously issued paper food coupons can use the benefits they have until they are spent. Likewise, retailers must also continue to accept paper food coupons as a form of payment, and the Federal government must continue to honor them as legal tender. Currently, there is a legislative proposal to de-obligate the paper food coupon but until legislation is passed, paper food coupons do not expire.

FNS is seeking approval not to display the expiration date of the information collection because it is impractical and not cost efficient to incur expenses for a form that hasn't been used since our last submission to OMB (Form FNS-278-4), or for one that use is rapidly declining (Form FNS-278B). There are no sensitive questions of private or personal nature involved in this information collection. All data collected concerns food stamp deposits within the banking system.

For this information collection package, the estimated reduction of respondents is based on a projected decrease in the number of RCs submitted as a result of fewer paper food coupons remaining in circulation. The estimated burden hours are 28.60442 hours.

Respondents: Businesses, wholesale food concerns, or other not-for-profit financial institutions.

Estimated Average Number of Respondents: 385.95723.

Estimated Annual Number of Responses per Respondent: 4.3033369.

Estimated Total Average Annual Responses: 1,660.904.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0172222 hours per response.

Estimated Total Average Annual Burden: 28.660442 hours.

Dated: April 14, 2008.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E8-8835 Filed 4-22-08; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on May 15, 2008 at The Chateau, 955 Fairway Blvd. Incline Village, NV 89451. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held May 15, 2008, beginning at 1 p.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at The Chateau, 955 Fairway Blvd. Incline Village, NV 89451

For Further Information or To Request an Accommodation (one week prior to meeting date) Contact: Aria Hams, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543-2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include: (1) Final recommendations for Southern Nevada Public Land Management Act (SNPLMA) Round 9 Capital projects and Science and Research themes; (2) a public hearing on the Lake Tahoe Federal Advisory Committees' SNPLMA Round 9 recommendations; and, (3) written public comment received during the comment period will be shared. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: April 15, 2008.

Eli Ilano,

Deputy Forest Supervisor.

[FR Doc. E8-8627 Filed 4-22-08; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

State of Alaska—Termination of Withdrawal

SUMMARY: The Act of March 22, 1944 (58 Stat. 119) withdrew approximately 3,235 acres of land within the Cascade Creek watershed of the Tongass National Forest as a municipal watershed for the City and Borough of Sitka. The Act provided that the withdrawal would terminate upon a finding by the Secretary of Agriculture of an abandonment and nonuse for a period of two years. With the concurrence of the City and Borough of Sitka, a finding of such abandonment and nonuse is being made and the withdrawal terminated.

DATES: This finding is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT:

Louise Herrera, USDA Forest Service, Washington, DC 20250. Phone: (202) 205-1255, E-mail: lherrera@fs.fed.us. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of March 22, 1944 (58 Stat. 119), certain lands within the Tongass National Forest in the State of Alaska comprising approximately 3,235 acres in the watershed of Cascade Creek were withdrawn from all forms of location, entry or appropriation under the mineral and nonmineral land laws of the United States and were set aside as a municipal water supply reserve for the use and benefit of the City of Sitka. The Act further provides that the right of the City of Sitka to use the reserved land for watershed purposes shall terminate upon the abandonment of the use by such municipality upon a finding of the Secretary of Agriculture of such nonuse or abandonment for a period of two years. In such case, the reservation created by the Act shall terminate to the extent of the lands involved.

The City and Borough of Sitka has notified the Forest Service by letter dated January 22, 2007, that it relinquishes any interests in the lands identified in the Cascade Creek. This relinquishment is a restatement of an

earlier relinquishment dated December 23, 1996, but heretofore not acted upon. The City states that it has developed a primary municipal water supply from Blue Lake as well as a secondary emergency water supply from Indian River. Therefore, Cascade Creek is no longer needed for such purposes.

Based on the foregoing, as authorized by section 2 of the Act of March 22, 1944 (58 Stat. 119), I find that the lands described in section 1 of said Act, comprising approximately 3,235 acres of the Cascade Creek watershed in the Tongass National Forest, have not been used for a period of at least 2 years by the City and Borough of Sitka, Alaska, and that the City and Borough have effectively abandoned such use as indicated by letters to the Forest Service dated December 23, 1996 and January 22, 2007. Therefore, the reservation established by said Act of March 22, 1944 is hereby terminated.

Dated: April 9, 2008.

Paul K. Brewster,

Deputy Regional Forester.

[FR Doc. E8-8704 Filed 4-22-08; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of the Secretary

[Agency Docket Number: 080402504-8505-01]

Availability of Fleet Alternative Fuel Vehicle Report for Fiscal Year 2007

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of availability of report.

SUMMARY: In compliance with the Energy Policy Act of 1992, this notice announces the availability of the Department of Commerce's (DOC) alternative fuel vehicle (AFV) report for fiscal year 2007 for its agency fleet. This report includes data concerning DOC's efforts to reduce energy consumption.

ADDRESSES: U.S. Department of Commerce, Office of the Chief Financial Officer and Assistant Secretary for Administration, Office of Administrative Services, 1401 Constitution Avenue, NW., Room 6316, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Eston Lewis or e-mail elewis3@doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 102-486, Title III, Sec. 310. Oct. 24, 1992, 106 Stat. 2874.

The Energy Policy Act of 1992 (Pub. L. 102-486, 42 U.S.C. 13211-13219) (EPAct), requires that AFV reports for

FY 1999 and beyond be made public, including placement of the reports on the DOC Web site and announcement of the availability of the reports in the **Federal Register**. Pursuant to the EAct, this notice serves as the DOC's official announcement of the availability of the AFV report for FY 2007. DOC's AFV report for FY 2007 is available on the internet at <http://www.osec.doc.gov/oas/ppmd/ppmd/afv.htm>. The AFV report contains information pertaining to planned acquisitions and projections for FY 2008 and FY 2009. EAct requires that seventy-five percent of all covered, light-duty vehicles acquired for Federal fleets in FY 1999 and beyond be AFVs. In FY 2007, the DOC exceeded the seventy-five percent acquisition requirement.

Fred E. Fanning,

Director for Administrative Services.

[FR Doc. E8-8855 Filed 4-22-08; 8:45 am]

BILLING CODE 3510-03-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Docket 24-2008)

Foreign-Trade Zone 161 Sedgwick County, Kansas, Application for Subzone Status Hawker Beechcraft Corporation (Aircraft Manufacturing), Wichita and Salina, Kansas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of County Commissioners of Sedgwick County, grantee of Foreign-Trade Zone (FTZ) 161, requesting special-purpose subzone status for the aircraft manufacturing facilities of Hawker Beechcraft Corporation (HBC) located in Wichita and Salina, Kansas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 17, 2008.

The HBC facilities are as follows: *Proposed Site 1*, located at 9709 E. Central Avenue, in Wichita (910 acres, 5,700 employees); and, *Proposed Site 2*, located at 2625 Scanlan Avenue, in Salina (56 acres, 430 employees). The facilities are used for manufacturing various types of aircraft (HTSUS 8802.40, with a weight greater than 15,000kg) (up to 750 aircraft annually). The Wichita facilities are used for final assembly of aircraft as well as other manufacturing support activities, while the Salina facilities are used primarily for manufacturing and fabrication of

aircraft assemblies and subassemblies. Imported components and raw materials account for approximately 34 percent of the value of inputs used in manufacturing. Parts and components that may be imported into the proposed subzone sites for manufacturing include: oxygen (2804.40); rubber adhesives or polymers (3506.91); acrylic polymers (3906.10); flexible plastic tubing (3917.31); non-reinforced plastic tubing (3917.32); other plastic tubing (3917.39); plastic tubing with fittings (3917.33); self-adhesive tape (3919.10, 3919.90); plastic sheets (3921.13); plastic handles (3926.30); plastic articles (3926.90); vulcanized rubber plates (4008.11); vulcanized rubber forms (4008.19); reinforced rubber tubes without fittings (4009.41); reinforced rubber tubes with fittings (4009.42); vulcanized rubber gaskets (4016.93); vulcanized rubber articles (4016.99); bags and cases (4202.92); wood boxes (4420.90); rubberized textile fabric (5906.99); lifejackets and lifebelts (6307.20); laminated safety glass (7007.21); glass envelopes for lighting (7011.10); glass sheets (7019.39); glass fibers and articles (7019.90); articles of glass (7020.00); imitation jewelry (7117.90); cast fittings of iron and steel (7307.19); stainless steel flanges (7307.21); threaded elbows (7307.22); tube and pipe fittings (7307.29); threaded elbows and sleeves (7307.92); screws, nuts and bolts (7318.15); threaded articles (7318.19); spring washers (7318.21); cotter and cotter pins (7318.24); other non-threaded articles (7318.29); other springs and leaves of iron and steel (7320.90); articles of iron and steel wire (7326.20); iron and steel hangers and supports (7326.90); stranded copper wire with or without fittings (7413.00); iron, copper and steel washers and spring washers (7415.21); non-alloy aluminum pipes and tubes (7608.10); other alloy aluminum pipes and tubes (7608.20); aluminum pipe or tube fittings (7609.00); aluminum fasteners (7616.10); aluminum articles (7616.99); tungsten articles (8101.99); titanium articles (8108.90); pliers, pincers, tweezers and similar (8203.20); hand-operated spanners and wrenches and their parts (8204.11); socket wrenches and their parts with or without handles, drives and extensions (8204.20); other hand tools (8205.59); vices, clamps and similar and their parts (8205.70); tools and their parts for boring and broaching (8207.60); other interchangeable tools (8207.90); locks (8301.40); parts of base-metal padlocks and locks (8301.60); base-metal hinges and parts (8302.10); base-metal mountings (8302.49); base-metal hooks,

eyes and eyelets (8308.10); other base-metal stoppers, caps and lids and other packing accessories (8309.90); fuel and other pumps (8413.30); air or vacuum pumps (8414.59); window, wall or split-system air-conditioning machines and parts (8415.10); air-conditioning machines not incorporating a refrigeration unit (8415.83); parts of air-conditioning machines (8415.90); oil or fuel filters for internal combustion engines (8421.23); other electromechanical appliances with self-contained motors (8479.89); pressure-reducing valves and their parts (8481.10); valves for oleo-hydraulic and pneumatic transmissions (8481.20); iron, copper and steel check valves (8481.30); safety or relief valves (8481.40); other hand-operated appliances and parts (8481.80, 8481.90); ball bearings (8482.10); spherical roller bearings (8482.30); other ball or roller bearings and parts (8482.99); bearing housings/plain shaft bearings (8483.30); gears, gearing and other transmission elements (8483.40); flywheels, pulleys and pulley blocks (8483.50); clutch and shaft couplings (8483.60); toothed-wheels, chain sprockets and other transmission elements (8483.90); gaskets and similar joints of metal sheeting (8484.10, 8484.90); other machine parts (8487.90); single-phase AC motors (8501.40); electric motors and generators (8501.63,); electric motor and generator parts (8503.00); static convertors (8504.40); electrical transformers, static convertors, conductors and parts (8504.50); starter-motors and starter-generators (8511.40); lead-acid storage batteries (8507.20); voltage and voltage-current regulators and cut-out relays (8511.80); audio frequency electric amplifiers (8518.40); electric sound amplifier sets (8518.50); optical media (8523.40); antennas, antenna reflectors and parts (8529.10); burglar and fire alarms (8531.10); electrical signaling equipment (8531.80); printed circuit assembly parts (8531.90); fuses (8536.10); circuit breakers (8536.30); voltage relays (8536.41, 8536.49); other switches (8536.50); lamp-holders (8536.61); other lamp-holders, plugs and sockets (8536.69); other electrical apparatus for switching circuits or making connections (8536.90); electrical board panels and consoles (8537.10); parts for electrical apparatus (8538.90); electrical filament or discharge lamps and parts (8539.29, 8539.39); electrical machines and parts (8543.70, 8543.90); copper winding wire (8544.11); other winding wire (8544.19); coaxial cable and electric conductors (8544.20); ignition and other wiring sets (8544.30); electrical conductors (8544.49);

insulating fittings for electrical machines (8547.90); parachutes and rotachutes (8804.00); corrective or protective spectacles and goggles (9004.90); lasers (9013.20); compasses (9014.10); aeronautical navigation instruments and appliances (9014.20); surveying instruments and appliances (9015.80); calculating instruments (9017.20); breathing appliances and gas masks (9020.00); thermometers and pyrometers (9025.19); hydrometers (9025.80); speedometers, tachometers and stroboscopes (9029.20); instruments for checking voltage and current (9030.39); instruments to measure and check instruments and their parts (9031.80, 9031.90); thermostats (9032.10); hydraulic and pneumatic instruments (9032.81); automatic voltage and voltage-current regulators (9032.89); electric lamps and lighting fittings (9405.20, 9405.40); illuminated signs and name plates (9405.60); plastic parts for lamps and lighting fixtures (9405.92, 9405.99); and, ball-point pens (9608.10). The duty rates on the imported components range from duty-free to 15 percent.

This application requests authority for HBC to conduct the manufacturing activity under FTZ procedures, which would exempt the company from customs duty payments on the imported components used in export production. Approximately 50 percent of production is exported. On domestic sales, the company could choose the lower duty rate (duty-free) that applies to the finished product for the imported components used in manufacturing. HBC may also realize savings related to direct delivery and weekly customs entry procedures. The company will also realize savings on the elimination of duties on materials that become scrap/waste during manufacturing. Additionally, customs duties could possibly be deferred or reduced on foreign status production equipment. The application indicates that the FTZ-related savings would improve the plant's international competitiveness.

In accordance with the Board's regulations, Christopher Kemp of the FTZ staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is June 23, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 7, 2008).

A copy of the application and accompanying exhibits will be available at each of the following addresses: U. S. Department of Commerce Export Assistance Center, 150 North Main Street, Suite 200, Wichita, Kansas; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, D.C., 20230. For further information contact Christopher Kemp at christopher_kemp@ita.doc.gov or (202) 482-0862.

Dated: April 17, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8-8814 Filed 4-22-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory Committee (TRANSTAC) will meet on May 8, 2008, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania & Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Welcome and Introductions.
2. Review Status of Working Groups.
3. Proposals from the Public.
4. Regulations and Status of Commerce Control List Review.
5. Missile Technology Review.
6. Wassenaar Update—Status of May 08 Proposals.
7. TRANSTAC Business.
8. Closing Comments.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at Yspringer@bis.doc.gov no later than May 1, 2008.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any

time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to Yvette Springer.

For more information contact Ms. Springer on (202) 482-2813.

Dated: April 15, 2008.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E8-8741 Filed 4-22-08; 8:45 am]

BILLING CODE 3510-JT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-851]

Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 28, 2008, the Department of Commerce (the "Department") published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("the PRC") for Ayecue International SLU and its affiliated producer, Ayecue (Liaocheng) Foodstuff Co., Ltd. (collectively, "Ayecue"). See *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review*, 73 FR 4822 (January 28, 2008) ("Preliminary Results"). We gave interested parties an opportunity to comment on the *Preliminary Results*.

EFFECTIVE DATE: April 23, 2008.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482-3936.

SUPPLEMENTARY INFORMATION:

Case History

The *Preliminary Results* for this administrative review were published on January 28, 2008. Since the *Preliminary Results*, the following events have occurred:

Verification

The Department did not conduct verification in this new shipper review.

Case Briefs and Rebuttal Briefs

On January 28, 2008, in the *Preliminary Results*, the Department stated that interested parties were to submit case briefs within 30 days of publication of the preliminary results and rebuttal briefs within five days after the time limit for filing case briefs. Ayecue timely filed its case brief on February 27, 2008. No other interested party submitted a case or rebuttal brief.

Hearing

No party requested a hearing for this new shipper review.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Certain Preserved Mushrooms" refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and

packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms" (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.¹

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the post-preliminary comments by parties in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, "Issues and Decision Memorandum for the Final Results of

the Eleventh Antidumping Duty New Shipper Review on Certain Preserved Mushrooms from the People's Republic of China," dated April 17, 2008 ("Issues and Decision Memorandum"), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU") in room 1117 in the main Commerce Department building, and is also accessible on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in the margin calculations for the final results: (1) We used the 2006–2007 annual report of Agro Dutch Industries Limited (Agro Dutch) to value fresh mushrooms and (2) we used the average 2006–2007 data from the annual reports of Agro Dutch and Flex Foods Limited to calculate surrogate financial ratios.

Final Results of the Review

The Department has determined that the following final dumping margin exists for the period February 1, 2006, through January 31, 2007:

Exporter	Manufacturer	Weighted-average margin (percentage)
Ayecue International SLU	Ayecue (Liaocheng). Foodstuff Co., Ltd	0.00

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions for Ayecue to CBP after 15 days of the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered

value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific (or customer) assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of the new shipper review for all shipments of subject merchandise exported by Ayecue International SLU and produced by Ayecue (Liaocheng) Foodstuff Co.,

Ltd. entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the "Act"): (1) For subject merchandise exported by Ayecue International SLU and produced by Ayecue (Liaocheng) Foodstuff Co., Ltd., no cash deposit will be required; (2) for subject merchandise exported by Ayecue International SLU but not manufactured by Ayecue (Liaocheng) Foodstuff Co., Ltd. the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise manufactured by Ayecue

¹ On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See "Recommendation Memorandum—Final Ruling

of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000. On February 9, 2005, this

decision was upheld by the United States Court of Appeals for the Federal Circuit. See *Tak Fat v. United States*, 396 F.3d 1378 (Fed Cir. 2005).

(Liaocheng) Foodstuff Co., Ltd., but exported by any party other than Ayecue International SLU, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements will remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214(h).

Dated: April 17, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Issues and Decision Memorandum

Comment 1: Whether the Department Should Use Contemporaneous Financial Statement Data

[FR Doc. E8-8809 Filed 4-22-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of the Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting via teleconference.

SUMMARY: The Manufacturing Council will hold a meeting via teleconference to deliberate a draft recommendation to the Secretary of Commerce regarding Alternative Energy.

DATES: May 7, 2008.

Time: 11 a.m. EST.

For the Conference Call-In Number and Further Information, Contact: The Manufacturing Council Executive Secretariat, Room 4043, Washington, DC 20230 (Phone: 202-482-1369), or visit the Council's Web site at <http://www.manufacturing.gov/council>.

Dated: April 18, 2008.

Kate Worthington,

Executive Secretary, The Manufacturing Council.

[FR Doc. E8-8877 Filed 4-22-08; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-570-925)

Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: April 23, 2008.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that sodium nitrite from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated dumping margin is shown in the "Preliminary Determination" section of this notice.

FOR FURTHER INFORMATION CONTACT:

Magd Zalok, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-4162.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2007, the Department received petitions concerning imports of sodium nitrite from the PRC and the Federal Republic of Germany filed in proper form by General Chemical LLC (petitioner). The Department initiated antidumping duty investigations of sodium nitrite from the above-

mentioned countries on November 28, 2007. *See Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 72 FR 68563 (December 5, 2007) (*Initiation Notice*).

In the "Respondent Selection" section of the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data. On the date of publication of the *Initiation Notice*, the Department released to parties under an Administrative Protective Order (APO), the CBP data obtained for respondent selection purposes. On December 12, 2007, the petitioner submitted comments regarding respondent selection, urging the Department to select as mandatory respondents, two PRC exporters who accounted for the majority of the sodium nitrite imported into the United States from the PRC during the period of investigation (POI). The Department did not receive any other comments from interested parties concerning respondent selection.

In order to identify the universe of potential respondents for purposes of this investigation, the Department analyzed information obtained from the petition, CBP, and its own research. The petition identified 92 exporters and producers of sodium nitrite from the PRC. The Department obtained public information for two exporters and/or producers of the subject merchandise that are identified in the CBP data, Qingdao Hengyuan Chemical Co., Ltd. (Qingdao), and Hualong Ammonium Nitrate Company Ltd. (Hualong). The Department determined that Qingdao and Hualong were the appropriate respondents in this investigation because they represent all publicly identified PRC exporters of subject merchandise during the POI. On December 31, 2007, the Department selected Qingdao and Hualong as mandatory respondents. *See* Memorandum regarding "Identification of Respondents in the Antidumping Investigation of Sodium Nitrite from the People's Republic of China," dated December 31, 2007 (Respondent Selection Memorandum).

On December 26, 2007, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of sodium nitrite from Germany and the PRC. *See Sodium Nitrite from China and Germany*, 73 FR 2278 (January 14, 2008).

On January 3, 2008, the Department issued Sections A through D of its antidumping duty questionnaire to Qingdao and Hualong via DHL and FedEx express courier services. The tracking information obtained from DHL and FedEx indicates that Qingdao and Hualong received the Department's questionnaire on January 7 and 9, 2008, respectively. See Memorandum regarding "Lack of Response to the Department of Commerce's Questionnaire" dated February 25, 2008 at Attachment I (Lack of Response Memorandum). In the cover letter to the questionnaire, the Department requested that Qingdao and Hualong, as mandatory respondents, submit a response to Section A, and a combined response to sections C and D of the questionnaire, by January 24, 2008, and February 11, 2008, respectively. Further, on January 15, 2008, the Department issued a letter to both Qingdao and Hualong, instructing them to use, for reporting purposes, certain physical characteristics that were identified in an attachment to the letter. The tracking information that we obtained from FedEx and DHL indicates that Qingdao and Hualong received the letter on January 18 and 22, 2008, respectively. See Lack of Response Memorandum at Attachment II. Qingdao and Hualong failed to respond to the Department's questionnaire.

Period of Investigation

The POI is April 1, 2007, through September 30, 2007. See 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO₂ and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Non-Market-Economy ("NME") Treatment

The Department considers the PRC to be an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003)). The Department has not revoked the PRC's status as an NME country. Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our NME methodology.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters must demonstrate the absence of both *de jure* and *de facto* government control over export activities, under a test developed by the Department and described in the *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), and *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).

No party filed separate rate information in this investigation. Absent separate rate information, the Department has presumed that all companies within the PRC, exporting the subject merchandise (including Qingdao and Hualong), are subject to government control and thus are part of the PRC-wide entity and should be assessed a single, China-wide, antidumping duty rate.

The PRC-Wide Entity – Use of Facts Available

Section 776(a)(2) of the Act provides that, (1) if an interested party withholds information requested by the administering authority, (2) fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, (3) significantly impedes a proceeding under this title, or (4) provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Because Qingdao and Hualong are part of the PRC-wide entity, and they withheld information that is required by the Department to calculate dumping margins, the Department has concluded that it is appropriate to base the PRC-wide entity's dumping margin on facts available, pursuant to section 776(a)(2)(A)-(C) of the Act.

Application of Adverse Inferences

According to section 776(b) of the Act, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-54026 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and*

Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794–55796 (August 30, 2002). It is the Department's practice to apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. *See, e.g., id.* Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003); *Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

Although the Department's antidumping duty questionnaire stated that failure to comply with a request for information may result in the Department using "information that is adverse to your interest" in conducting its analysis, Qingdao and Hualong failed to respond to the questionnaire. This constitutes a failure to cooperate to the best of their abilities to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Because these companies did not provide the information requested, section 782(d) and (e) of the Act are not applicable. Based on the above, the Department has preliminarily determined that the PRC-wide entity, which includes Qingdao and Hualong, failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total adverse facts available because the respondent failed to respond to the antidumping questionnaire).

Selection of Information Used as Facts Available

When the Department applies adverse facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c); Statement of Administrative Action Accompanying the Uruguay Round Agreements Act,

H.R. Rep. No. 103–316 at 868–71, (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216, 77218–19 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned the PRC-wide entity, including Qingdao and Hualong, a dumping margin of 190.74 percent, the highest margin from the petition, as revised by the Department. *See Initiation Notice* 72 FR at 68567.

When the Department relies upon secondary information, it must "to the extent practicable, corroborate that information from independent sources that are reasonably at [the Department's] disposal." *See* section 776(c) of the Act. To corroborate the initiation dumping margins for use as adverse facts available, to the extent appropriate, where information was available, we revisited our pre-initiation analysis of the adequacy and accuracy of the information in the petition. *See Initiation Checklist*. In our analysis, we examined evidence supporting the calculations in the petition to determine the probative value of the petition margins for use as an adverse facts available rate. We also examined the key elements of the export-price and normal-value calculations used in the petition to derive dumping margins. Further, we examined information in the petition, and its supplements, that came from various independent sources which corroborates key elements of the export-price and normal-value calculations that were used to derive the estimated dumping margins in the petition. *See Initiation Notice*. We received no comments as to the relevance or probative value of this information. Based on the foregoing, the Department has determined that the information provided by independent sources that was included in the petition, as revised by the Department, corroborates the 190.74 percent rate, to the extent practicable. Therefore, the Department finds that the rates derived from the petition for initiation purposes, are reliable for purposes of calculating a rate based on adverse inferences.

Preliminary Determination

The weighted-average dumping margin is as follows:

Manufacturer/exporter	Margin (percent)
China-Wide Rate	190.74

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all entries of sodium nitrite from the PRC, as described in the "Scope of the Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin indicated in the chart above. The suspension-of-liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. Under section 735(b)(2) of the Act, if the Department's final determination is affirmative, the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments on the preliminary determination may be submitted to the Assistant Secretary for Import Administration no later than 30 days after the date of publication of this preliminary determination. 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline for the submission of case briefs. 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. *Id.* Executive summaries should be limited to five pages total, including footnotes. *Id.* Further, we request that parties submitting briefs and rebuttal briefs provide the Department with an electronic copy of the public version of such briefs.

In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested

parties an opportunity to comment on arguments raised in case and rebuttal briefs. If a request for a hearing is made in this investigation, the hearing will tentatively be held three days after the deadline for submitting rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *Id.*

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 16, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-8832 Filed 4-22-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-428-841

Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that sodium nitrite from the Federal Republic of Germany (Germany) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the date of the preliminary determination.

EFFECTIVE DATE: April 23, 2008.

FOR FURTHER INFORMATION CONTACT:

Brian C. Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482 1766 or (202) 482 3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 28, 2007, the Department initiated the antidumping duty investigation of sodium nitrite from Germany. *See Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 72 FR 68563 (December 5, 2007) (*Initiation Notice*). The petitioner in this investigation is General Chemical LLC.

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. 72 FR at 68564. No parties submitted comments on the scope.

The Department also set aside a period of time for parties to raise issues regarding product characteristics and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. *See Initiation Notice*, 72 FR at 68564. Interested parties submitted comments on this issue.

On December 21, 2007, we selected BASF AG (BASF), the largest producer/exporter of sodium nitrite from Germany during the period of investigation (POI), as the mandatory respondent in this proceeding. *See Memorandum to James Maeder, Director Office 2, from the Team, regarding "Antidumping Duty Investigation of Sodium Nitrite from the Federal Republic of Germany - Selection of Respondents for Individual Review,"* dated December 21, 2007.

On January 3, 2008, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of sodium nitrite from Germany and the People's Republic of China are materially injuring the U.S. industry and the ITC notified the Department of its findings. *See Sodium Nitrite From China and Germany, Case Numbers: 701-TA-453 (Preliminary) and 731-TA-1136-1137 (Preliminary)*, 72 FR 2278 (January 14, 2008).

We subsequently issued the antidumping questionnaire to BASF on

January 14, 2008. On January 28, 2008, BASF informed the Department that it would not respond to the Department's antidumping duty questionnaire.

Period of Investigation

The POI is October 1, 2006, through September 30, 2007.

Scope of the Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO₂ and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to the sole respondent in this investigation, BASF.

As noted in the "Supplementary Information" section above, BASF informed the Department that it would not respond to the Department's antidumping duty questionnaire. *See BASF's January 28, 2008, letter to the Department.* Section 776(a)(2) of the Act provides that, (1) if an interested party withholds information requested by the administering authority, (2) fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, (3) significantly impedes a proceeding under this title, or (4) provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the

administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, BASF failed to respond to the Department's antidumping duty questionnaire and, as such, it withheld information that we requested for purposes of determining its antidumping duty margin, thereby significantly impeding this proceeding. Because this company did not provide any information, sections 782(d) and 782(e) of the Act are not applicable. Thus, in reaching our preliminary determination for BASF, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based its dumping margin on facts otherwise available.

Application of Adverse Inferences for Facts Available

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). It is the Department's practice to apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. *See* the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 (1994) at 870 (SAA), reprinted in 1994 U.S.C.A.N. 4040, 4198–4199. Furthermore, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.” *See Antidumping Duties; Countervailing*

Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (Nippon); and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

BASF's failure to respond to the Department's questionnaire constitutes a failure on its part to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Based on the above, the Department has preliminarily determined that BASF failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See* SAA at 870 and 19 CFR 351.308(c). It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216, 77218 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted in this case, we have assigned to BASF the highest margin alleged in the petition, as referenced in the *Initiation Notice*, of 237.00 percent. (*See Initiation Notice*, 72 FR at 68567; and November 28, 2007, *Initiation Checklist* at page 9.)

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal. To “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *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, 11843 (March 13, 1997)). The Department's regulations state 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. *See* 19 CFR 351.308(d); *see also* SAA at 870.

To the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis. *See* *Initiation Checklist* at page 9. We also examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA in this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export-price (EP) and normal-value (NV) calculations used in the petition to derive margins. *See* *Initiation Checklist* at pages 5–9. During our pre-initiation analysis, we also examined information from various independent sources provided either in the petition or in supplements to the petition that corroborates key elements of the EP and

NV calculations used in the petition to derive estimated margins. *See id.* Specifically, the petitioners calculated three constructed export prices (CEPs) using POI price quotes for sodium nitrite produced by BASF in Germany and sold (or offered for sale) by BASF's affiliate in the United States. *See* Initiation Checklist at page 5. These price quotes identify the price that the first U.S. customer unaffiliated with BASF paid for the subject merchandise. *See id.* The petitioners also calculated an export price (EP) using the average unit values (AUVs) of sodium nitrite from Germany imported into the United States during the POI, classified under HTSUS 2834.10.1000, as reported in the Bureau of the Census IM145 import statistics. *See* Volume 2 of the November 8, 2007, petition at Exhibit II-6 (the petition). We compared the U.S. price quotes to the AUVs for this period and confirmed that the U.S. price quotes were consistent with the AUVs. *See* Initiation Checklist at Attachment V, Volume 2 of the petition at Exhibit II-6, and the November 20, 2007, supplement to the petition at Exhibit 5. The petitioners adjusted CEPs, where applicable, for discounts, foreign inland freight, ocean freight, marine insurance, U.S. inland freight and transloading fees, U.S. customs and port fees, warehousing expenses, and CEP profit. *See* Initiation Checklist at page 5. For EP based on customs value, the petitioner made an adjustment only for foreign inland freight, as the AUV is based on an FOB foreign port price. *See* Initiation Checklist at pages 5-6. Based on our review of the information contained in the petition, we recalculated CEP to correct certain errors in the petitioner's calculation. *See id.* Based on an examination of the aforementioned information, we considered the petitioner's calculation of net U.S. prices to be corroborated. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the petition.

With respect to NV, the petitioner stated that neither home-market prices nor third-country prices of German-produced sodium nitrite were reasonably available. According to the petitioner, it was unsuccessful in obtaining such pricing information, despite its best efforts. Therefore, the petitioner based NV on constructed value (CV). *See* Initiation Checklist at pages 7-8.

Pursuant to section 773(e) of the Act, CV consists of the cost of manufacture (COM); selling, general and administrative (SG&A) expenses; packing expenses; and profit. In

calculating COM and packing, the petitioner based the quantity of each of the inputs used to manufacture and pack sodium nitrite in Germany on its own production experience during the POI. The petitioner then multiplied the usage quantities by the value of the inputs used to manufacture and pack sodium nitrite in Germany based on publicly available data (e.g., ammonia, caustic soda), data obtained from market research (e.g., silicon dioxide), or its own costs (e.g., packing materials). *See* Initiation Checklist at pages 7-8.

The petitioner determined labor costs using the labor inputs derived from its own experience which it valued using an industrial German wage rate obtained from the International Labour Organization's "Laborsta" database at <http://laborsta.ilo.org>. The petitioner determined energy costs (i.e., electricity, natural gas, steam, cooling water, and city water) using German price data obtained from market research. To calculate factory overhead, the petitioner relied on its own experience (for factory overhead exclusive of depreciation) and on BASF's parent company's consolidated financial data (for depreciation). To calculate SG&A expenses and profit, the petitioner relied on BASF's parent company's consolidated financial data, for the fiscal year ending December 31, 2006, the period most contemporaneous with the POI for which the petitioner was able to obtain such information. *See* Initiation Checklist at page 8.

Based on our examination of the aforementioned information, we consider the petitioner's calculation of CV to be corroborated. Because the petitioner demonstrated, and we confirmed, the validity of the input-usage quantities it used in its CV build-up, used public sources of information that we confirmed were accurate to value inputs of production, and used financial documents of the type accepted by the Department in prior cases that we consider to be accurate (e.g., a financial statement) to compute factory overhead, SG&A, financial expense, and profit, we consider the petitioner's calculation of NV corroborated. Further, we consider the petitioner's calculation of NV corroborated because several parts of that calculation relied on publicly available information which does not require further corroboration. Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine that the

margins in the petition are reliable for purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. 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. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as "best information available" (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin. In *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the AFA rate bore a "rational relationship" to the respondent's "commercial practices" and was, therefore, relevant.

In the pre-initiation stage of this investigation, we confirmed that the calculation of the margins in the petition reflected the commercial practices of the sodium nitrite industry during the POI. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily find that the highest margin in the petition, which we determined during our pre-initiation analysis was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination, is relevant as the AFA rate for BASF in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving BASF, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determined to be relevant to BASF in this investigation, we have corroborated the AFA rate "to the extent practicable." *See* section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating that, "pursuant

to the to the extent practicable' language the corroboration requirement itself is not mandatory when not feasible."'). Therefore, we find that the estimated margin of 237.00 percent in the *Initiation Notice* has probative value. Consequently, in selecting a rate to apply as AFA with respect to BASF, we have applied the margin rate of 237.00 percent, the highest estimated dumping margin set forth in the *Initiation Notice*.

All-Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or de minimis or are determined entirely under section 776 of the Tariff Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign as the all-others rate the simple average of the margins in the petition. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271, 67272 (November 28, 2007). *See also Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 34128, 34129 (June 18, 2004). Consistent with our practice, we used the rates in the petition that were considered in the Department's initiation to calculate a simple average to be assigned as the all-others rate. That simple average, 150.82 percent, is derived from the following petition rates: 237.00 percent, 151.98 percent, 148.73 percent, and 65.58 percent. *See Initiation Checklist* at page 9.

Preliminary Determination

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
BASF AG	237.00
All Others	150.82

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of sodium nitrite from Germany, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average

dumping margin, as indicated in the chart above, as follows: (1) the rate for the firm listed above will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 237.00 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of sodium nitrite from Germany are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than 30 days after the date of publication of the preliminary determination. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S.

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs.

We will not be conducting verification in this case because BASF failed to respond to the Department's questionnaire, as discussed above in the "Use of Facts Otherwise Available" section of this notice. Therefore, the deadline for submission of factual information in 19 CFR 351.301(b)(1) is not applicable. Thus, the deadline for submission of factual information in this investigation will be seven days after the date of publication of this notice.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 16, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-8836 Filed 4-22-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XH05

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Report 5.2 "Best Practice Approaches for Characterizing, Communicating, and Incorporating Scientific Uncertainty in Decisionmaking"

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability and request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to announce a 45-day public comment period for the draft report

titled, U.S. Climate Change Science Program Synthesis and Assessment Product 5.2 "Best practice approaches for characterizing, communicating, and incorporating scientific uncertainty in decisionmaking."

This draft report is being released solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by NOAA. It does not represent and should not be construed to represent any Agency policy or determination. After consideration of comments received on the draft report, a revised version along with the comments received will be published on the CCSP web site.

DATES: Comments must be received by June 9, 2008.

ADDRESSES: The draft Synthesis and Assessment Product: 5.2 is posted on the CCSP Web site at:

<http://www.climatescience.gov/Library/sap/sap5-2/default.php>

Detailed instructions for making comments on this draft report are provided at the CCSP link. Comments must be prepared in accordance to these instructions and must be submitted to:

5.2-uncertainties@climatescience.gov

FOR FURTHER INFORMATION CONTACT: Dr. Fabien Laurier, Climate Change Science Program Office, 1717 Pennsylvania Avenue, NW, Suite 250, Washington, DC 20006, Telephone: (202)419-3481.

SUPPLEMENTARY INFORMATION: The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that promote climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues.

Dated: April 8, 2008.

William J. Brennan,

Deputy Assistant Secretary of Commerce for International Affairs, and Acting Director, Climate Change Science Program.

[FR Doc. E8-8829 Filed 4-22-08; 8:45 am]

BILLING CODE 3510-12-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XH02

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of Availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces that the Proposed Lake Ozette Sockeye Salmon Recovery Plan (Plan) is available for public review and comment. The Plan addresses the Lake Ozette Sockeye Salmon (*Oncorhynchus nerka*) Evolutionarily Significant Unit (ESU), which spawns in Lake Ozette and its tributaries, on the Olympic Peninsula at the western edge of Washington State. NMFS is soliciting review and comment from the public and all interested parties on the Proposed Plan.

DATES: NMFS will consider and address all substantive comments received during the comment period. Comments must be received no later than 5 p.m. Pacific daylight time on June 23, 2008.

ADDRESSES: Please send written comments and materials to Rosemary Furfey, National Marine Fisheries Service, 1201 N.E. Lloyd Blvd, Suite 1100, Portland, OR 97232. Comments may also be submitted by e-mail to: OzettePlan.nwr@noaa.gov. Include in the subject line of the e-mail comment the following identifier: Comments on Lake Ozette Sockeye Plan. Comments may be submitted via facsimile (fax) to 503-872-2737.

Persons wishing to review the Plan can obtain an electronic copy (i.e., CD-ROM) from Sharon Houghton by calling 503-230-5418 or by e-mailing a request to sharon.houghton@noaa.gov with the subject line "CD-ROM Request for Lake Ozette Sockeye Plan." Electronic copies of the Plan are also available on-line on the NMFS website www.nwr.noaa.gov/Salmon-Recovery-Planning/ESA-Recovery-Plans/Draft-Plans.cfm

FOR FURTHER INFORMATION CONTACT: Rosemary Furfey, NMFS Lake Ozette Salmon Recovery Coordinator at 503-231-2149, or Elizabeth Gaar, NMFS Salmon Recovery Division at 503-230-5434.

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions beneficial to the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans incorporate: (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

NMFS is responsible for developing and implementing ESA recovery plans for listed salmon and steelhead. In so doing, NMFS' goal is to restore endangered and threatened Pacific salmonids to the point that they are again self-sustaining members of their ecosystems and no longer need the protections of the ESA. NMFS believes it is critically important to base its recovery plans on the many state, regional, tribal, local, and private conservation efforts already underway throughout the region. This Plan is the product of a collaborative process initiated by NMFS and involving the participation and contributions of a wide group of private and governmental entities, citizens, and sovereigns (tribes) with the potential to contribute to recovery. In 2005, NMFS and the Lake Ozette Steering Committee (Steering Committee), an existing, locally based citizen group, began working together to write a draft recovery plan for Lake Ozette sockeye salmon. The goal was to produce a plan that meets ESA requirements for recovery plans as well as the State of Washington's recovery planning outline and guidance (www.governor.wa.gov/gsro/default/htm).

The Steering Committee has met periodically since 1981 to discuss natural resource issues related to sockeye salmon. The Steering Committee is made up of representatives from the Makah and Quileute Tribes, Olympic National Park, Clallam County, local land owners, Washington Governor's Salmon Recovery Office, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, NMFS, U.S. Environmental Protection Agency, North Olympic Peninsula Lead Entity, private timber companies, and local citizens.

Frequent Steering Committee meetings enabled NMFS and Puget Sound Technical Recovery Team members to share draft recovery plan products and seek Steering Committee review and comment as the draft plan was developed. In early 2007, the preliminary draft Lake Ozette Sockeye Limiting Factors Analysis (Haggerty *et al.*, 2007) and NMFS' Status Report for Completing the Sockeye Recovery Plan were posted on the North Olympic Peninsula Lead Entity web page at noplegroup.org/NOPLE/pages/watersheds/OzetteLakeWatershedPage.htm.

In addition to participating in frequent Steering Committee meetings during development of the draft recovery plan, NMFS periodically briefed staff or members of the following key stakeholder groups: Olympic National Park, Clallam County Commissioners and Planning Department, Makah Tribe, Quileute Tribe, Washington Forest Protection Association, Olympic Coast National Marine Sanctuary, Lake Ozette watershed private timber land managers, Lake Ozette watershed landowners, and North Olympic Peninsula Lead Entity.

NMFS has appointed teams of scientists with expertise in salmon species to provide scientific support for recovery planning in the Northwest. These technical recovery teams (TRTs) include biologists from NMFS, state, tribal, and local agencies, academic institutions, and private consulting groups. The Puget Sound TRT provided two reports for the Lake Ozette sockeye salmon recovery planning process: (1) a description of the Lake Ozette sockeye salmon population (Currens *et al.*, 2006) and (2) viability criteria for the sockeye (Rawson *et al.*, 2008). The team also reviewed the Lake Ozette Sockeye Limiting Factors Analysis (Haggerty *et al.*, 2007) and the draft recovery plan in detail, and the Plan was revised accordingly.

The proposed Plan is now available for public review and comment. The Limiting Factors Analysis and the two Puget Sound TRT reports, which provide the scientific basis for the Plan, are also available for public review and comment. With approval of the final Plan, NMFS commits itself to implement the actions in the Plan for which it has authority and funding, to work cooperatively on implementation of other actions, and to encourage other Federal agencies and tribal governments to implement Plan actions for which they have responsibility and authority. NMFS will also encourage the State of Washington to seek similar

implementation commitments from state agencies and local governments. NMFS will seek opportunities to work with tribal governments on plan implementation to help the agency meet its trust and treaty responsibilities to the tribes. NMFS will encourage other Federal agencies to do the same when implementing programs that may affect trust and treaty resources.

NMFS expects the Plan to help NMFS and other Federal agencies take a more consistent approach to future ESA section 7 consultations and other ESA decisions. For example, the Plan will provide greater biological context for the effects that a proposed action may have on the species. This context will be enhanced by adding recovery plan science to the "best available information" for section 7 consultations as well as for ESA section 10 habitat conservation plans and other ESA decisions. Such information includes viability criteria for the ESU, better understanding of and information on limiting factors and threats facing the ESU, better information on priority areas for addressing specific limiting factors, and better geographic context for where the ESU can tolerate varying levels of risk.

The Plan

Lake Ozette, its perimeter shore, and most of the Ozette River, which forms the outlet of the lake to the estuary and Pacific Ocean, are included in the 922,000-acre Olympic National Park. This Plan complements, recognizes, and works within the authorities of the Olympic National Park, Clallam County, the Forest Practices Habitat Conservation Plan, the Washington Department of Natural Resources Habitat Conservation Plan, and tribal trust and treaty rights, and does not augment or supersede these or other authorities.

Lake Ozette sockeye salmon were listed under the Endangered Species Act (ESA) on March 25, 1999 (64 FR 14528) as a species threatened with extinction. The Lake Ozette Sockeye Salmon ESU is unique among other ESA-listed salmon in being made up of only one population with an inland range that is limited to a single freshwater watershed a short distance from the ocean. Furthermore, the Lake Ozette watershed has an unusual potential for protection and restoration of landscape processes to support long-term salmon survival, because it is relatively undeveloped, has a relatively low human population density, and the lake itself is located in the Olympic National Park.

The Plan is based on a series of hypotheses about what is limiting the

survival of Lake Ozette sockeye salmon. These hypotheses are based on the best available current knowledge about the Lake Ozette sockeye salmon, and are designed to be tested in the course of time through monitoring the fish, their environment, and the effects of the actions that may be taken to protect and improve the Lake Ozette sockeye's ecosystem and survival chances. The process of designing actions based on best available information, then monitoring the results to find out what works best and changing the actions as appropriate, is called adaptive management. The Plan is intended as a tool for adaptive management for Lake Ozette sockeye salmon recovery.

ESU Addressed and Planning Area

The Plan is intended for implementation within the range of the Lake Ozette Sockeye Salmon ESU, which spawns in Lake Ozette or its tributaries, on the Olympic Peninsula at the western edge of Washington State. The Lake Ozette Sockeye Salmon ESU is made up of only one population (Currens *et al.*, 2006), which currently contains five distinct spawning aggregations that are described in the Plan as subpopulations. The subpopulations can be grouped according to whether they spawn in tributaries or near lake beaches. Lake Ozette sockeye salmon are distinguished from other Washington sockeye salmon ESUs based upon unique genetic characteristics, early river entry, the relatively large adult body size, and large average smolt size relative to other coastal Washington sockeye salmon populations.

Lake Ozette is situated on the coastal plain between the Pacific Ocean and the Olympic Mountains. The lake is approximately 8 miles (12.9 km) long from north to south and 2 miles (3.2 km) wide, irregularly shaped, and containing several bays, distinct points, and three islands. With a surface area of 11.8 mi² (30.6 km²; 7,550 acres; 3,056 ha), Lake Ozette is the third largest natural lake in Washington State. The Ozette River drains the lake from its north end and travels approximately 5.3 miles (8.5 km) along a sinuous course to the Pacific Ocean. The total drainage area of the Ozette watershed at the confluence with the Pacific Ocean is 88.4 mi² (229 km²).

Historically, the Ozette watershed supported thriving populations of sockeye salmon, which were an important element of the fisheries of the Makah and Quileute Tribes as well as an important subsistence species for early European-American settlers in the watershed. The peak harvest of 17,500 fish was recorded in 1949, but

abundance decreased rapidly in the following two decades. Because of declining numbers, tribal commercial harvest ceased in 1974 and all tribal ceremonial and subsistence harvest ceased in 1982.

The Plan's Recovery Goals and Recovery Criteria

The Plan's goal is for the Lake Ozette sockeye salmon population to reach the point that it is naturally self-sustaining, no longer needs the protection of the Act, and can be delisted. In addition, a recovery plan can have "broad-sense" goals that may go beyond the requirements for delisting to acknowledge social, cultural, or economic values regarding the listed species. NMFS and the Lake Ozette Steering Committee crafted the following vision statement describing desirable future conditions for the Lake Ozette sockeye salmon and its human and biological setting:

"The naturally spawning Lake Ozette sockeye salmon population is sufficiently abundant, productive, and diverse (in terms of life histories and geographic distribution) to provide significant ecological, cultural, social, and economic benefits. Protection and restoration of ecosystems have sustained processes necessary to maintain sockeye as well as other salmon, steelhead, cutthroat trout, and other native fish and wildlife species. Community livability, economic well-being, and treaty-reserved fishing rights have benefited by balancing salmon recovery with management of local land use and fishery economies."

To meet the ESA requirement for objective, measurable criteria for delisting, the Plan provides biological recovery criteria based on the Puget Sound TRT viability criteria for Lake Ozette sockeye salmon as well as "threats" criteria based on the listing factors defined in ESA section 4(a)(1).

Biological Recovery Criteria

The Puget Sound TRT provided viability criteria for Lake Ozette sockeye salmon in terms of the four "viable salmonid population" (VSP) parameters defined in a NMFS technical memorandum, *Viable salmonid populations and the recovery of evolutionarily significant units* (McElhany *et al.*, 2000). The Puget Sound TRT's viability criteria for Lake Ozette sockeye salmon are as follows:

- Abundance: Between 35,500 and 121,000 adult spawners, over a number of years.
- Productivity (Growth Rate): Stable or increasing

- Spatial Structure: Multiple, persistent, and spatially distinct beach spawning aggregations, augmented by tributary spawning aggregations.

- Diversity: One or more persistent spawning aggregations from each major genetic and life history group historically present within that population. Maintain the distinctness between Lake Ozette sockeye salmon and kokanee.

NMFS, in coordination with the Steering Committee, concluded that the Puget Sound TRT's viability criteria should be the biological recovery criteria of the plan.

Threats Criteria

"Threats" are the human activities or natural events that cause the factors limiting a species' survival. For example, where high water temperatures are identified as a limiting factor, removal of riparian vegetation, which causes loss of shade and results in higher water temperatures, is categorized as a threat. The threats criteria define the conditions under which the listing factors, or threats, can be considered to be addressed or mitigated. Threats criteria are provided in Section 3.3.2 of the Plan.

Causes for Decline and Current Threats

The 1999 listing of the Lake Ozette sockeye salmon as threatened under the ESA was primarily attributed to concerns about low abundance and effects of small population genetic and demographic variability. A more thorough identification of limiting factors is provided in the draft Lake Ozette Sockeye Limiting Factors Analysis (Haggerty *et al.*, 2007). Based on the best available information and analysis, the Lake Ozette Steering Committee's Technical Workgroup evaluated and rated each of the limiting factors hypotheses for its contribution to sockeye population or subpopulation mortality by life stage.

Some limiting factors, habitat conditions, and life histories are shared among all subpopulations, while others vary. In the Limiting Factors Analysis, the subpopulations were grouped based on spawning environment, i.e., tributary vs. beach, and limiting factors were described in three categories: those affecting the entire population; those specific to beach spawners; and those specific to tributary spawners.

Two limiting factors are hypothesized as having a high impact on all Lake Ozette sockeye salmon population segments: piscivorous fish predation on juveniles rearing in the lake, and general marine survival. Limiting factors with moderate impact on all population

segments are marine mammal predation on adults re-entering the Ozette River and water quality in the Ozette River.

Limiting factors hypothesized as having a high impact specifically on beach spawners are poor-quality spawning habitat, which decreases survival in the incubation-to-emergence life stage, and predation on adults, eggs, and newly emerged fry. Limiting factors with moderate impact on beach spawners are: seasonal lake level changes; water quality issues, including turbidity and fine sediment; and competition for good quality spawning habitat, which can result in redd superimposition and decreased egg-to-fry survival.

Limiting factors hypothesized as having high impact specifically on tributary spawners are fine sediments, unstable channel, and other water quality issues that reduce spawning habitat quality and result in decreased egg-to-fry survival. High predation on fry during their emigration to the lake was identified as a limiting factor with moderate impact on tributary spawners.

Recovery Strategies and Actions

The Plan recommends an overall recovery strategy based on current research about the relationships between watershed processes, land use, and freshwater habitat. This information is then related to what is known about sockeye salmon mortality by life stage, and to the hypothesized limiting factors. The result is a hierarchy of types of recovery strategies that can form the basis for setting priorities among potential actions.

The first priority, and likely the most effective type of action, is to assess, protect, and maintain good quality habitat and the processes that create and maintain it. One example would be to protect currently used spawning areas. Another would be for forest landowners to protect willow or streamside areas with conservation easements, where trees could be allowed to grow large, mature, and eventually fall by natural forces, creating habitat conditions needed by sockeye salmon.

Next in importance and certainty of effectiveness is reconnecting isolated habitat – for example, removing a blockage in the stream, thus allowing salmon more room to spawn and rear.

Third is restoring biological processes of various kinds; this includes a wide range of potential actions. For example: restoring natural predator-prey balance by improving egg-to-fry survival and/or reducing non-native fish species by means of selective fishing; ceasing to remove large woody debris from

sections of the lower Ozette River; and assessing sources of sediment and reducing sediment production and delivery to streams.

Directly restoring degraded habitat is of lower priority because it is more difficult, often more costly, and often effective only in the short term, compared to restoring the processes that create habitat and will continue creating properly functioning habitat over time. However, some direct actions, such as placing large woody debris in carefully chosen areas, will initiate biological processes that are likely to continue naturally. Creating new habitat is significantly more difficult than working to protect and restore existing habitat; creating new habitat is therefore of lowest priority, although in some circumstances it may be the only alternative.

NMFS, with input from the Steering Committee, evaluated the sub-basins in the Lake Ozette watershed for their importance as sockeye habitat. The Plan accordingly provides geographic priorities for recovery actions.

Habitat, harvest, and hatchery factors affecting Lake Ozette sockeye salmon are included in the recovery strategies. Hatchery and harvest management issues are presented and addressed within the context of biological processes.

NMFS and the Lake Ozette Steering Committee developed an extensive list of 121 potential projects/actions. The proposed actions are designed to address the full range of limiting factors for all life cycle stages of Lake Ozette sockeye salmon and are intended to improve the health and ecosystems of these fish.

The proposed actions are in six categories:

- Fisheries management
- Habitat-related actions
- Hatchery supplementation
- Predation-related actions
- Research, monitoring, and adaptive management
- Public education and outreach

The proposed recovery actions will need to be implemented in cooperation with all appropriate permitting authorities (including the Olympic National Park), and in the context of existing permits, regulations, agreements, and public processes.

Research, Monitoring, and Adaptive Management

The Plan identifies the many knowledge gaps and uncertainties involved in designing recovery actions for the Lake Ozette sockeye salmon. Because the proposed recovery actions are based on hypotheses about the

relationships between fish, limiting factors, human activities, and the environment, the Plan recommends research and monitoring to determine progress in recovery. Monitoring is the basis for adaptive management – the process of adjusting management actions and/or directions based on new information. Research, monitoring, and adaptive management are built into the Plan.

Time and Cost Estimates

The ESA section 4(f)(1) requires that the recovery plan include “estimates of the time required and the cost to carry out those measures needed to achieve the Plan’s goal and to achieve intermediate steps toward that goal” (16 U.S.C. 1533[f](1)).

Appendix E of the Plan provides cost estimates for actions where costs are available. Costs for actions that are being implemented as part of ongoing, existing programs are considered “baseline” and are not included in Appendix E as costs to recover sockeye salmon. During the public comment period, NMFS will work with regional experts to identify costs, scale, or unit costs for actions that require more information. Appendix E and the total cost estimate will be updated with this new information for the final recovery plan. The overall total cost to implement potential recovery actions for the first 10 years of this plan is estimated to be about \$46 million. Many of these are one-time costs. Approximately \$100,000 represents ongoing, annual administrative or infrastructure costs that will likely continue for the duration of implementation of the recovery plan. Thus, it can be inferred that if recovery takes 50 years, another \$4 million may be incurred over the long term to continue and maintain proposed habitat improvements.

NMFS estimates that recovery of the Lake Ozette Sockeye Salmon ESU, like recovery for most of the ESA-listed salmon, could take 50 to 100 years. Because many uncertainties exist about how sockeye salmon and their habitat will respond to recovery actions, the costs and recovery actions in this plan focus on the first 10 years of implementation. Actions and costs will be revised over time as part of adaptive management.

Unlike other ESA-listed salmon species in Washington State, the Lake Ozette Sockeye Salmon ESU has not had a state-designated recovery board responsible for developing the recovery plan. Therefore, NMFS is working with the Lake Ozette Steering Committee and other entities such as the newly formed

North Pacific Coast Lead Entity and the Washington Coast Sustainable Salmon Partnership to make an implementation plan. NMFS anticipates that the organizations potentially involved will choose to participate, in recognition of the shared benefits of habitat protection and restoration. A detailed implementation schedule and further details of an organizational approach to implementation will be produced in 2008 after the recovery plan is adopted.

Conclusion

NMFS concludes that the Plan meets the requirements of ESA section 4(f) and thus is proposing it as an ESA recovery plan.

Public Comments Solicited

NMFS solicits written comments on the Proposed Plan. All comments received by the date specified above will be considered prior to NMFS’ decision whether to approve the Plan. Additionally, NMFS will provide a summary of the comments and responses through its Northwest Region web site and provide a news release for the public announcing the availability of the response to comments. NMFS seeks comments particularly in the following areas: (1) the analysis of, and hypotheses concerning, limiting factors and threats; (2) the recovery objectives, strategies, and actions; (3) the criteria for removing the ESU from the Federal list of endangered and threatened wildlife and plants; and (4) estimates of time and cost to implement recovery actions, including the intent to be even more specific by soliciting an implementation schedule.

Literature Cited

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Dept. of Commerce, NOAA Tech. Memo., NMFS-NWFSC-42, 156p.

Rawson, K., N.J. Sands, K.P. Currens, W. Graeber, M. Ruckelshaus, R. Fuerstenberg, and J.B. Scott. 2008. Viability Criteria for the Lake Ozette Sockeye Salmon ESU. Puget Sound Technical Recovery Team document. Northwest Fisheries Science Center. NOAA Fisheries Service. Seattle, WA. 39p.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 17, 2008.

Marta Nammack,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8-8831 Filed 4-22-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Revised Draft Framework for Developing the National System of Marine Protected Areas and Response to Comments

AGENCY: NOAA, Department of Commerce (DOC).

ACTION: Extension of public comment period; Notice on the Revised Draft Framework for Developing the National System of Marine Protected Areas.

SUMMARY: NOAA and the Department of the Interior published a notice in the *Federal Register* on March 17, 2008 (73 FR 14227) announcing a 30-day public comment period on the Revised Draft Framework for Developing the National System of Marine Protected Areas (Revised Draft Framework). Copies of the Revised Draft Framework can be requested via the contact information below or downloaded from <http://www.mpa.gov>. The deadline for public comment on the Revised Draft Framework is hereby extended.

DATES: The extended deadline for comments on the Revised Draft Framework is 11:59 EDT, May 16, 2008.

ADDRESSES: All comments regarding the Revised Draft Framework should be submitted to Joseph Uravitch, National MPA Center, N/ORM, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910. Comments sent via e-mail should be sent to mpa.comments@noaa.gov, and all comments sent by fax should be sent to 301-713-3110. E-mail and fax comments should state "Revised Draft Framework Comments" in the subject line.

FOR FURTHER INFORMATION CONTACT:

Refer to the *Federal Register* notice of March 17, or contact Lauren Wenzel, NOAA, at 301-713-3100, or via e-mail at mpa.comments@noaa.gov.

Dated: April 16, 2008.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. E8-8672 Filed 4-22-08; 8:45 am]

BILLING CODE 3510-08-M

COMMODITY FUTURES TRADING COMMISSION

Proposal To Exempt the Trading and Clearing of Certain Products Related to streetTRACKS® Gold Trust Shares

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed order and request for comment.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or the "Commission") is proposing to exempt the trading and clearing of products called options on streetTRACKS® Gold Trust Shares ("ST Gold Options"), proposed to be traded on a national securities exchange, and cleared through the Options Clearing Corporation ("OCC"), from the provisions of the Commodity Exchange Act ("CEA")¹ and the regulations thereunder to the extent necessary to permit them to be so traded and cleared. Authority for this exemption is found in Section 4(c) of the CEA.²

DATES: Comments must be received on or before April 30, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/http://frwebgate.access.gpo/cgi-bin/leaving>. Follow the instructions for submitting comments.

- *E-mail:* secretary@cftc.gov. Include "OCC ST Gold Options 4(c)" in the subject line of the message.

- *Fax:* 202/418-5521.

- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Courier:* Same as mail above.

All comments received will be posted without change to <http://www.CFTC.gov/>.

¹ 7 U.S.C. 1 *et seq.*

² 7 U.S.C. 6(c).

FOR FURTHER INFORMATION CONTACT:

Robert B. Wasserman, Associate Director, 202-418-5092, rwasserman@cftc.gov, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OCC is both a Derivatives Clearing Organization ("DCO") registered pursuant to Section 5b of the CEA, 7 U.S.C. 7a-1, and a securities clearing agency registered pursuant to Section 17A of the Securities Exchange Act of 1934 ("the '34 Act").³

OCC has filed with the CFTC, pursuant to Section 5c(c) of the CEA and Commission Regulations 39.4(a) and 40.5 thereunder,⁴ requests for approval of rules and rule amendments that would enable OCC to clear and settle ST Gold Options⁵ traded on a national securities exchange in its capacity as a registered securities clearing agency (and not in its capacity as a DCO).⁶ Section 5c(c)(3) provides that the CFTC must approve any such rules and rule amendments submitted for approval unless it finds that the rules or rule amendments would violate the CEA.

The request for approval concerning the ST Gold Options was filed effective February 4, 2008, and Amendment No. 1 thereto was filed effective March 7, 2008.

II. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the CEA empowers the CFTC to "promote responsible economic or financial innovation and fair competition" by exempting any transaction or class of transactions from any of the provisions of the CEA (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest.⁷ The Commission

³ 15 U.S.C. 78q-1.

⁴ 7 U.S.C. 7a-2(c), 17 CFR 39.4(a), 40.5.

⁵ streetTRACKS® Gold Trust Shares, which underly ST Gold Options, are described in greater detail in the "Proposed Exemptive Order for ST Gold Futures Contracts," 73 FR 13,867 (March 14, 2008). The length of the comment period for this proposal is informed by the fact that the ST Gold Futures Contracts proposal is outstanding, and the goal of addressing both proposals simultaneously.

⁶ See SR-OCC-2008-04 and Amendment No. 1 thereto. OCC has also filed these proposed rule changes with the SEC.

⁷ Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1), provides in full that:

In order to promote responsible economic or financial innovation and fair competition, the

may grant such an exemption by rule, regulation or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

In enacting Section 4(c), Congress noted that the goal of the provision “is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.”⁸ Permitting ST Gold Options to trade on national securities exchanges and be cleared on OCC as discussed above may foster both financial innovation and competition. In accordance with the Memorandum of Understanding entered into between the CFTC and the Securities and Exchange Commission (“SEC”) on March 11, 2008, and in particular the addendum thereto concerning *Principles Governing the Review of Novel Derivative Products*, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or SEC-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority). The CFTC is requesting comment on whether it should exempt ST Gold Options, as described above, that are traded on a national securities exchange and cleared through OCC, from the CEA and the Commission’s regulations thereunder, to the extent necessary to permit them to be so traded and cleared.

In proposing this exemption, the CFTC need not—and does not—find that ST Gold Options are (or are not) subject to the CEA. During the legislative process leading to the

enactment of Section 4(c) of the CEA, the House-Senate Conference Committee noted that:

The Conferees do not intend that the exercise of exemptive authority by the Commission would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward. Rather than making a finding as to whether a product is or is not a futures contract, the Commission in appropriate cases may proceed directly to issuing an exemption.⁹

ST Gold Options are “novel instruments” and the “determination as to [their] jurisdiction is not straightforward.” Given their potential usefulness to the market, however, the Commission believes that this may be an appropriate case for issuing an exemption without making a finding as to the nature of these particular instruments.

Section 4(c)(2) provides that the Commission may grant exemptions only when it determines: that the requirements for which an exemption is being provided should not be applied to the agreements, contracts or transactions at issue, and the exemption is consistent with the public interest and the purposes of the CEA; that the agreements, contracts or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory responsibilities under the CEA.¹⁰

The purposes of the CEA include “promot[ing] responsible innovation and fair competition among boards of trade, other markets and market

participants.”¹¹ It may be consistent with these and the other purposes of the CEA, with the public interest, with the CFTC-SEC Memorandum of Understanding of March 11, 2008, and with the addendum thereto, for the mode of trading of these transactions—whether it is to be through CFTC-regulated markets and clearing organizations or SEC-regulated markets and clearing organizations—to be determined by competitive market forces. Accordingly, the CFTC is requesting comment as to whether this exemption from the requirements of the CEA and Regulations thereunder should be granted in the context of these transactions.

Section 4(c)(3) includes within the term “appropriate persons” a number of specified categories of persons, and also in subparagraph (K) thereof “such other persons that the Commission determines to be appropriate in light of * * * the applicability of appropriate regulatory protections.” Both national securities exchanges and OCC, as well as their members who will intermediate these transactions, are subject to extensive and detailed regulation by the SEC under the ‘34 Act. The CFTC is requesting comment as to whether all persons trading ST Gold Options on national securities exchanges, and clearing such options on OCC, are appropriate persons.

In light of the above, the Commission also is requesting comment as to whether this exemption will interfere with its ability to discharge its regulatory responsibilities under the CEA or with the self-regulatory duties of any contract market or derivatives transaction execution facility.

III. Request for Comment

The Commission requests comment on all aspects of the issues presented by this proposed order.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”) ¹² imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed exemptive order would not, if approved, require a new collection of

Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except subparagraphs (c)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

⁸ House Conf. Report No. 102-978, 1992 U.S.C.A.N. 3179, 3213 (“4(c) Conf. Report”).

⁹ 4(c) Conf. Report at 3214-3215.

¹⁰ Section 4(c)(2) of the CEA, 7 U.S.C. 6(c)(2), provides in full that:

The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—

(A) The requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) The agreement, contract, or transaction—
(i) Will be entered into solely between appropriate persons; and

(ii) Will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

¹¹ CEA 3(b), 7 U.S.C. 5(b). See also CEA 4(c)(1), 7 U.S.C. 6(c)(1) (purpose of exemptions is “to promote responsible economic or financial innovation and fair competition.”)

¹² 44 U.S.C. 3507(d).

information from any entities that would be subject to the proposed order.

B. Cost-Benefit Analysis

Section 15(a) of the CEA, as amended by Section 119 of the Commodity Futures Modernization Act of 2000 ("CFMA"),¹³ requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The Commission is considering the costs and benefits of this proposed order in light of the specific provisions of Section 15(a) of the CEA, as follows:

1. *Protection of market participants and the public.* National securities exchanges, OCC and their members who would intermediate ST Gold Options are subject to extensive regulatory oversight.

2. *Efficiency, competition, and financial integrity.* The proposed exemption may enhance market efficiency and competition since it could encourage potential trading of ST Gold Options on markets other than designated contract markets or derivative transaction execution facilities. Financial integrity will not be affected since the ST Gold Options will be cleared by OCC, a DCO and SEC-registered clearing agency, and intermediated by SEC-registered broker-dealers.

3. *Price discovery.* Price discovery may be enhanced through market competition.

4. *Sound risk management practices.* The ST Gold Options will be subject to OCC's current risk-management practices including its margining system.

5. *Other public interest considerations.* The proposed exemption may encourage development of derivative products through market competition without unnecessary regulatory burden.

After considering these factors, the Commission has determined to seek comment on the proposed order as discussed above. The Commission invites public comment on its application of the cost-benefit provision.

* * * * *

Issued in Washington, DC, on April 21, 2008 by the Commission.

David A. Stawick,

Secretary of the Commission.

Dissenting Opinion of Commissioner Bartholomew H. Chilton to Notice of Proposed Order pursuant to Section 4(c) of the CEA which would exempt certain products related to StreetTRACKS Gold Trust Shares traded on a national securities exchange and cleared by the Options Clearing Corporation from provisions of the CEA.

I respectfully dissent from the Commission's issuance of the above-referenced proposed order. Should the CFTC ultimately approve this order, it is my hope and expectation that the SEC similarly will fully exercise its broad exemptive authority under the securities laws to permit futures exchanges to trade products that are economically equivalent to those that are or may be approved for trading on national securities exchanges, and to allow designated clearing organizations to clear such products, to ensure that the futures markets are not competitively disadvantaged with regard to such products. I dissent from today's action, because I do not believe that the proposed order provides sufficient basis for or assurance of such reciprocity in the future.

Bart Chilton,
Commissioner, Commodity Futures Trading Commission.

[FR Doc. E8-8942 Filed 4-22-08; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency National Defense Intelligence College Board of Visitors Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency, National Defense Intelligence College.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Public

Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the Defense Intelligence Agency National Defense Intelligence College Board of Visitors has been scheduled as follows.

DATES: Tuesday, June 3, 2008 (8 a.m. to 5 p.m.) and Wednesday, June 4, 2008 (8 a.m. to 12 p.m.).

ADDRESSES: National Defense Intelligence College, Washington, DC 20340-5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, Defense Intelligence Agency National Defense Intelligence College, Washington, DC 20340-5100; telephone: (202) 231-3344.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Defense Intelligence College.

Dated: April 16, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E8-8801 Filed 4-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Closed Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board will meet in closed session on May 21-22, 2008; at the Pentagon, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301-3140, via e-mail at debra.rose@osd.mil, or via phone at (703) 571-0084.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss interim finding and recommendations resulting from ongoing Task Force activities. The

¹³ 7 U.S.C. 19(a).

Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U. S. national defense posture and homeland security.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. 2) and 41 CFR 102-3.155, the Department of Defense has determined that these Defense Science Board Quarterly meeting will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology and Logistics), with the coordination of the DoD Office of General Counsel, has determined in writing that all sessions of these meetings will be closed to the public because they will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(1).

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed above, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: April 16, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8-8806 Filed 4-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Secretary of Defense's Defense Advisory Board for Employer Support of the Guard and Reserve (DAB-ESGR)

AGENCY: Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DAB-ESGR. This meeting will focus on the status of DoD actions and recommendations from previous DAB meetings, and discussion of the board's mission and future goals. This meeting is open to the public.

DATES: May 21, 2008 (8:30 a.m. to 4:45 p.m.)

ADDRESSES: Alexandria Room, Marriott Crystal Gateway, 1700 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Interested attendees may contact MAJ Elaine M. Gullotta at 703-696-1385 ext 540, or e-mail at elaine.gullotta@osd.mil.

SUPPLEMENTARY INFORMATION:

Agenda

- 8:30 Convene, (Mr. James G. Rebholz, Chairman).
- 8:35 Oath of Office (Mr. Frank Wilson).
- 8:40 Minutes approval, Due Outs from last meeting (Mr. James G. Rebholz, Chairman).
- 8:50 Review and discussion of DAB Nomination List (Mr. James G. Rebholz, Chairman).
- 9:30 Vice Admiral John G. Cotton, Chief of Navy Reserve, Commander, Navy Reserve Force.
- 10:45 Break.
- 11:00 Institute for Defense Analyses, Briefing (Mr. Colin Doyle).
- 12:00 Working Lunch (Discussion and Selection of DAB Nominees) (Mr. James G. Rebholz, Chairman).
- 1:30 Mr. Paul Wagner Presentation.
- 2:45 Board Discussion, Due Outs-Subcommittee tasks (Mr. James G. Rebholz, Chairman).
- 3:30 Break.
- 4:00 Summary of Proceedings, administrative announcements.
- 4:45 Adjourn.

Dated: April 16, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E8-8803 Filed 4-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee Closed Meeting

AGENCY: Defense Threat Reduction Agency, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics); Department of Defense.

ACTION: Federal Advisory Committee meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces the following

Federal advisory committee meeting of the Threat Reduction Advisory Committee (hereafter referred to as the Committee).

DATES: Thursday, May 8, 2008, (8 a.m. to 4 p.m.).

ADDRESSES: Defense Threat Reduction Agency, Defense Threat Reduction Center Building, Brittigan Conference Room, Room 1252, 8725 John J. Kingman Road, Fort Belvoir, Virginia 22060-6201.

FOR FURTHER INFORMATION CONTACT:

Contact Mr. Eric Wright, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060-6201, Phone: (703) 767-5717, Fax: (703) 767-5701, E-mail: eric.wright@dtra.mil.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate information related to the Committee's mission to advise on technology security, combating weapons of mass destruction (WMD), chemical and biological defense, transformation of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

Meeting Agenda: The Committee will receive summaries of current activities related to combating WMD as well as nuclear deterrent transformation activities from the USD AT&L, ATSD(NCB) and Director of DTRA. Panel summaries from five ad-hoc working Panels (Chemical-Biological Warfare Defense, Systems and Technology, Combating Weapons of Mass Destruction, Nuclear Deterrent Transformation, and Intelligence) will be provided for committee discussion.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense (Acquisition, Technology and Logistics), in consultation with the Office of the DoD General Counsel, 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.

Written Statements: Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the

GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: April 16, 2008.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. E8-8804 Filed 4-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting To Discuss the TRICARE Voluntary Agreements for Retail Refunds (VARRs) Program

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of meeting.

SUMMARY: In response to pharmaceutical industry interest in the TRICARE VARRs Program, Department of Defense will host a meeting to discuss policies and procedures for VARRs.

DATES: Thursday, May 1, 2008 (8 a.m.–12 p.m.).

ADDRESSES: Marriott Wardman Park, 2600 Woodley Road, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: LTC Travis Watson, Deputy Director, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041-3206, Telephone: (703) 681-2890; Fax: (703) 681-1940, E-mail Address: UFVARR@tma.osd.mil.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide pharmaceutical manufacturers the policies and procedures TRICARE Management Activity uses under the VARRs Program.

Meeting Agenda: Sign-in; welcome and opening remarks; review of program; discussion of reporting; questions and answers; closing remarks.

Meeting Accessibility: The availability of space in this meeting is open to the public. Seating is limited and all persons must sign in legibly.

Written Statements: The public or interested organizations may submit

written statements to UFVARR@tma.osd.mil at any time or in response to the stated agenda of a planned meeting.

Dated: April 16, 2008.

Patricia L. Toppings,
Alternate OSD Federal Register, Liaison
Officer, Department of Defense.

[FR Doc. E8-8802 Filed 4-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Record of Decision To Develop, Test, Deploy, and Plan for Decommissioning of the Ballistic Missile Defense System

AGENCY: Missile Defense Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Missile Defense Agency (MDA) is issuing this Record of Decision (ROD) to develop, test, deploy, and plan for decommissioning of the Ballistic Missile Defense System (BMDS). This decision includes the development, testing, deployment, and planning for decommissioning of land-, sea- and air-based platforms for BMDS weapons components and space-based sensors. This action will enable MDA to develop and field an integrated, layered, BMDS to defend the United States (U.S.), its deployed forces, allies, and friends against all ranges of enemy ballistic missiles in all phases of flight. The BMDS is a key component of U.S. policy for addressing ballistic missile threats worldwide.

FOR FURTHER INFORMATION CONTACT: For further information on the BMDS Programmatic Environmental Impact Statement (PEIS) or this ROD please contact Mr. Rick Lehner, MDA Director of Public Affairs at (703) 697-8997. Downloadable electronic versions of the Final PEIS and ROD are available on the MDA public access Internet Web site <http://www.mda.mil/mdalink/html/enviro.html>. Public reading copies of the Final PEIS and the ROD are available for review at the following public libraries:

- Anchorage Municipal Library (Anchorage, AK).
- Mountain View Branch Library (Anchorage, AK).
- California State Library (Sacramento, CA).
- Sacramento Public Library (Sacramento, CA).
- Hawaii State Library (Honolulu, HI).
- University of Hawaii at Manoa (Honolulu, HI).

- Arlington County Public Library, Central Branch (Arlington, VA).
- District of Columbia Public Library, Central Branch (Washington, DC).

Dated: April 11, 2008.

Patricia Toppings,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

SUPPLEMENTARY INFORMATION:

A. MDA Decision

The MDA is issuing this ROD, selecting Alternative 1 as described in the BMDS PEIS, to develop, test, deploy, and plan for decommissioning of the BMDS. This decision includes the development, testing, deployment, and planning for decommissioning of land-, sea-, and air-based platforms for BMDS weapons components. Alternative 1 also includes space-based sensors. MDA is deferring a decision on the development, testing, and deployment of space-based interceptors (Alternative 2) pending further concept development and policy discussion.

B. Background

The MDA has a requirement to develop, test, deploy, and prepare for decommissioning the BMDS to protect the U.S., its deployed forces, friends, and allies from ballistic missile threats. The proposed action would provide an integrated BMDS using existing infrastructure and capabilities, when feasible, as well as emerging and new technologies, to meet current and evolving threats in support of the MDA's mission. Consequently, the BMDS would be a layered system of defensive weapons, sensors, command and control, battle management, and communications (C2BMC), and support assets; each with specific functional capabilities, working together to defend against all classes and ranges of ballistic missile threats in all phases of flight. Multiple defensive weapons would be used to create a layered defense comprised of multiple intercept opportunities along the trajectory of the incoming ballistic missiles. This would provide a layered defensive system of capabilities designed to back up one another.

On December 17, 2002, the President announced his decision to field an initial defensive operation capability. The initial fielding would provide a modest protection of the U.S. and would be improved over time. Prior to the initiation of the BMDS PEIS, MDA and its predecessor agencies prepared several programmatic National Environmental Policy Act (NEPA) documents regarding ballistic missile defense. In addition, each program

element prepared extensive NEPA documentation to cover its own specific test and development activities. Ballistic missile defense has evolved to the point that the BMDS PEIS was prepared to consider the integrated BMDS as envisioned in the evolution of the MDA.

A Programmatic EIS, or PEIS, analyzes the broad envelope of environmental consequences in a wide-ranging Federal program like the BMDS. A PEIS addresses the overall issues in a proposed program and considers related actions together in order to review the program comprehensively. A PEIS is appropriate for projects that are broad in scope, are implemented in phases, and are widely dispersed geographically. A PEIS creates a comprehensive, global analytical framework that supports subsequent analysis of specific activities at specific locations, which could then be tiered from the PEIS.

The BMDS PEIS is intended to serve as a tiering document for subsequent specific BMDS NEPA analyses and includes a roadmap for considering environmental impacts and resource areas in developing future documents. This roadmap identifies how a specific resource area can be analyzed and also includes thresholds for considering the significance of environmental impacts to specific resource areas. This means that ranges, installations, and facilities at which specific BMDS activities may occur in the future could tier their documents from the PEIS and have some reference point from which to start their site-specific analyses.

C. National Environmental Policy Act (NEPA) Process

The MDA prepared the BMDS PEIS pursuant to the Council on Environmental Quality (CEQ) regulations implementing the NEPA (40 CFR Parts 1500–1508); Department of Defense (DoD) Instruction 4715.9, *Environmental Planning and Analysis*; the applicable service environmental regulations that implement these laws and regulations; and Executive Order (EO) 12114, *Environmental Effects Abroad of Major Federal Actions* (whose implementation is guided by NEPA and the CEQ implementing regulations).

On April 11, 2003, MDA initiated the public scoping process by publishing the Notice of Intent (NOI) to prepare the PEIS for the BMDS in the **Federal Register**. MDA held public scoping meetings in Arlington, Virginia; Sacramento, California; Anchorage, Alaska; and Honolulu, Hawaii. The Notice of Availability (NOA) of the MDA BMDS Draft PEIS was published in the **Federal Register** on September

17, 2004. This initiated a public review and comment period for the Draft PEIS. MDA held public hearings in Arlington, Virginia; Sacramento, California; Anchorage, Alaska; and Honolulu, Hawaii. MDA received approximately 8,500 comments on the Draft PEIS; MDA considered all of these comments in preparing the Final PEIS. Responses to all of the in-scope comments can be found in Appendix K of the PEIS. Three recurring issues of public concern—orbital debris, perchlorate, and radar impacts to wildlife—were addressed in more technical detail in Appendices L, M, and N, respectively, of the PEIS.

The NOA for the Final PEIS was published in the **Federal Register** on February 16, 2007. This ROD is the culmination of the NEPA process.

D. Alternatives Considered

In developing the alternatives, MDA reviewed the various components of the BMDS (i.e., weapons, sensors, C2BMC, and support assets) and the acquisition process common to all components (i.e., development, testing, deployment, and planning for decommissioning). The components are the systems and subsystems of logically grouped hardware and software that perform interrelated tasks to provide the BMDS functional capabilities. The acquisition process is capability driven and component-based. Capability-based planning allows MDA to develop capabilities and system performance objectives based on technological feasibility, engineering analyses, and the potential capability of the threat. Spiral development is an iterative process for developing the BMDS by refining program objectives as technology becomes available through research and testing with continuous feedback among MDA, the test community, and the military operators. Each new technology goes through development; promising technologies go through testing and demonstration; and proven technologies are incorporated into the BMDS.

- **Development.** Development includes the various activities that support research and development of the BMDS components and overall systems. This includes planning, budgeting, research and development, systems engineering, site preparation and construction, repair, maintenance and sustainment, manufacture of test articles and initial testing, including modeling, simulation, and tabletop exercises.

- **Testing.** Testing of the BMDS involves demonstration of BMDS elements and components through test and evaluation. The successful demonstration of the BMDS would rely

on a robust testing program aimed at producing credible system characterization, verification, and assessment data. To confirm these capabilities, MDA would continue to develop test beds using existing and new land-, sea-, air-, and space-based assets. Some construction at various geographic locations would be required to support infrastructure and assets where BMDS components and the overall system would be tested. Testing of the BMDS includes ongoing and planned tests (e.g., ground tests, flight tests) of components that might be incorporated into the BMDS, as well as tests of the layered, integrated BMDS through increasingly realistic system integration tests through 2012 and beyond.

- **Deployment.** Deployment of the BMDS refers to the fielding (including the manufacture, site preparation, construction, and transport of systems) and sustainment (including operations and maintenance, training, upgrades, and service life extension) of the BMDS. The evolving BMDS is intended to have the capability over time to deploy different combinations of interoperable components. Deployment also would involve the transfer of facilities, elements, and programs to the military services.

- **Decommissioning.** Decommissioning would involve the demilitarization and final removal and disposal of the BMDS components and assets. Plans would be made for decommissioning BMDS components by either demolition or transfer to other uses or owners.

The following presents a discussion of the alternatives considered by MDA and presents and contrasts the components and acquisition phases that are unique to each alternative.

No Action Alternative: Under the No Action Alternative, the MDA would not develop, test, deploy, or plan for decommissioning activities for an integrated BMDS. Instead, the MDA would continue existing development and testing of discrete systems as stand-alone ballistic missile defense capabilities. Individual systems would continue to be tested but would not be subjected to System Integration Tests.

Alternative 1 (selected alternative): Under Alternative 1, the MDA will develop, test, deploy, and plan to decommission an integrated BMDS, composed of land-, sea-, and air-based components. Alternative 1 also includes space-based sensors, but does not include space-based interceptors.

Alternative 2: Under Alternative 2, the MDA would develop, test, deploy, and plan to decommission an integrated

BMDS, composed of land-, sea-, air-, and space-based components. Alternative 2 would be identical to Alternative 1, with the addition of space-based interceptors. A space-based test bed would be considered and evaluated to determine the feasibility of using kinetic energy interceptors on space platforms to intercept threat missiles.

E. Environmental Impacts of Alternatives

The PEIS evaluated potential impacts associated with each alternative for each acquisition life cycle phase (i.e., development, testing, deployment, and planning for decommissioning) by component (i.e., weapons, sensors, C2BMC, and support assets). To evaluate the potential impacts of implementing one of the alternatives (i.e., No Action Alternative, Alternative 1, or Alternative 2) considered for the BMDS, the MDA characterized the existing condition of the affected environment in the locations where various BMDS implementation activities would occur. The affected environment includes all land, air, water, and atmospheric environments where proposed activities are reasonably foreseeable. For this PEIS, the affected environment includes all locations, ranges, installations, and facilities that the MDA has used, uses, or proposes to use for the BMDS both within and outside the U.S. The MDA determined that activities associated with the proposed BMDS might occur in locations around the world. Therefore, the affected environment has been considered in terms of global biomes, broad ocean areas, and the atmosphere.

Each biome covers a broad region, both geographically and ecologically for both domestic and international locations where components of the proposed BMDS may be located or operated. Climate, geography, geology, and distribution and abundance of vegetation and wildlife determine the range of the biomes. Using biomes as affected environmental designations facilitates future site-specific environmental documentation to tier from the BMDS PEIS. Further, BMDS test activities would often occur over broad ocean areas, and the necessity of launching targets and interceptors to support testing would indicate that consideration of the atmosphere and broad ocean areas as parts of the affected environment was appropriate.

To evaluate the potential environmental consequences of the alternatives, the components of the BMDS (i.e., weapons, sensors, C2BMC, and support assets) were evaluated as

they proceed through acquisition life cycle phases. MDA evaluated each of the BMDS acquisition phases including development, testing, deployment, and decommissioning. Not all activities associated with the BMDS are expected to produce environmental impacts. Only those activities with expected impacts during one or more acquisition phases were identified in the PEIS. Further, only those activities that are considered reasonably foreseeable were analyzed in the PEIS. Four steps were used to analyze impacts in the BMDS PEIS. Step 1 included the identification and characterization of BMDS activities. Step 2 included the identification of activities with no potential for impact. Step 3 included the identification of similar activities occurring across acquisition life cycle phases. Step 4 included the conduct of environmental analyses. The analyses for each alternative are specific to each resource area based on the impacts from the activities associated with the BMDS components.

The potential impacts of the various alternatives are summarized in Exhibits ES-7 through ES-13 in the Final BMDS PEIS (available on the MDA Web site <http://www.mda.mil/mdalink/html/enviro.html> and are as discussed in the Final BMDS PEIS. This ROD presents a brief discussion that highlights the differences between the alternatives.

Alternative 1 would result in the potential for increased environmental consequences over the No Action Alternative due to the additional integrated test events and the development and testing of an integrated C2BMC. The additional potential for environmental consequences associated with the development, testing, deployment, and planning for decommissioning of the space-based interceptors in Alternative 2 could result in environmental consequences that would be in addition to those associated with Alternative 1.

The increase in potential impacts associated with the development and acquisition phases of Alternatives 1 and 2 over the No Action Alternative would result from increased testing and the site preparation and development of new facilities or the refurbishment of existing facilities for C2BMC, or to develop space-based missile defense technologies. The site preparation may result in additional impacts on the land-based resources (i.e., biological, geology and soils, noise, water), but would not impact non-land based resources (i.e., airspace or orbital debris).

The increase in potential impacts associated with the testing acquisition phase of Alternatives 1 and 2 over the

No Action Alternative would result from an increased number of test events, specifically, system integration tests. The increase in the number of test events would result in additional impacts on all resource areas, and based on the specific activities and objectives of an individual test event, impacts on some resources might be insignificant as demonstrated in the PEIS, while impacts to other resources would be more substantial.

The increase in potential impacts associated with the deployment acquisition phase of Alternative 2 over Alternative 1 and the No Action Alternative would result from the site preparation, development, and emplacement of new facilities or the refurbishment of existing facilities for deployment of space-based interceptors. The site preparation may result in additional impacts on the land-based resources (e.g., biological, geology and soils, noise, water), and placing interceptors into space could produce impacts on non-land based resources (e.g., airspace or orbital debris).

The increase in potential impacts associated with the planning for decommissioning of Alternative 2 over Alternative 1 and the No Action Alternative would result from the additional BMDS components that would require decommissioning.

No significant environmental impacts or cumulative impacts on resource areas addressed for any activity considered in implementing the BMDS were found in this programmatic impact analysis. There could be impacts associated with the specific BMDS program activities at specific locations; however, as stated in the PEIS they would be addressed, as appropriate, in subsequent NEPA analyses that would tier from the PEIS. As appropriate, mitigation measures would be developed to address any site-specific significant impacts.

F. Mitigation Monitoring

MDA did not identify any significant programmatic environmental impacts arising from the proposed action and therefore, is not identifying specific mitigation measures. However, as discussed above, there is the potential for specific BMDS activities at specific locations to impact the environment, and mitigation measures would be identified, as appropriate, in future NEPA analyses tiered from this PEIS. MDA uses a mitigation monitoring database to track the implementation of mitigation measures identified in previous NEPA analyses and will continue to follow its mitigation monitoring process (EMP-3-62, Mitigation Monitoring) to both track and

monitor the effectiveness of MDA's mitigation measures, including those identified in future, site-specific NEPA analyses tiered from this PEIS.

G. Environmentally Preferred Alternative

The findings of the PEIS indicate that the No Action Alternative, the continuation of existing program element-based testing and development activities with no integration testing, would be the environmentally-preferred alternative. As a conservative estimate, MDA assumed that stand-alone element component testing as well as system integration testing would occur under Alternatives 1 and 2, which would result in potentially more adverse effects than the No Action Alternative. However, MDA believes that consolidation of stand-alone component tests associated with Alternative 1 into the system integration tests to the extent practicable could serve to reduce the overall environmental consequences as the total number of tests conducted by MDA could fall.

H. Conclusion

I have considered potential environmental impacts as defined in the PEIS, cost, technical requirements, applicable statutory and regulatory requirements, Presidential direction (the December 17, 2002, Presidential announcement to field an initial defensive operation capability), MDA's mandate and mission, and public comments in arriving at my decision.

I select Alternative 1 over the other alternatives for implementation of the proposed action. Although the No Action Alternative has been identified as the environmentally-preferred alternative, it does not support the Agency's mandate or mission. Alternative 1 has fewer environmental consequences than Alternative 2, as described above.

I have selected Alternative 1 because integration of missile defense capabilities as opposed to single element development, testing, and deployment is essential to an effective BMDS that can provide a layered defense of the United States, its deployed troops, and its friends and allies. Any decision to deploy a BMDS capability will be subject to Presidential and Congressional authorization and funding.

Date: April 8, 2008.

Henry A. Obering III,
Lieutenant General, USAF, Director.

[FR Doc. E8-8800 Filed 4-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its 2008 Procurement Package, OMB Control Number 1910-4100. This information collection request covers information necessary to evaluate proposals and administer contracts related to management contractors managing the Department's major facilities and other contractors furnishing goods and services.

DATES: Comments regarding this collection must be received on or before May 23, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The OMB Desk Officer for DOE may be telephoned at 202-395-4650.

ADDRESSES: Written comments should be sent to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; and to:

U.S. Department of Energy, MA-61, Attn: Richard Langston, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Richard Langston, Procurement Policy Analyst, at Richard.langston@hq.doe.gov or (202) 287-1339.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910-4100; (2) Information Collection Request Title: DOE 2008 Procurement Package; (3) Purpose: This information collection request covers information necessary to evaluate proposals and administer contracts related to management contractors managing the Department's major facilities and other contractors furnishing goods and services; (4) Estimated Number of Respondents: 7,539; (5) Estimated Total Burden Hours: 896,209; (6) Number of

Collections: The information collection request contains 47 information and/or recordkeeping requirements. A notice and request for comment was previously published concerning this collection at 73 FR 7538 on February 8, 2008. No comments were received.

Statutory Authority: Office of Federal Procurement Policy (OFPP) Act, as amended (41 U.S.C. 405).

Issued in Washington, DC on April 17, 2008.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management.

[FR Doc. E8-8768 Filed 4-22-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Department of Energy, Office of Electricity Delivery and Energy Reliability.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the first meeting of the Electricity Advisory Committee. The Federal Advisory Committee Act, Public Law 92-463, as amended, requires that public notice of these meetings be announced in the **Federal Register**.

Date and Time: Tuesday, May 20, 2008, 8:30 a.m.—12:30 p.m. EDT.

Location: The meeting will be held at the Sheraton National Hotel located at 900 South Orme Street, Arlington, Virginia 22204.

Agenda: See **SUPPLEMENTARY INFORMATION** below.

SUPPLEMENTARY INFORMATION:

Background: The Electricity Advisory Committee (EAC) was established in 2008 by DOE to provide expert advice on complex scientific, technical, and policy issues that arise in the planning, managing, and implementation of DOE's electricity programs. The committee is composed of approximately 30 individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to electricity.

Purpose of the Meeting: The first meeting of the Electricity Advisory Committee is expected to include discussion of the first year objectives of the Committee, introductions of Committee Members and a discussion of establishing subcommittees on specific subjects.

Tentative Agenda: The meeting will host a discussion on advice to the Department of Energy on matters related

to electricity supply adequacy. The meeting agenda may change to accommodate committee business. For Committee agenda updates, see the Committee Web site at: <http://www.oe.energy.gov/eac.htm>.

Public Participation: Any member of the public interested in offering comments at the Committee meeting may do so on the day of the meeting, Tuesday, May 20, 2008. Approximately one-half hour will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting or had insufficient time to address the committee is invited to send a written statement to Mr. David Meyer, U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue, SW., Washington, DC 20585 or e-mail david.meyer@hq.doe.gov.

The following electronic file formats are acceptable: Microsoft Word (.doc), Corel Word Perfect (.wpd), Adobe Acrobat (.pdf), Rich Text Format (.rtf), plain text (.txt), Microsoft Excel (.xls), and Microsoft PowerPoint (.ppt). If you submit information that you believe to be exempt by law from public disclosure, you may only submit your comments by mail, and you must submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination concerning disclosure or nondisclosure of the information and for treating it in accordance with the DOE's Freedom of Information regulations (10 CFR 1004.11).

Note: Delivery of the U.S. Postal Service mail to DOE continues to be delayed by several weeks due to security screening. DOE therefore encourages those wishing to comment to submit comments electronically by e-mail. If comments are submitted by regular mail, the Department requests that they be accompanied by a CD or diskette containing electronic files of the submission.

Minutes: The minutes of the first meeting of the Electricity Advisory Committee are expected to be available within 45 days of the meeting on the Committee Website at <http://www.oe.energy.gov/eac.htm> or by contacting Mr. David Meyer at (202) 586-1411 or e-mail david.meyer@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Mr. David Meyer, Designated Federal Officer, U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue, SW., Washington, DC 20585; telephone

(202) 586-1411; e-mail david.meyer@hq.doe.gov.

Issued in Washington, DC on April 18, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8-8769 Filed 4-22-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting and retreat.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, May 21, 2008, 9 a.m.–5:30 p.m.; Thursday, May 22, 2008, 9 a.m.–4 p.m.

ADDRESSES: Holiday Inn, Santa Fe, 4048 Cerrillos Road, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995-0393; Fax (505) 989-1752 or E-mail: msantistevan@doeal.gov.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Retreat—Wednesday, May 21, 2008

- 9 a.m.—Welcome and Introductions, Ed Moreno.
- 9:05 a.m.—Round Robin—Expectations for Retreat, Board Members.
- 9:15 a.m.—“Lesson Learned” from the Material Disposal Area—G Forum, Ralph Phelps.
- 9:30 a.m.—Northern New Mexico Citizens' Advisory Board (NNMCAB) Surveys, Larry Rapagnani.
- 10 a.m.—Break.
- 10:15 a.m.—Overview of NNMCAB Bylaws, EM SSAB Guidance and Administrative Procedures, Christina Houston.
- 11:45 a.m.—Lunch Break.

1 p.m.—View “The Manhattan Project”

* * *

1:45 p.m.—Department of Energy, Los Alamos Site Office, George Rael:

- Top Three Priorities;
- EM Baseline;
- Funding Issues;
- Impacts of Delayed Funding.

2:30 p.m.—Break.

2:45 p.m.—Consent Order Table of Contents and Schedule, James Bearzi:

- Background and Development;
- Outline of Contents;
- Components:
 1. Characterization;
 2. Corrective Measures Evaluation;
 3. Selection of Remedy.

3:15 p.m.—New Mexico Environment Department (NMED) Critical Issues, James Bearzi:

- How Selected;
- NMED Issues of Concern;
- Resource Conservation and Recovery Act (RCRA) Permit Renewal:

○ Top Three Issues:

1. Groundwater Monitoring;
2. Remedy Selection;
3. Permit Renewal.

3:45 p.m.—Consent Order, Los Alamos National Laboratory (LANL), Dave McNroy:

- LANL EM Program Master Plan;
- Progress in Clean-up;
- Future Activities.

4:15 p.m.—Environmental Protection Agency, Rich Mayer:

- Federal Facilities Compliance Act;
- Recertification of the Waste Isolation Pilot Plant.

4:45 p.m.—NNMCAB Communications:

- Web site Training, Lorelei Novak;
- Distribution of Information to Members.

5:15 p.m.—Wrap up Discussion, Ed Moreno.

5:30 p.m.—Adjourn.

Meeting—Thursday, May 22, 2008

9 a.m.—Call to Order by Deputy Designated Federal Officer, Christina Houston.

Establishment of a Quorum, Lorelei Novak.

Welcome, Ed Moreno.

Approval of Agenda, J. D. Campbell.

Approval of Minutes of March 26, 2008, Board Meeting, J.D. Campbell.

9:05 a.m.—Old Business, Ed Moreno:

- Written Reports;
- Other Matters.

9:15 a.m.—New Business, Ed Moreno:

- Election of Vice-Chair, Board Members;
- Consideration and Action on Proposed Amendments to NNMCAB Bylaws, Menice Santistevan.

9:45 a.m.—Committee Business/Reports:

- Environmental Monitoring, Surveillance, and Remediation Committee, Introduction of Draft Recommendation(s), Pam Henline;
- Waste Management Committee, Introduction of Draft Recommendation(s), Ralph Phelps.

10:30 a.m.—Break.

10:45 a.m.—Presentation on San Ildefonso Pueblo Tribal Risk Assessment, Raymond Martinez.

11:30 a.m.—Public Comment.

11:45 a.m.—Lunch Break.

1 p.m.—Committees Prepare Draft Fiscal Year 2009 Work Plans, Ed Moreno.

2:30 p.m.—Break.

2:45 p.m.—Committees Continue Work on Draft Fiscal Year 2009 Work Plans, Ed Moreno.

3:45 p.m.—Wrap up Discussion, Ed Moreno.

4 p.m.—Adjourn, Christina Houston.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: <http://www.nnmcab.org/minutes/board-minutes.htm>.

Issued at Washington, DC, on April 18, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8-8770 Filed 4-22-08; 8:45 am]

BILLING CODE 6405-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

April 16, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96-719-020; ER97-2801-021; ER99-2156-014.

Applicants: MidAmerican Energy Company; PacifiCorp; Cordova Energy Company LLC.

Description: MidAmerican Energy Company *et al.* submits Notice of Change regarding MidAmerican's ownership of certain generation facilities.

Filed Date: 04/14/2008.

Accession Number: 20080415-0200.

Comment Date: 5 p.m. Eastern Time on Monday, May 05, 2008.

Docket Numbers: ER96-780-019; ER01-1633-007; ER00-3240-010; ER03-1383-010.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits substitute tariff sheets in compliance with FERC's Order 697.

Filed Date: 04/11/2008.

Accession Number: 20080415-0266.

Comment Date: 5 p.m. Eastern Time on Friday, May 02, 2008.

Docket Numbers: ER99-2541-009; ER05-731-003; ER97-3556-017; ER04-582-007; ER99-221-012; ER99-220-014; ER01-1764-006; ER97-3553-005.

Applicants: Carthage Energy, LLC; Central Maine Power Company; Energetix, Inc.; Hartford Steam Company; New York State Electric & Gas Corp.; NYSEG Solutions, Inc.; PEI Power II, LLC; Rochester Gas and Electric Corporation.

Description: Carthage Energy, LLC submits Substitute Original Sheet 1 to FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 04/11/2008.

Accession Number: 20080415-0265.

Comment Date: 5 p.m. Eastern Time on Friday, May 02, 2008.

Docket Numbers: ER03-552-011; ER03-984-009.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits its Status Report complying with the February 22, order.

Filed Date: 04/15/2008.

Accession Number: 20080415-5057.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Docket Numbers: ER08-682-001.

Applicants: Idaho Power Company.

Description: Idaho Power Co. submits a request to withdraw First Revised Sheet 131 to their 3/17/08 filing.

Filed Date: 04/14/2008.

Accession Number: 20080415-0194.

Comment Date: 5 p.m. Eastern Time on Monday, May 05, 2008.

Docket Numbers: ER08-822-000.

Applicants: Old Lane Commodities, LP.

Description: Old Lane Commodities, LP submits a notice of cancellation of its market based rate tariff.

Filed Date: 04/15/2008.

Accession Number: 20080415-0199.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 06, 2008.

Docket Numbers: ER08-823-000.

Applicants: Idaho Power Company.

Description: Idaho Power Co. submits certain modifications to non-rate terms and conditions in its Open Access Transmission Tariff.

Filed Date: 04/14/2008.

Accession Number: 20080415-0198.

Comment Date: 5 p.m. Eastern Time on Monday, May 05, 2008.

Docket Numbers: ER08-825-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits Amendment 1 to Southwest Power Pool, Inc. Large Generator Interconnection Agreement Service 1168.

Filed Date: 04/14/2008.

Accession Number: 20080415-0201.

Comment Date: 5 p.m. Eastern Time on Monday, May 05, 2008.

Docket Numbers: ER08-826-000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits an executed large generator interconnection agreement with the Village of Arcade *et al.*

Filed Date: 04/14/2008.

Accession Number: 20080415-0202.

Comment Date: 5 p.m. Eastern Time on Monday, May 05, 2008.

Docket Numbers: ER08-827-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an interconnection service agreement among PJM Virginia Electric and Power Company and Virginia Electric and Power Company designated as Original Service Agreement 1878.

Filed Date: 04/15/2008.

Accession Number: 20080416-0050.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 06, 2008.

Docket Numbers: ER08-828-000.

Applicants: American Electric Power Service Corporation.

Description: AEP Texas Central Company submits an executed generation interconnection agreement dated 3/25/08 with Victoria ELE, LP.

Filed Date: 04/15/2008.

Accession Number: 20080416-0051.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 06, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07-60-003.

Applicants: Idaho Power Company.
Description: Idaho Power Company's OATT Errata Filing pursuant to the March 19, 2008 order, Order No. 890.
Filed Date: 04/15/2008.
Accession Number: 20080416-5000.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 06, 2008.
Docket Numbers: OA08-14-002.
Applicants: Midwest Independent Transmission System.
Description: Request of the Midwest ISO for Waiver of Conversion Requirement.
Filed Date: 04/15/2008.
Accession Number: 20080416-5026.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 06, 2008.
Docket Numbers: OA08-83-001.
Applicants: Idaho Power Company.
Description: Idaho Power Co submits their request to withdraw sheets from its 3/17/08 compliance filing and commits to re-file the pro forma rollover reforms within 30 days, OA08-83.
Filed Date: 04/14/2008.
Accession Number: 20080416-0053.
Comment Date: 5 p.m. Eastern Time on Monday, May 05, 2008.
Docket Numbers: OA08-102-000.
Applicants: American Electric Power Service Corporation.
Description: Order No. 890-A OATT Filing of American Electric Power Service Corporation.
Filed Date: 04/15/2008.
Accession Number: 20080415-5099.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 06, 2008.
Docket Numbers: OA08-103-000.
Applicants: WSPP Inc.
Description: WSPP Inc's Order No. 890-A OATT Filing.
Filed Date: 04/15/2008.
Accession Number: 20080416-5002.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 06, 2008.
Docket Numbers: OA08-104-000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool's Order No. 890-A OATT Filing.
Filed Date: 04/15/2008.
Accession Number: 20080416-5003.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 06, 2008.
Docket Numbers: OA08-105-000.
Applicants: Oklahoma Gas and Electric Company.
Description: Order No. 890-A OATT Filing of Oklahoma Gas and Electric Company.
Filed Date: 04/15/2008.
Accession Number: 20080416-5032.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 06, 2008.
 Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM08-5-000.
Applicants: United Illuminating Company, The.
Description: The United Illuminating Co submits an application for relief on a service territory-wide basis from the provisions of Section 292.303(a).
Filed Date: 04/15/2008.
Accession Number: 20080416-0120.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 13, 2008.
 Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.
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(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
 [FR Doc. E8-8746 Filed 4-22-08; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

April 15, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08-69-000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico's Application for Approval to acquire from its affiliate PNMR Development and Management Company all interests in a trust that holds certain ownership interests etc.
Filed Date: 04/10/2008.
Accession Number: 20080414-0157.
Comment Date: 5 p.m. Eastern Time on Thursday, May 1, 2008.
Docket Numbers: EC08-70-000.
Applicants: KeySpan-Ravenswood, LLC.
Description: KeySpan Ravenswood, LLC submits an Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action.
Filed Date: 04/10/2008.
Accession Number: 20080414-0159.
Comment Date: 5 p.m. Eastern Time on Thursday, May 1, 2008.
Docket Numbers: EC08-71-000.
Applicants: PNM Resources, Inc., PNM Merger Sub LLC, Public Service Company of New Mexico, NewCorp Resources Electric Cooperative.
Description: Joint application for approval of the disposition of jurisdictional facilities under Section 203 of the Federal Power Act re PNM Resources Inc *et al.*
Filed Date: 04/11/2008.
Accession Number: 20080414-0156.
Comment Date: 5 p.m. Eastern Time on Friday, May 2, 2008.
Docket Numbers: EC08-72-000.
Applicants: Industry Funds Management (Nominees) Lim, Industry Funds Management Pty Ltd, Duquesne Light Company, Duquesne Power, LLC, Duquesne Keystone, LLC, Duquesne Conemaugh, LLC.
Description: Industry Funds Management (Nominees) Limited submits an application for authorization

for the disposition of jurisdictional facilities.

Filed Date: 04/11/2008.

Accession Number: 20080415-0166.

Comment Date: 5 p.m. Eastern Time on Friday, May 2, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08-58-000.

Applicants: West Valley Leasing Company LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of West Valley Leasing Company LLC.

Filed Date: 04/14/2008.

Accession Number: 20080414-5105.

Comment Date: 5 p.m. Eastern Time on Monday, May 5, 2008.

Docket Numbers: EG08-59-000.

Applicants: Winnebago Windpower LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Winnebago Windpower LLC.

Filed Date: 04/15/2008.

Accession Number: 20080415-5033.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03-552-011; ER03-984-009.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits its Status Report complying with the February 22, order.

Filed Date: 04/15/2008.

Accession Number: 20080415-5057.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Docket Numbers: ER03-719-009; ER03-720-009; ER03-721-009; ER98-830-018.

Applicants: New Athens Generating Company, LLC, New Covert Generating Company, LLC, New Harquahala Generating Company, LLC, Millennium Power Partners, L.P.

Description: New Athens Generating Co, LLC *et al.* submits notice of non-material change in status concerning a change in upstream ownership etc.

Filed Date: 04/09/2008.

Accession Number: 20080411-0050.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 30, 2008.

Docket Numbers: ER08-301-001.

Applicants: Covanta Fairfax, Inc.

Description: Covanta Fairfax, Inc., submits First Amended and Restatement of Power Purchase and Operating Agreement.

Filed Date: 04/14/2008.

Accession Number: 20080415-0196.

Comment Date: 5 p.m. Eastern Time on Monday, May 5, 2008.

Docket Numbers: ER08-526-001.

Applicants: El Paso Electric Company. *Description:* El Paso Electric Co., submits Second Revised Sheet 136 *et al.* to FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 04/10/2008.

Accession Number: 20080414-0009.

Comment Date: 5 p.m. Eastern Time on Thursday, May 1, 2008.

Docket Numbers: ER08-675-001.

Applicants: Orange and Rockland Utilities, Inc.

Description: Orange and Rockland Utilities, Inc submits Attachment A as additional cost support for the 3/17/08 filing of an amendment to FERC Electric Tariff, Original Volume 3.

Filed Date: 04/10/2008.

Accession Number: 20080411-0044.

Comment Date: 5 p.m. Eastern Time on Thursday, May 1, 2008.

Docket Numbers: ER08-814-000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits the Large Generator Interconnection Agreement and Service Agreement for Wholesale Distribution Service with Daggett Ridge Wind Farm, LLC.

Filed Date: 04/10/2008.

Accession Number: 20080411-0047.

Comment Date: 5 p.m. Eastern Time on Thursday, May 1, 2008.

Docket Numbers: ER08-815-000.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits amendments to certain non-rate terms and conditions of its Open Access Transmission Tariff, PGE request that the Commission waive its prior notice requirements and accept such revisions etc.

Filed Date: 04/10/2008.

Accession Number: 20080411-0048.

Comment Date: 5 p.m. Eastern Time on Thursday, May 1, 2008.

Docket Numbers: ER08-816-000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Co., submits its Fourth Revised Rate Schedule 132.

Filed Date: 04/10/2008.

Accession Number: 20080414-0011.

Comment Date: 5 p.m. Eastern Time on Thursday, May 1, 2008.

Docket Numbers: ER08-818-000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc., submits proposed

revisions to its Market Administration and Control Area Services Tariff etc.

Filed Date: 04/11/2008.

Accession Number: 20080414-0196.

Comment Date: 5 p.m. Eastern Time on Friday, May 2, 2008.

Docket Numbers: ER08-819-000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits proposed amendment to Section 40.5.2.2.1 re resource adequacy import allocation provisions.

Filed Date: 04/11/2008.

Accession Number: 20080414-0195.

Comment Date: 5 p.m. Eastern Time on Friday, May 2, 2008.

Docket Numbers: ER08-820-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection submits revisions to PJM's Open Access Transmission, Amended and Restated Operating Agreement, and Consolidated Transmission Owners Agreement, Rate Schedule 42 etc.

Filed Date: 04/11/2008.

Accession Number: 20080414-0194.

Comment Date: 5 p.m. Eastern Time on Friday, May 2, 2008.

Docket Numbers: ER08-821-000; ER97-4587-008.

Applicants: Hazleton Generation LLC; Williams Generation Company—Hazleton.

Description: Williams Generation Co-Hazleton submits a notice of change in status and notice of succession.

Filed Date: 04/11/2008.

Accession Number: 20080415-0193.

Comment Date: 5 p.m. Eastern Time on Friday, May 2, 2008.

Docket Numbers: ER08-824-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits the PJM Open Access Transmission Tariff and PJM Operating Agreement.

Filed Date: 04/14/2008.

Accession Number: 20080415-0197.

Comment Date: 5 p.m. Eastern Time on Monday, May 5, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08-36-001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits an amendment to the application of the California Independent System Operator Corporation.

Filed Date: 04/10/2008.

Accession Number: 20080414-0158.

Comment Date: 5 p.m. Eastern Time on Friday, April 25, 2008.

Docket Numbers: ES08-43-000.

Applicants: NSTAR Electric Company.

Description: NSTAR Electric Co submits application for authorization to issue short-term debt securities pursuant to Section 204 of the Federal Power Act.

Filed Date: 04/11/2008.

Accession Number: 20080415-0154.

Comment Date: 5 p.m. Eastern Time on Friday, May 2, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07-101-001.

Applicants: El Paso Electric Company.

Description: El Paso Electric's Compliance Filing Pursuant to March 11, 2008 Order.

Filed Date: 04/10/2008.

Accession Number: 20080410-5062.

Comment Date: 5 p.m. Eastern Time on Thursday, May 1, 2008.

Docket Numbers: OA07-40-002.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company's revised tariff sheets to their Open Access Transmission Tariff pursuant to Order No. 890.

Filed Date: 04/10/2008.

Accession Number: 20080411-5007.

Comment Date: 5 p.m. Eastern Time on Thursday, May 01, 2008.

Docket Numbers: OA08-13-001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator Inc submits proposed amendments to its Open Access Transmission Tariff in compliance with Order 890 requirements governing the clustering of transmission studies.

Filed Date: 04/11/2008.

Accession Number: 20080415-0155.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: OA08-101-000.

Applicants: PJM Interconnection, L.L.C.

Description: Order No. 890 OATT Filing of PJM Interconnection, L.L.C.

Filed Date: 04/15/2008.

Accession Number: 20080415-5095.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 06, 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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-8747 Filed 4-22-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

April 09, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97-2872-005; ER97-4234-076.

Applicants: Central Hudson Gas & Electric Corp.

Description: Central Hudson Gas and Electric Corp submits Substitute First Revised Sheet 1 and 2 to FERC Electric Tariff, First Revised Volume 1 in compliance with Order 697.

Filed Date: 04/04/2008.

Accession Number: 20080408-0021.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: ER99-2284-009; ER99-1773-009; ER99-1761-005; ER00-1026-016; ER01-1315-005; ER01-2401-011; ER98-2184-014; ER98-2186-015; ER00-33-011; ER05-442-003; ER98-2185-014; ER99-1228-007; ER97-2904-008; ER01-751-010.

Applicants: AEE 2 LLC; AES Creative Resources LP; AES Eastern Energy, LP; Indianapolis Power & Light Company; AES IRONWOOD LLC; AES RED OAK LLC; AES Huntington Beach, L.L.C.; AES Redondo Beach, L.L.C.; AES Placerita Inc.; Condon Wind Power, LLC; AES Alamitos, Inc.; Storm Lake Power Partners II LLC; Lake Benton Power Partners LLC; Mountain View Power Partners, LLC.

Description: The AES MBR Affiliates submits notice of change in status in connection with the indirect acquisition by AES of Mountainview Power Partners, LLC.

Filed Date: 04/04/2008.

Accession Number: 20080408-0046.

Comment Date: 5 p.m. Eastern Time on Friday, April 25, 2008.

Docket Numbers: ER00-2268-026; ER99-4124-023; ER99-4122-027; ER07-428-005; EL07-82-002.

Applicants: Pinnacle West Capital Corporation; Arizona Public Service Company; Aps Energy Services Co Inc; Pinnacle West Marketing & Trading Co, LLC; Pinnacle West Capital Corporation.

Description: Arizona Public Service Company submits an errata and Substitute Second Revised Sheet 2, FERC Electric Tariff, Fifth Revised Volume 3 to the compliance filing previously filed on 3/17/08.

Filed Date: 04/04/2008.

Accession Number: 20080408-0022.

Comment Date: 5 p.m. Eastern Time on Friday, April 25, 2008.

Docket Numbers: ER03-9-010; ER98-2157-011.

Applicants: Westar Energy, Inc., Kansas Gas and Electric Company.

Description: Notice of Change in Status of Westar Energy, Inc., and Kansas Gas and Electric Company.

Filed Date: 04/08/2008.

Accession Number: 20080408-5049.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Docket Numbers: ER08-717-001.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Company submits an executed "Control Area Services Agreement with UNS Electric Inc dated 3/20/08.

Filed Date: 04/08/2008.

Accession Number: 20080409-0074.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Docket Numbers: ER08-747-000.

Applicants: Beaver Ridge Wind, LLC.

Description: Beaver Ridge Wind, LLC submits a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Filed Date: 03/31/2008.

Accession Number: 20080401-0094.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08-796-000.

Applicants: ITC Midwest LLC.

Description: ITC Midwest, LLC submits a proposed Attachment FF Section III.A.2.d.3 International/METC/ITC Midwest to their Open Access Transmission and Energy Markets Tariff.

Filed Date: 04/04/2008.

Accession Number: 20080408-0043.

Comment Date: 5 p.m. Eastern Time on Friday, April 25, 2008.

Docket Numbers: ER08-797-000.

Applicants: HEEP Fund Inc.

Description: HEEP Fund, Inc requests acceptance of its FERC Electric Rate Schedule 1 etc.

Filed Date: 04/04/2008.

Accession Number: 20080408-0042.

Comment Date: 5 p.m. Eastern Time on Friday, April 25, 2008.

Docket Numbers: ER08-798-000.

Applicants: American Electric Power Service Corporation.

Description: Ohio Power Co and Columbus Southern Power Co submits first revision to the Interconnection Agreement with American Transmission Systems, Inc.

Filed Date: 04/07/2008.

Accession Number: 20080408-0044.

Comment Date: 5 p.m. Eastern Time on Monday, April 28, 2008.

Docket Numbers: ER08-799-000.

Applicants: Consolidated Edison Co. of New York, Inc.

Description: Consolidated Edison Company of New York, Inc submits a Master Services Agreement and associated Transaction Forms.

Filed Date: 04/07/2008.

Accession Number: 20080408-0045.

Comment Date: 5 p.m. Eastern Time on Monday, April 28, 2008.

Docket Numbers: ER08-801-000.

Applicants: Berkshire Power Company, LLC.

Description: Berkshire Power Company LLC submits their proposed revisions to their Rate Schedule FERC 2 to reflect the merger of one party to the rate schedule with Shell Energy North America LP.

Filed Date: 04/07/2008.

Accession Number: 20080409-0076.

Comment Date: 5 p.m. Eastern Time on Monday, April 28, 2008.

Docket Numbers: ER08-802-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits an executed interconnection service agreement and an executed construction service agreement with Cogentrix Virginia Leasing Company *et al.*

Filed Date: 04/07/2008.

Accession Number: 20080409-0075.

Comment Date: 5 p.m. Eastern Time on Monday, April 28, 2008.

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Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the

appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-8748 Filed 4-22-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

April 17, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08-73-000.

Applicants: PPL EnergyPlus, LLC, BE Ironwood LLC.

Description: PPL EnergyPlus, LLC and BE Ironwood LLC submits a joint application for authorization to dispose of jurisdictional facilities.

Filed Date: 04/15/2008.

Accession Number: 20080417-0042.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08-60-000.

Applicants: Sheldon Energy LLC.

Description: Sheldon Energy LLC submits its Notice of Self Certification of Exempt Wholesale Generator Status.

Filed Date: 04/15/2008.

Accession Number: 20080417-0041.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Docket Numbers: EG08-61-000.

Applicants: Gunsight Mountain Wind Energy LLC.

Description: Gunsight Mountain Wind Energy LLC submits their Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 04/15/2008.

Accession Number: 20080417-0040.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Docket Numbers: EG08-62-000.

Applicants: Willow Creek Energy LLC.

Description: Willow Creek Energy LLC submits a notice of self-certification

of its status as an exempt wholesale generator.

Filed Date: 04/15/2008.

Accession Number: 20080417-0039.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08-441-003.

Applicants: Velocity American Energy Master I, L.P.

Description: Velocity American Energy Master I, LP submits Substitute Original Sheet 1 to FERC Electric Tariff, Original Volume 1.

Filed Date: 04/16/2008.

Accession Number: 20080417-0032.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 7, 2008.

Docket Numbers: ER08-829-000.

Applicants: ISO New England Inc.

Description: ISO New England, Inc *et al.* submits revised tariff sheets & supporting testimony of Jonathan B Lowell re proposed revisions to Section 6.4.4 & Appendix F of the Market Rule I to exclude the Real-Time Load Obligations etc.

Filed Date: 04/15/2008.

Accession Number: 20080417-0031.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Docket Numbers: ER08-830-000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits revised tariff sheet reflecting a proposed revision of Market Rule related to the Day-Ahead Load Response Program.

Filed Date: 04/15/2008.

Accession Number: 20080417-0027.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Docket Numbers: ER08-833-000.

Applicants: Progress Energy Service Company.

Description: Progress Energy Services Co *et al.* submits an executed 230 kV Facilities Interconnection Agreement with Florida Power Corp.

Filed Date: 04/16/2008.

Accession Number: 20080417-0029.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 7, 2008.

Docket Numbers: ER08-834-000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc's proposed amendments to certain Market Power Mitigation Measures set forth in Attachment H to its Market Administration and Control Area Services Tariff etc.

Filed Date: 04/16/2008.

Accession Number: 20080417-0033.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 7, 2008.

Docket Numbers: ER08-835-000.

Applicants: Polytop Corporation.

Description: Polytop Corporation submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 04/16/2008.

Accession Number: 20080417-0028.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 7, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07-25-003.

Applicants: DUKE ENERGY CAROLINAS, LLC.

Description: Order No. 890 Penalty Refund Report OATT Filing of DUKE ENERGY CAROLINAS, LLC.

Filed Date: 04/16/2008.

Accession Number: 20080417-5029.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 7, 2008.

Docket Numbers: OA07-113-001.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits First Revised Sheet 135 *et al.* to Second Revised Volume 6 Open Access Transmission Tariff.

Filed Date: 04/11/2008.

Accession Number: 20080417-0038.

Comment Date: 5 p.m. Eastern Time on Friday, May 2, 2008.

Docket Numbers: OA08-106-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits the FPA Section 206 Compliance Filing of Non-Rate Terms and Conditions as set forth in Order 890-A.

Filed Date: 04/15/2008.

Accession Number: 20080417-0037.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Docket Numbers: OA08-12-001; OA08-62-001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp. submits compliance filing to comply with Order 890 and 890-Ader OA08-12 *et al.*

Filed Date: 04/15/2008.

Accession Number: 20080417-0036.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Docket Numbers: OA08-107-000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits compliance filing like the NYISO's 10/11/07 compliance filing proposes certain revisions to response to Order 890 October 11, filing etc.

Filed Date: 04/15/2008.

Accession Number: 20080417-0035.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 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. E8-8785 Filed 4-22-08; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R05-OAR-2007-0520, EPA-R05-OAR-2007-0585; FRL-8556-8]

Adequacy Status of the Indiana and Ohio Portions of the Cincinnati-Hamilton, Ohio/Kentucky/Indiana, Submitted 8-Hour Ozone Attainment Demonstration for Transportation Conformity Purposes**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets (MVEBs) for volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in the Indiana and Ohio portions of the Cincinnati-Hamilton, Ohio/Kentucky/Indiana area are adequate for use in transportation conformity determinations. Indiana submitted the Cincinnati-Hamilton budgets with an 8-hour ozone attainment demonstration on June 13, 2007. As a result of our finding, the Indiana and Ohio portions of the Cincinnati-Hamilton, Ohio/Kentucky/Indiana area must use the MVEBs from the submitted 8-hour ozone attainment demonstration for future transportation conformity determinations.

DATES: This finding is effective May 8, 2008.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Life Scientist, Criteria Pollutant Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, Maietta.anthony@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we", "us" or "our" is used, we mean EPA.

Background

Today's notice is simply an announcement of a finding that we have already made. On March 6, 2008, EPA Region 5 sent a letter to the Indiana Department of Environmental Management stating that the 2008 MVEBs for the Indiana and Ohio portion of the Cincinnati-Hamilton, Ohio/Kentucky/Indiana area, which were submitted with the 8-hour ozone attainment demonstration, are adequate. Receipt of these MVEBs was announced on EPA's transportation conformity Web site, and no comments were submitted. The finding is available at EPA's

conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>.

The adequate 2008 MVEBs, in tons per day (tpd), for VOC and NO_x for the Indiana and Ohio portions of the Cincinnati-Hamilton, Ohio/Kentucky/Indiana area are as follows:

	2008 MVEB (tpd)
VOC	72.16
NO _x	18.99

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a State Implementation Plan (SIP) means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004, preamble starting at 69 FR 40038, and we used the information in these resources while making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

The finding and the response to comments are available at EPA's transportation conformity Web site: <http://www.epa.gov/otaq/state/resources/transconf/adequacy.htm>.

Authority: 42 U.S.C. 7401-7671q.

Dated: April 11, 2008.

Margaret Guerriero,

Acting Regional Administrator, Region 5.
[FR Doc. E8-8858 Filed 4-22-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2008-0311; FRL-8361-8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 1, 2008 through February 29, 2008, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before May 23, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2008-0311, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Hand Delivery:** OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2008-0311. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2008-0311. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

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

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

and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 1, 2008 through February 29, 2008, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 2/01/08 TO 2/29/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-08-0210	02/01/08	04/30/08	CBI	(G) Pigment additive for industrial coatings and ink manufacture and for plastics compounding	(G) Naphthalenesulfonic acid, [(methyl-sulphophenyl)diazenyl]-hydroxy-metal salt
P-08-0211	02/01/08	04/30/08	CBI	(G) Integrated circuits manufacturing	(G) Aluminum complex
P-08-0212	02/04/08	05/03/08	CBI	(G) Chemical intermediate	(G) Tetrafluoro nitrotoluene
P-08-0213	02/04/08	05/03/08	Grain Processing Corporation	(G) Highly dispersive use	(G) Corn by product
P-08-0214	02/04/08	05/03/08	CBI	(S) Aromatic urethane acrylate oligomer used in ultra violet curable inks and coatings	(G) Aromatic urethane acrylate polymer
P-08-0215	02/05/08	05/04/08	CBI	(G) Adhesive	(S) Fatty acids, C ₁₆₋₁₈ and C ₁₈ -unsaturated, me esters, epoxidized, polymers with ethylene glycol
P-08-0216	02/05/08	05/04/08	CBI	(G) Industrial coating	(G) Amino-modified multifunctional acrylate
P-08-0217	02/06/08	05/05/08	CBI	(G) Pigment additive for industrial coatings and ink manufacture and for plastics compounding	(G) Naphthalenesulfonic acid, [(methyl-sulphophenyl)diazenyl]-hydroxy-metal salt
P-08-0218	02/06/08	05/05/08	CBI	(G) Sealant and waterproof membrane	(G) Isocyanate terminated polymer with polyoxyalkylene polyols and isocyanate
P-08-0219	02/07/08	05/06/08	Boulder Scientific Company	(S) Chemical intermediate	(S) 1,3-cyclopentadiene, 5-butyl-
P-08-0220	02/08/08	05/07/08	CBI	(G) Coatings	(G) Acrylate ester
P-08-0221	02/08/08	05/07/08	CBI	(G) Textile treatment additive	(G) Fluoroalkyl methacrylate copolymer
P-08-0222	02/08/08	05/07/08	CBI	(G) Paper treatment additive	(G) Fluoroalkyl acrylate copolymer
P-08-0223	02/08/08	05/07/08	CBI	(G) Carpet treatment additive	(G) Fluoroalkyl acrylate copolymer
P-08-0224	02/08/08	05/07/08	CBI	(G) Textile treatment additive	(G) Fluoroalkyl acrylate copolymer
P-08-0225	02/11/08	05/10/08	The Lubrizol Corporation	(S) Metalworking fluid additive (lubricity, anti-corrosion)	(S) 2-propanol, 1,1'-iminobis-, compound with .alpha.-butyl-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)] phosphate
P-08-0226	02/11/08	05/10/08	The Lubrizol Corporation	(S) Metalworking fluid additive (lubricity, anti-corrosion)	(S) 1-propanol, 2-amino-2-methyl-, compound with .alpha.-butyl-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)] phosphate
P-08-0227	02/11/08	05/10/08	The Lubrizol Corporation	(S) Metalworking fluid additive (lubricity, anti-corrosion); machine (metal-working) cleaners	(S) Ethanol, 2,2',2''-nitrilotris-, compound with .alpha.-butyl-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)] phosphate
P-08-0228	02/11/08	05/10/08	The Lubrizol Corporation	(S) Metalworking fluid additive (lubricity, anti-corrosion); machine (metal-working) cleaners	(S) Ethanol, 2-amino-, compound with .alpha.-butyl-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)] phosphate
P-08-0229	02/11/08	05/10/08	CBI	(G) Additive, open, non-dispersive use	(G) Polyether and trialkylsilylalkylamine modified polyurethane
P-08-0230	02/11/08	05/10/08	CBI	(G) Additive, open, non-dispersive use	(G) Trialkoxysilylalkylene modified polydialkylsiloxane
P-08-0231	02/11/08	05/10/08	Cognis Corporation	(G) Lubricant	(S) Fatty acids, C ₈₋₁₀ , tetraesters with sorbitan
P-08-0232	02/11/08	05/10/08	Mane, USA	(G) Perfumery ingredient	(S) 2H-pyran, 5,6-dihydro-4-methyl-2-[(2,2,3-trimethyl-3-cyclopenten-1-yl)methyl]-
P-08-0233	02/12/08	05/11/08	Rahn USA Corp.	(S) Ultra violet/electron beam inks. The pmn substance acts as a reactive resin in such blends; ultra violet/electron beam coatings. The pmn substance acts as a reactive resin in such blends; ultra violet /electron beam putty/sealant. The pmn substance acts as a reactive resin in such blends; ultra violet /electron beam adhesives. The pmn substance acts as a reactive resin in such blends; ultra violet/electron beam = ultra violet / electron beam reactive formulations.	(G) Alkyd based intermediate resin

I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 2/01/08 TO 2/29/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-08-0234	02/12/08	05/11/08	3M	(G) Prepolymer	(G) Bisphenol A - epichlorohydrin amine copolymer
P-08-0235	02/13/08	05/12/08	CBI	(S) Ingredient in fragrance compound	(G) Heteropolycyclic lactone
P-08-0236	02/13/08	05/12/08	Zeon Chemicals L.P.	(S) Automotive seals and gaskets	(G) Acrylate copolymer
P-08-0237	02/13/08	05/12/08	CBI	(S) Aromatic acrylic polymer used in automobile and other metal coatings	(G) Aromatic acrylate polymer
P-08-0238	02/13/08	05/12/08	CBI	(G) Resin for ink	(G) Water-borne silicone grafted (meth)acrylic copolymer
P-08-0239	02/11/08	05/10/08	CBI	(G) Additive, open, non-dispersive use	(G) Alkenyltrialkoxysilane modified polysiloxane
P-08-0240	02/13/08	05/12/08	Hydrite Chemical Company	(G) Intermediate in defoaming agent	(G) Organic silicone intermediate
P-08-0241	02/13/08	05/12/08	Eastman Kodak Company	(G) Contained use in an article; sale for industrial applications	(G) Triazole substituted polyheterocycle, salt
P-08-0242	02/20/08	05/19/08	Cargill, Incorporated, Office Center	(S) Food; plasticizer	(S) 1,2,3,4-butanetetrol meso-erythritol
P-08-0243	02/20/08	05/19/08	CBI	(S) Intermediate for polyurethane surfactant	(G) Organommodified silanic hydrogen fluid
P-08-0244	02/20/08	05/19/08	CBI	(S) Polyurethane silicone surfactant	(G) Modified silicone polyether copolymer
P-08-0245	02/20/08	05/19/08	Firmenich Inc	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleaners, etc;	(S) Extractives and their physically modified derivatives. <i>Theobroma grandiflorum</i> . Oil <i>Theobroma grandiflorum</i>
P-08-0246	02/20/08	05/19/08	Cognis Corporation	(S) Synthetic lubricant basestock	(S) Fatty acids, C ₈₋₁₀ , mixed tetraesters with heptanoic acid, pentaerythritol, 3,5,5-trimethylhexanoic acid and valeric acid
P-08-0247	02/20/08	05/19/08	The Dow Chemical Company	(S) Polymer intermediate for polyurethane foam	(G) Polymer of fatty acids methyl esters hydroformylation products, hydrogenated, with alkylene oxides
P-08-0248	02/20/08	05/19/08	The Dow Chemical Company	(S) Polymer intermediate for polyurethane foam	(G) Polymer of fatty acids methyl esters hydroformylation products, hydrogenated, with alkylene oxides
P-08-0249	02/20/08	05/19/08	CBI	(G) Pigment additive for industrial coatings and ink manufacture and for plastics compounding	(G) Naphthalenesulfonic acid, [(chloro-methyl-sulfonylphenyl)diazenyl]-hydroxy-metal salt
P-08-0250	02/21/08	05/20/08	Huntsman Corporation	(S) Curing agent in an adhesive	(S) Poly(oxy-1,4-butanediyl), .alpha.-hydro-.omega.-hydroxy-, polymer with ammonia
P-08-0251	02/21/08	05/20/08	Givaudan Fragrances Corporation	(G) Highly dispersive use.	(S) 2H-2,4A-methanonaphthalene-8-ethanol, 1,3,4,5,6,7-hexahydro-beta 2H-2, 4A-methanonaphthalene-8-ethanol, 1,3,4,5,6,7,8a-hexahydro-.beta., 1,1,5,5-pentamethyl-
P-08-0252	02/22/08	05/21/08	Cytec Industries Inc.	(G) Coatings and inks	(G) Alkanoic acid ester, polymer with substituted alcohol and epoxy resin
P-08-0253	02/22/08	05/21/08	Cytec Industries Inc.	(S) Binder for industrial coatings	(G) Unsaturated polyester resin
P-08-0254	02/22/08	05/21/08	CBI	(G) Pigment additive for industrial coatings and ink manufacture and for plastics compounding	(G) Naphthalenesulfonic acid, [(chloro-methyl-sulfonylphenyl)diazenyl]-hydroxy-metal salt
P-08-0255	02/25/08	05/24/08	CBI	(G) Open non-dispersive (sealant)	(G) Aqueous polyurethane dispersion
P-08-0256	02/26/08	05/25/08	CBI	(G) Adhesive	(S) Fatty acids, C ₁₆₋₈ and C ₁₈ -unsaturated, me esters, epoxidized, polymers with ethylene glycol
P-08-0257	02/27/08	05/26/08	CBI	(G) Polyurethane foam component	(G) Isocyanate quasiprepolymer
P-08-0258	02/27/08	05/26/08	CBI	(G) Polyurethane foam component	(G) Isocyanate quasiprepolymer
P-08-0259	02/27/08	05/26/08	Ciba Corporation	(S) Pigment for thermoplastic resins	(G) B) 2,5-dihydro-3,6-bis[4-(alkylthio)aryl] - substituted pyrroledione
P-08-0260	02/29/08	05/28/08	CBI	(G) Additive for colorants	(G) Diketopyrrolopyrrole sulfo derivatives
P-08-0261	02/12/08	05/11/08	Innospec Fuel Specialties LLC	(G) Destructive use. Dispersant/detergent additive for fuel PMN chemical is destroyed when fuel is burned	(G) Alkylamine alkoxylate
P-08-0262	02/29/08	05/28/08	CBI	(S) Laminating adhesive	(G) Polyester polyurethane

I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 2/01/08 TO 2/29/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-08-0263	02/29/08	05/28/08	CBI	(G) Raw material used to manufacture surfactant blend	(S) Ethanol, 2,2'-[[3-[(2-hydroxyethyl)amino]propyl]imino]bis-, <i>N</i> -(hydrogenated tallow alkyl) derivs
P-08-0264	02/29/08	05/28/08	CBI	(G) Film and coating component	(G) Polyester

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 2 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 2/01/08 TO 2/29/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T-08-0007	02/22/08	04/06/08	Cytec Industries Inc.	(G) Coatings and inks	(G) Alkanoic acid ester, polymer with substituted alcohol and epoxy resin
T-08-0008	02/22/08	04/06/08	Cytec Industries Inc.	(S) Binder for industrial coatings	(G) Unsaturated polyester resin

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 34 NOTICES OF COMMENCEMENT FROM: 2/1/08 TO 2/29/08

Case No.	Received Date	Commencement Notice End Date	Chemical
P-00-0097	02/14/08	02/01/08	(S) Carbonic acid, 2-hydroxypropyl 5-methyl-2-(1-methylethyl)cyclohexyl ester
P-01-0698	02/13/08	10/01/01	(G) Alkene adduct, alkenoic acid ester, sulfurized
P-06-0339	02/27/08	01/29/08	(G) Fatty acids, polymers with substituted acrylates, substituted alkanolic acid, substituted polyglycol and substituted carbomonocycle, peroxide initiated
P-06-0402	02/13/08	02/01/08	(G) Modified polymeric succinimide dispersant
P-06-0412	02/19/08	02/07/08	(S) D-glucopyranose, oligomeric, bu glycosides, phosphinobis[oxy(2-hydroxy-3,1-propanediyl)] ethers, sodium salts
P-06-0413	02/19/08	02/08/08	(S) D-glucopyranose, oligomeric, 2-ethylhexyl glycosides, phosphinobis[oxy(2-hydroxy-3,1-propanediyl)] ethers, sodium salts
P-06-0415	02/19/08	02/09/08	(S) D-glucopyranose, oligomeric, C ₁₀₋₁₆ -alkyl glycosides, phosphinobis[oxy(2-hydroxy-3,1-propanediyl)] ethers, sodium salts
P-06-0416	02/19/08	02/11/08	(S) D-glucopyranose, oligomeric, C ₁₀₋₁₆ -alkyl decyl octyl glycosides, phosphinobis[oxy(2-hydroxy-3,1-propanediyl)] ethers, sodium salts
P-06-0422	02/11/08	01/11/08	(G) Alkanoic acid, 2-[[[alkylthio]thioxomethyl]thio]-2-alkyl-
P-06-0432	02/11/08	01/11/08	(G) Alkanoic acid, 2-[[[alkylthio]thioxomethyl]thio]-2-methyl-, alkyl ester
P-06-0509	02/19/08	01/21/08	(G) Substituted alkanol
P-07-0002	02/08/08	01/11/08	(G) Fatty acids, C ₁₆ -C ₁₈ and C ₁₈ unsaturated, esters with mixed diols and triols
P-07-0109	02/06/08	01/15/08	(G) Iodoalkyl substituted catechol
P-07-0111	02/08/08	02/04/08	(G) Alkylcatechol-substituted calixarene
P-07-0114	02/06/08	01/25/08	(G) Arylated glycerol
P-07-0308	02/01/08	01/16/08	(G) Glycol ether
P-07-0428	02/14/08	01/30/08	(S) 1,2-cyclohexanediamine, (1R,2R)-rel-
P-07-0512	02/20/08	02/12/08	(G) Branched acid functional polyester
P-07-0514	02/13/08	01/17/08	(S) Palm kernel meal. The dried seed residue from mechanical and solvent extraction of palm kernel from <i>elaeis guineensis</i> . The meal contains predominantly protein, oil and fiber.
P-07-0572	02/01/08	01/07/08	(S) Hexanoic acid, 2-ethyl-, mixed diesters with benzoic acid triethylene glycol
P-07-0600	02/14/08	02/01/08	(G) Substituted epoxy resin
P-07-0610	02/13/08	02/06/08	(G) Bisurea compound
P-07-0626	02/07/08	02/04/08	(G) Methyl trialkyl ammonium chloride, reaction products with silicic acid, lithium, magnesium and sodium salt
P-07-0667	02/06/08	01/28/08	(G) Poly(ethylene oxide)
P-07-0701	02/20/08	02/01/08	(G) Poly [oxy (alkyl-1,2-ethanediyl)], .alpha.-alkyl-.omega.-[3-(alkyloxyalkylsilyl)propoxy]-
P-07-0705	02/06/08	01/29/08	(G) Polyurethane hydrid
P-07-0723	02/07/08	02/04/08	(G) [Chlorooxoethyl]diethylamino]phenylimino] carbomonocyclic] acetamide
P-08-0001	02/04/08	01/28/08	(G) Esterified polyamic acid polymer
P-08-0021	02/19/08	02/07/08	(S) Alcoholic beverages, rum, ext.

III. 34 NOTICES OF COMMENCEMENT FROM: 2/1/08 TO 2/29/08—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P-08-0027	02/15/08	01/30/08	(G) Dimethyl siloxane polyglycol
P-08-0028	02/22/08	02/20/08	(G) Dimethyl siloxane polyethylene glycol
P-08-0037	02/08/08	01/29/08	(G) Isocyanate functional polyester polyether urethane polymer
P-08-0064	02/27/08	02/08/08	(G) Rosin modified phenolic resin
P-98-1215	02/27/08	02/04/08	(S) Ethanethioic acid, s-[1-[2-(acetyloxy)ethyl]butyl]ester

List of Subjects

Environmental protection, Chemicals,
Premanufacturer notices.

Dated: April 16, 2008.

Todd S. Holderman,

*Acting Director, Information Management
Division, Office of Pollution Prevention and
Toxics.*

[FR Doc. E8-8794 Filed 4-22-08; 8:45 am]

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**ENVIRONMENTAL PROTECTION
AGENCY**

[EPA-HQ-OPPT-2008-0320; FRL-8361-9]

**Certain New Chemicals; Receipt and
Status Information**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 3, 2008 through March 21, 2008, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before May 23, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2008-0320, by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

• *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2008-0320. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2008-0320. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your

comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

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

FOR FURTHER INFORMATION CONTACT:

Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-

1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions

pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 3, 2008 through March 21, 2008, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 56 PREMANUFACTURE NOTICES RECEIVED FROM: 3/01/08 TO 3/21/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-08-0265	03/03/08	05/31/08	Ashland Inc., Environmental Health and Safety	(G) Adhesive for bonding wood, metal and ceramics	(G) Polymer of isocyanic acid, polymethylene polyphenylene ester, with alkyl polyamine, .alpha.-hydro-gamma.-hydroxypoly[(oxy(methyl-1,2-ethanediyl)) and methyloxirane
P-08-0266	03/04/08	06/01/08	CBI	(G) Anti-corrosive additive	(G) Guanidine, <i>N,N'</i> -alkanediylbis[<i>N'</i> -cyano-, polymer with alkanediamine, phosphate
P-08-0267	03/04/08	06/01/08	CBI	(G) Anti-static agent for thermoplastic resin	(G) Modified polyolefin, aminoalkanoic acid and polyether copolymer.
P-08-0268	03/05/08	06/02/08	Dow Automotive	(S) Automotive glass and body primer	(G) Silicone modified urethane adduct
P-08-0269	03/06/08	06/03/08	CBI	(G) Polyester used in inks	(G) Polyester acrylate
P-08-0270	03/07/08	06/04/08	CBI	(G) Solder resist - open, non-dispersive use; printed circuit ink containing the pmn material is ready to use with no further additions required	(G) Glycidyl methacrylate modified carboxylated epoxy cresol novolac acrylate
P-08-0271	03/10/08	06/07/08	The Shepherd Chemical Company	(G) Automotive additive	(S) Molybdenum, borate neodecanoate oxo complexes
P-08-0272	03/10/08	06/07/08	Firmenich Inc.	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc;	(S) Extractives and their physically modified derivatives, <i>passiflora edulis</i> Oil, passion flower, <i>passiflora edulis</i>

I. 56 PREMANUFACTURE NOTICES RECEIVED FROM: 3/01/08 TO 3/21/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-08-0273 P-08-0274	03/10/08 03/06/08	06/07/08 06/03/08	CBI CBI	(G) Polymer additive (S) Aqueous dispersion of polymer for leather finishing	(G) Alkyl silyl phosphonate (G) Alkanedioic acid, polymer with alkanediol, alkanediamine, alkanediol, hydroxy-(hydroxyalkyl)-alkyl-, trialkylamine, carbocycle-isocyanato-(isocyanatoalkyl)-trialkyl-, trialkylcyclohexane and alkylimino alcohol, salt
P-08-0275	03/10/08	06/07/08	Alconix USA, Inc.	(S) A component of infrared absorption material	(S) Cesium tungsten oxide
P-08-0276	03/06/08	06/03/08	CBI	(S) Colorant for cellulosic paper	(G) Substituted-carbopolycyclic-[[heterocycle]-heterocycle-diyl]diimino]bis[substituted-[[sulfocarbocycl-e]azo]carbocycle]azo]-, sodium salt
P-08-0277	03/12/08	06/09/08	CBI	(G) Electrical sealant or putting material	(G) Naphthalene modified epoxy resin
P-08-0278	03/13/08	06/10/08	AOC L.L.C.	(S) Polyester component for gel coat for fiberglass reinforced plastic parts	(S) 1,3-benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-1-(hydroxymethyl)-1,3-propanediol, 2,5-furandione, hexanedioic acid and 1,2-propanediol, 2-ethylhexyl ester
P-08-0279	03/13/08	06/10/08	CBI	(G) Polymers for coatings	(G) Fatty acids, dimers, polymers with alkane diacid, aliphatic isocyanate, aromatic diacid, alkanediol, lactone and alkanetriol
P-08-0280	03/13/08	06/10/08	CBI	(G) Polymers for coatings	(G) Fatty acids, dimers, polymers with alkane diacid, aliphatic isocyanate, aromatic diacid, alkanediol, lactone and alkanetriol
P-08-0281 P-08-0282 P-08-0283	03/13/08 03/13/08 03/13/08	06/10/08 06/10/08 06/10/08	CBI CBI Cognis Corporation	(G) Cathode in batteries (G) Intermediate (G) Laundry detergent additive	(G) Metal oxide (G) Cyanoalkane (S) Octadecanoic acid, 12-hydroxy-, homopolymer, ester with 1,2,3-propanetriol homopolymer
P-08-0284	03/14/08	06/11/08	Momentive performance	(G) Coatings and finishes	(G) Amino functional silicone polymer
P-08-0285	03/14/08	06/11/08	Firmenich Inc.	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc;	(S) Extractives and their physically modified derivatives, <i>prunus persica</i> Oil, peach
P-08-0286	03/13/08	06/10/08	CBI	(S) Curing agent for epoxy resin in protective coatings	(G)
P-08-0287	03/17/08	06/14/08	CBI	(G) Polymer solution designed to facilitate the patterning of other features for the manufacturing of integrated circuits	(G) Hydrocarbylpolsilicate
P-08-0288	03/17/08	06/14/08	CBI	(S) Binder for wood coatings	(G) Polyester polycarbonate polyurethane modified with polymer of acrylic and vinyl esters
P-08-0289	03/17/08	06/14/08	CBI	(S) Curing agent for epoxy resin in protective coatings	(G) Alkylene, N'-(2-aminoethyl)-N-benzyl derivatives
P-08-0290	03/17/08	06/14/08	CBI	(S) Curing agent for epoxy resin in protective coatings	(G) Alkylene diamine, N,N'-1,2-ethanedylbis-, N-benzyl derivatives
P-08-0291	03/17/08	06/14/08	CBI	(S) Curing agent for epoxy resin in protective coatings	(G) Alkylene diamine, N-(3-aminopropyl)-N-[2-[(3-aminopropyl)amino]ethyl]-, N-benzyl derivs
P-08-0292	03/17/08	06/14/08	CBI	(S) Lube additive intermediate	(S) 1-propanamine, N-(1-methylethyl)-, 3-(C ₁₂₋₁₅ -alkoxy) derivatives
P-08-0293	03/17/08	06/14/08	CBI	(S) Curing agent for epoxy resin in coatings, adhesives, encapsulants, concrete repair materials	(G) 2-propenenitrile, reaction products with alkenediamine, hydrogenated, N-(2-hydroxypropyl) derivatives
P-08-0294	03/17/08	06/14/08	CBI	(G) Chemical intermediate	(G) Hydroxysubstitutedalkanoic acid, 2-[(2-methyl-1-oxo-propenyl-1-yl)oxy]ethyl ester
P-08-0295	03/17/08	06/14/08	CBI	(S) As ingredient of tomer	(G) Sulfonylcalixarene

I. 56 PREMANUFACTURE NOTICES RECEIVED FROM: 3/01/08 TO 3/21/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-08-0296	03/17/08	06/14/08	CBI	(G) Specialty additive	(G) Salt of a derivative of a sulfonated petroleum distillate
P-08-0297	03/17/08	06/14/08	CBI	(G) Open, non-dispersive (resin)	(G) Phosphorous acid ester
P-08-0298	03/17/08	06/14/08	CBI	(G) Open non dispersive (adhesive)	(G) Polyurethane
P-08-0299	03/18/08	06/15/08	Cabb North America Inc.	(S) Anti foam agent in cooling lubricants for chip-foaming metallworking; levelling agent in floor polishing products; anti foam agent in dishwashing detergents (dishwashers for commercials use only)	(S) Propanol, 1(or 2)-(methyl-2-[(1,7,7-trimethylbicyclo[2.2.1]hept-2-yl)oxy]ethoxy]-
P-08-0300	03/18/08	06/15/08	Colgate-Palmolive Co.	(G) Laundry product additive	(G) Amidoamine salt
P-08-0301	03/18/08	06/15/08	CBI	(G) Industrial liquid coatings	(G) Polymer fatty acids, aliphatic diols, aliphatic polyols, and aromatic acids
P-08-0302	03/18/08	06/15/08	CBI	(G) Industrial coating	(G) Amino modified polyetheracrylate
P-08-0303	03/18/08	06/15/08	Firmenich, Inc.	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleanser, etc;	(S) Extractives and their physically modified derivatives, <i>siparuna guianensis</i> Oil, <i>siparuna guianensis</i>
P-08-0304	03/19/08	06/16/08	CBI	(S) Lightfastness enhancer for dyed polyester fiber	(G) Substituted carbocycle, [(N-carbocycleamino)-heterocycle-yl]-bis-
P-08-0305	03/20/08	06/17/08	CBI	(G) Additive, open, non-dispersive use	(G) Compound of oxalkylated amine with fatty acid adduct
P-08-0306	03/20/08	06/17/08	CBI	(G) Additive, open, non-dispersive use	(G) Polyether urethane block copolymer
P-08-0307	03/20/08	06/17/08	CBI	(G) Additive, open, non-dispersive use	(G) Fatty acid condensate
P-08-0308	03/20/08	06/17/08	E. I. Dupont De Nemours	(S) Industrial intermediate	(G) Heteromonocycle carboxylic acid, bromo-(3-chloro-2-pyridinyl)-dihydro-, ethyl ester
P-08-0309	03/20/08	06/17/08	E. I. Dupont De Nemours	(S) Industrial intermediate	(G) Heteromonocycle carboxylic acid, bromo-(3-chloro-2-pyridinyl)-, ethyl ester
P-08-0310	03/20/08	06/17/08	E. I. Dupont De Nemours	(S) Industrial intermediate	(G) Heteromonocycle carboxylic acid, (3-chloro-2-pyridinyl)-oxo-, ethyl ester
P-08-0311	03/20/08	06/17/08	E. I. Dupont De Nemours	(S) Industrial intermediate	(G) Heteromonocycle carboxylic acid, (3-chloro-2-pyridinyl)-dihydro-[(phenylsulfonyl)oxy]-, ethyl ester
P-08-0312	03/20/08	06/17/08	Firmenich Inc.	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc;	(S) Ethanol soluble components obtained from extraction of hyraceum (sticky mass of dung and urine) from <i>procavia carpensis</i> Excretions, hyraceum, ext.
P-08-0313	03/18/08	06/15/08	Momentive performance materials	(G) Wetting agent	(G) Alkylene silosanes and silicones reaction products with siloxanes and silicones
P-08-0314	03/20/08	06/17/08	CBI	(G) Additive of ink	(G) Acrylic ester copolymer
P-08-0315	03/21/08	06/18/08	CBI	(G) Additive for plastics	(G) Hexanedioic acid, polymer with diol and a monohydric alcohol

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as

CBI) on the Notices of Commencement to manufacture received:

II. 16 NOTICES OF COMMENCEMENT FROM: 3/1/08 TO 3/21/08

Case No.	Received Date	Commencement Notice End Date	Chemical
P-05-0459	03/05/08	02/19/08	(S) Oxirane, methyl-, polymer with 1,3-diisocyanatomethylbenzene and oxirane, 2-hydroxyethyl acrylate- and 2-phenoxyethanol-blocked
P-06-323	08/15/06	08/21/06	(G) cycloalkyl methyl ester
P-07-0238	03/05/08	02/19/08	(G) Polyester acrylate
P-07-0281	03/12/08	02/29/08	(G) Corn distillers condensed solubles
P-07-0294	03/03/08	02/14/08	(S) Benzene, (1-methylethenyl)-, polymer with 1,3-butadiene, hydrogenated

II. 16 NOTICES OF COMMENCEMENT FROM: 3/1/08 TO 3/21/08—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P-07-0311	03/13/08	02/26/08	(G) Polyester acrylate
P-07-0557	03/13/08	02/28/08	(G) Urethane acrylate
P-07-0588	03/03/08	02/25/08	(G) Alkyl nitrile
P-07-0673	03/17/08	03/07/08	(S) 2(3 <i>H</i>)-furanone,5-(6-heptenyl)dihydro-
P-07-0686	03/11/08	02/29/08	(G) Polyetheramine
P-07-0697	03/12/08	03/04/08	(G) Alkanedioc acid, polymer with isocyanate, alkyl diols, and substituted alkenoate, alkylamine-blocked, compounds with substituted alkanol
P-07-0700	03/03/08	02/18/08	(G) Polyester resin
P-08-0061	03/04/08	02/19/08	(G) Alcohol, reaction products with alkylene oxide, alkenyl glycidyl ether sulfate
P-08-0074	03/10/08	02/16/08	(G) Aliphatic polyisocyanate, C ₁₆ -alcohol and polyalkylene glycol-blocked
P-08-0078	03/17/08	03/10/08	(G) Plant oil
P-91-0862	03/13/08	10/15/91	(G) Capped polyurea

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: April 16, 2008.

Todd S. Holderman,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8-8796 Filed 4-22-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8556-5; Docket ID No. EPA-HQ-ORD-2008-0048]

Draft Toxicological Review of 2-Hexanone: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review meeting to review the external review draft document titled, "Toxicological Review of 2-Hexanone: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (NCEA-S-2764). EPA previously announced the 60-day public comment period (ending April 28, 2008) for the draft document in the **Federal Register** on March 4, 2008 (73 FR 11408). EPA will consider public comments and recommendations from the expert panel meeting as EPA finalizes the draft document.

The public comment period and the external peer-review meeting are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends

to forward public comments submitted in accordance with **Federal Register** (73 FR 11408) to Versar, Inc., for consideration by the external peer-review panel prior to the meeting.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

Versar, Inc., invites the public to register to attend this meeting as observers. In addition, Versar, Inc., invites the public to give brief oral comments at the meeting regarding the draft document under review. The draft document and EPA's peer-review charge are available via the Internet on the National Center for Environmental Assessment's (NCEA) home page under the Recent Additions and the Data and Publications menus at <http://www.epa.gov/ncea>. When finalizing the draft document, EPA intends to consider Versar's report of the comments and recommendations from the external peer-review meeting and any public comments that EPA receives in accordance with 73 FR 11408, March 4, 2008. Public comments that were submitted during the 60-day public comment period ending April 28, 2008 may be observed at <http://www.regulations.gov> under Docket ID No. EPA-HQ-ORD-2008-0048.

DATES: The peer-review panel meeting will begin on May 22, 2008, at 9 a.m. and end at 5 p.m. Register by May 16, 2008, if you wish to provide brief oral comments at the meeting.

ADDRESSES: The peer-review meeting will be held at the Courtyard by Marriott Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202. Versar, Inc., is organizing, convening, and conducting the peer-review meeting. To

attend the meeting, register by May 16, 2008, via the Internet at <http://epa.versar.com/2hexanone/>.

The draft "Toxicological Review of 2-Hexanone: In Support of Summary Information on the Integrated Risk Information System (IRIS)" is available via the Internet on the National Center for Environmental Assessment's (NCEA) home page under the Recent Additions and the Data and Publications menus at <http://www.epa.gov/ncea>. A limited number of paper copies are available from the Information Management Staff, NCEA; telephone: 703-347-8561; facsimile: 703-347-8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title. Copies are not available from Versar, Inc.

FOR FURTHER INFORMATION CONTACT: For information on the peer review meeting, contact Stephanie Sarraino, Versar, Inc.; telephone: 703-750-3000 ext. 316; e-mail: ssarraino@versar.com.

If you have questions about the document, contact Amanda S. Persad, IRIS Staff, National Center for Environmental Assessment (B-243-01), U.S. EPA, Research Triangle Park, NC, 27711; telephone: 919-541-9781; facsimile: 919-541-1818; e-mail: persad.amanda@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Summary of Information About the Integrated Risk Information System (IRIS)**

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at <http://www.epa.gov/iris>) contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-

response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. Meeting Information

Members of the public may attend the meeting as observers, and there will be a limited time for oral comments from the public. Please let Versar, Inc. know if you wish to make comments during the meeting by registering on the Web site at <http://epa.versar.com/2hexanone/> and indicating your intent to make oral comments. Space is limited, and reservations will be accepted on a first-come, first-served basis.

Dated: April 15, 2008.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E8-8797 Filed 4-22-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0303; FRL-8361-2]

Fenamiphos; Notice of Receipt of Request to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by a registrant to voluntarily cancel its registrations for all products containing the pesticide fenamiphos. This notice announces receipt by EPA of a request from the registrant Bayer CropScience to cancel the remaining fenamiphos product registrations. The request would terminate the last fenamiphos products registered for use in the United States. The last remaining fenamiphos products registered under FIFRA Section 3 were cancelled on May 31, 2007 as stipulated in a **Federal Register** notice issued on December 10, 2003

(FRL-7332-5). However, several FIFRA 24(c) Special Local Needs registrations (for nematode and banana root borer control) have not gone through the voluntary cancellation process. Bayer CropScience, the registrant for all of the active FIFRA 24(c) product registrations, has requested cancellation of all fenamiphos Special Local Needs registrations associated with the previously cancelled Section 3 fenamiphos products. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws their request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or May 23, 2008.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA-HQ-OPP-2008-0303, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2008-0303. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-

mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Eric Miederhoff, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8028; fax number: (703) 308-7070; e-mail address: miederhoff.eric@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

II. Background on the Receipt of Request to Cancel Certain Pesticide Registrations

This notice announces receipt by EPA of a request from the registrant, Bayer CropScience, to cancel the remaining fenamiphos product registrations. Fenamiphos is an organophosphate insecticide and nematocide which was used primarily to control nematodes and thrips on various agricultural crops (i.e., citrus, grapes, peanuts, pineapples, tobacco, etc.) and non-agricultural (i.e., turf and ornamentals) sites.

In a letter dated March 24, 2008, Bayer CropScience requested that EPA cancel the remaining pesticide product registrations for fenamiphos (identified in Table 1 of this notice). The request would terminate the last remaining fenamiphos products registered for use in the United States. The last remaining fenamiphos products registered under FIFRA Section 3 were cancelled on May 31, 2007 in accordance with a **Federal Register** notice issued on December 10, 2003 (68 FR-68901)(FRL-7332-5). However, several FIFRA 24(c) Special Local Needs registrations (for nematode and banana root borer control) have not gone through the voluntary cancellation process. Bayer CropScience, the registrant for all of the active FIFRA

24(c) product registrations, has requested cancellation of all fenamiphos Special Local Needs registrations associated with the previously cancelled Section 3 fenamiphos products.

III. What Action is the Agency Taking?

This notice announces receipt by the EPA of a request from Bayer CropScience to cancel all fenamiphos pesticide product registrations registered under section 24(c) of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit. The registrant making the request is identified in Table 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The fenamiphos registrant has requested that EPA waive the 180-day comment period. EPA will provide a 30-day comment period on the proposed request.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registrations.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
PR 97-0002	Nemacur 15% Granular Systemic Insecticide-Nematicide	Fenamiphos
HI 04-0002	Nemacur 15% Granular Systemic Insecticide-Nematicide	Fenamiphos
NM 90-0001	Nemacur 15% Granular Systemic Insecticide-Nematicide	Fenamiphos
PR 97-0001	Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide	Fenamiphos
PR 97-0005	Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide	Fenamiphos
WA 76-0034	Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide	Fenamiphos

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
FL 84-0019	Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide	Fenamiphos
HI 04-0001	Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide	Fenamiphos
OR 04-0021	Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide	Fenamiphos

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else

desiring the retention of a registration should contact the applicable registrant directly during this 30-day period.

Table 2 of this unit includes the names and addresses of record for all

registrants of the products in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
264	Bayer CropScience 2 T.W. Alexander Drive P.O. Box 12014 Research Triangle Park, NC 27709

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before [insert date 30 days after date of publication in the **Federal Register**]. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. If this request for voluntary cancellation is granted, the Agency intends to issue a cancellation order that will allow

persons other than the registrant to continue to use the affected FIFRA 24(c) labels to apply existing stocks of the previously-cancelled parent Section 3 products, Nemacur 15% Granular Systemic Insecticide-Nematicide and Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. Nos. 264-726 and 264-731, respectively), provided such use is consistent with the 24(c) labels, until such existing stocks are exhausted. The registrant will not be permitted to sell or distribute the previously-cancelled parent Section 3 products, Nemacur 15% Granular Systemic Insecticide-Nematicide and Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. Nos. 264-726 and 264-731, respectively), but existing stocks already in the hands of dealers or users may be distributed and sold until May 31, 2008 and used legally until they are exhausted, in accordance with FRL-7332-5. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 10, 2008.

Peter Caulkins,
Acting Director, Special Review and Reregistration Division.

[FR Doc. E8-8568 Filed 4-22-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0121; FRL-8360-3]

Formaldehyde/Paraformaldehyde Risk Assessments; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the pesticide formaldehyde/paraformaldehyde, and opens a public comment period on these documents (Phase 3 of 4-Phase Process). The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for formaldehyde and paraformaldehyde through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before June 23, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID)

number EPA-HQ-OPP-2008-0121, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2008-0121. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated

and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

ShaRon Carlisle, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-6427; fax number: (703) 308-6467; e-mail address: carlisle.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that

includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for formaldehyde/paraformaldehyde, and soliciting public comment on risk management ideas or proposals. Formaldehyde is used for disinfection of poultry houses and as a materials preservative for residential uses. Paraformaldehyde is used as a mildewcide in closets. EPA developed the risk assessments and risk characterization for formaldehyde and paraformaldehyde through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested

parties to provide comments and input on the Agency's risk assessments for formaldehyde/paraformaldehyde. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for formaldehyde/paraformaldehyde. Homeowner risks of concern associated with the use of formaldehyde/paraformaldehyde are: Risks from the use of household products and the use of paraformaldehyde as mildewicide in closets. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to formaldehyde/paraformaldehyde, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL-7357-9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For formaldehyde/paraformaldehyde, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessments. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for formaldehyde/paraformaldehyde. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials, Formaldehyde.

Dated: April 15, 2008.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E8-8684 Filed 4-22-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0193; FRL-8356-1]

HHT Risk Assessments; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the pesticide hexahydro-1,3,5-tris(2-hydroxyethyl)-s-triazine HHT, and opens a public comment period on these documents (Phase 3 of 4-Phase Process). The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for HHT through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before June 23, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2008-0193, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2008-0193. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Lance Wormell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603-0523; fax number: (703) 308-8467; e-mail address: wormell.lance@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI

information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for HHT, and soliciting public comment on risk management ideas or proposals. HHT is an antimicrobial chemical that displays some fungicidal activity. The actual antimicrobial agent is formaldehyde (HCHO) which is released from HHT under proper conditions. EPA developed the risk assessments and risk characterization for HHT through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Products containing HHT are registered to preserve metalworking cutting fluids during use and for in-can preservation of adhesives; chain lubricants; aqueous mineral slurries; paints; stains; coatings; surfactant/detergent solutions and emulsions; chemical and clinical reagents; inks and dyes; fuel and oil in storage; indoor construction compounds such as caulks, spackling, grout, adhesives, foams, etc.; and drilling muds, workover fluids, and completion fluids.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for HHT. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as inhalation toxicity and worker exposure data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for HHT. Risks of concern associated with the use of HHT are: HCHO residential handler (inhalation) and post-application/bystander (inhalation), HCHO occupational handler (inhalation), and HHT occupational handler (dermal). In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to HHT, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL-7357-9), explains that in

conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For HHT, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its few complex issues. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for HHT. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 19, 2008.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E8-8730 Filed 4-22-08; 8:45 a.m.]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0196; FRL-8360-6]

Triforine Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide triforine, and opens a public comment period on this document. The

Agency's risk assessments and other related documents also are available in the Triforine Docket. Triforine is a systemic fungicide registered for use on ornamentals, mainly in residential areas, including roses, trees, herbaceous plants, woody shrubs and vines for control of black spot, rust, and powdery mildew. EPA has reviewed triforine through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before May 23, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2008-0196, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2008-0196. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and

included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

Cathryn O'Connell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0136; fax number: (703) 308-7070; e-mail address: oconnell.cathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since

others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating

existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, triforine under section 4(g)(2)(A) of FIFRA. Triforine is a systemic fungicide registered for use on ornamentals, mainly in residential areas, including roses, trees, herbaceous plants, woody shrubs and vines for control of black spot, rust, and powdery mildew. As a result of the risk assessments label language is required that specifies a maximum number of yearly applications and language that will advise users on how to reduce the opportunity for ecological exposure. EPA has determined that the data base to support reregistration is substantially complete and that products containing triforine are eligible for reregistration, provided the risks are mitigated in the manner described in the RED. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing triforine.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL-7357-9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, triforine was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for triforine.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the triforine RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for triforine. Comments received after the close of the comment

period will be marked "late." EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the triforine RED will be implemented as it is now presented.

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

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 9, 2008.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8-8567 Filed 4-22-08; 8:45 a.m.]

BILLING CODE 6560-50-S

FEDERAL DEPOSIT INSURANCE CORPORATION

Covered Bond Policy Statement

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final statement of policy.

SUMMARY: The Federal Deposit Insurance Corporation (the FDIC) is publishing for comment an interim final policy statement ("Policy Statement") on the treatment of covered bonds in a conservatorship or receivership. The Policy Statement provides guidance on the availability of expedited access to collateral pledged for certain covered bonds in a receivership or a conservatorship, after the FDIC decides whether to terminate or continue the transaction. The Policy Statement provides guidance to facilitate the prudent and incremental development of the U.S. covered bond market while the FDIC, and other regulators, evaluate

the benefits and risks of these products in the U.S. mortgage market. The Policy Statement is being published as "interim final" in order to provide immediate guidance, but with a view to possible later amendment in response to comments received.

DATES: Effective April 23, 2008.

Comments must be submitted on or before June 23, 2008.

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

- *Agency Web Site:* <http://www.fdic.gov/regulations/laws/federal>.

Follow instructions for submitting comments on the Agency Web Site.

- *E-mail:* Comments@FDIC.gov. Include "Covered Bond Policy" in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

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

- *Instructions:* All comments received will be posted generally without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided.

Comments may be inspected at the FDIC Public Information Center, Room E-1022, 3502 North Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

Richard T. Aboussie, Associate General Counsel, Legal Division (703) 562-2452; Michael H. Krimminger, Special Advisor for Policy (202) 898-8950.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC has received questions from interested parties about how covered bond transactions will be treated in a conservatorship or receivership of an insured depository institution ("IDI"). Currently, there are no statutory or regulatory prohibitions on the issuance of covered bonds by U.S. banks. Interested parties assert that if the FDIC were to issue a policy statement providing guidance on the availability of expedited access to collateral pledged for certain covered bonds in a conservatorship or a receivership, it would reduce market uncertainty and the additional costs of U.S. covered bond transactions. As discussed below, these costs are created by the additional liquidity needed to insure continued payment on outstanding bonds if the FDIC as conservator or receiver fails to make payment or provide access to the pledged collateral after the FDIC decides to terminate the covered bond

transaction. The Policy Statement does not impose any new obligations on the FDIC, as conservator or receiver, but does define the circumstances and the specific covered bond transactions for which the FDIC will grant consent to access pledged covered bond collateral.

Covered bonds are general obligation bonds of the issuing bank secured by a pledge of loans that remain on the bank's balance sheet. Covered bonds originated in Europe, where they are subject to extensive statutory and supervisory regulation designed to protect the interests of covered bond investors from the risks of insolvency of the issuing bank. By contrast, covered bonds are a relatively new innovation in the U.S. with only two issuers to date: Bank of America, N.A. and Washington Mutual. The initial U.S. covered bonds were issued in September 2006.

In the covered bond transactions initiated in the U.S. to date, an IDI sells mortgage bonds, secured by mortgages, to a trust or similar entity ("special purpose vehicle" or "SPV"). The pledged mortgages remain on the IDI's balance sheet, securing the IDI's obligation to make payments on the debt, and the SPV sells covered bonds, secured by the mortgage bonds, to investors. In the event of a default by the IDI, the mortgage bond trustee takes possession of the pledged mortgages and continues to make payments to the SPV to service the covered bonds.

Proponents argue that covered bonds provide new and additional sources of liquidity and diversity to an institution's funding base.

FDIC staff agrees that covered bonds may be a useful liquidity tool for IDIs as part of an overall prudent liquidity management framework and within the parameters set forth in the Policy Statement. While covered bonds, like other secured liabilities, could increase the costs to the Deposit Insurance Fund in a receivership, these potential costs must be balanced with diversification of sources of liquidity and the benefits that accrue from additional on-balance sheet alternatives to securitization for financing mortgage lending. The Policy Statement seeks to balance these considerations by clarifying the circumstances and the specific covered bond transactions for which the FDIC will grant consent to access pledged covered bond collateral. Staff believes that the prudential limitations identified in the Policy Statement permit the incremental development of the covered bond market, while allowing the FDIC, and other regulators, the opportunity to evaluate these transactions within the U.S. mortgage market. In fulfillment of its responsibilities as deposit insurer

and receiver for failed IDIs, the FDIC will continue to review the development of the covered bond marketplace in the U.S. and abroad to gain further insights into the appropriate role of covered bonds in IDI funding and the U.S. mortgage market, and their potential consequences for the Deposit Insurance Fund. (For ease of reference, throughout this Policy Statement when we refer to "covered bond obligation," we are referencing the part of the covered bond transaction comprising the IDI's debt obligation, whether to the SPV, mortgage bond trustee, or other parties; and "covered bond obligee" is the entity to which the IDI is indebted.)

Under Federal Deposit Insurance Act, when the FDIC is appointed conservator or receiver of an IDI, contracting parties cannot terminate agreements with the IDI because of the insolvency itself or the appointment of the conservator or receiver. In addition, contracting parties must obtain the FDIC's consent during the forty-five day period after appointment of FDIC as conservator, or during the ninety day period after appointment of FDIC as receiver before, among other things, terminating any contract or liquidating any collateral pledged for a secured transaction. During this period, the FDIC must still comply with otherwise enforceable provisions of the contract. The FDIC also may terminate or repudiate any agreement of the IDI within a reasonable time after the FDIC's appointment as conservator or receiver if the conservator or receiver determines that the agreement is burdensome and that the repudiation will promote the orderly administration of the IDI's affairs.¹ The questions to the FDIC for guidance have focused principally on the conditions under which the FDIC would grant consent to obtain collateral for a covered bond transaction before the expiration of the forty-five day period after appointment of a conservator or the ninety day period after appointment of a receiver.

IDIs interested in issuing covered bonds have expressed concern that the requirement to seek the FDIC's consent before exercising on the collateral after a breach could interrupt payments to the covered bond obligee for as long as 90 days. IDIs can provide for additional liquidity or other hedges to accommodate this potential risk to the continuity of covered bond payments, but at an additional cost to the

¹ See 12 U.S.C. §§ 1821(e)(3) and (13). These provisions do not apply in the manner stated to "qualified financial contracts" as defined in Section 11(e) of the FDI Act. See 12 U.S.C. §§ 1821(e)(8).

transaction. Interested parties have requested that the FDIC provide clarification about how FDIC would apply the consent requirement with respect to covered bonds. Accordingly, the FDIC has determined to issue this Policy Statement in order to provide covered bond issuers with guidance on how the FDIC will treat covered bonds in a conservatorship or receivership.

II. Interim Final Policy

For the purposes of this Policy Statement, a "covered bond" is defined as a recourse debt obligation of an insured depository institution with a term greater than one year and no more than ten years, that is secured directly or indirectly by a pool of mortgage loans or, not exceeding ten percent of the collateral, by AAA-rated mortgage bonds. The term "covered bond obligee" is the entity to which the IDI is indebted.

To provide guidance to potential covered bond issuers and investors, while allowing the FDIC to evaluate the potential benefits and risks that covered bond transactions may pose to the Deposit Insurance Fund in the U.S. mortgage market, the application of the policy statement is limited to covered bonds that meet the following standards.

This Policy Statement only applies to covered bond issuances made with the consent of the IDI's primary federal regulator in which the IDI's total covered bond obligations at such issuance comprise no more than 4% of an IDI's total liabilities. The FDIC is concerned that unrestricted growth while the FDIC is evaluating the potential benefits and risks of covered bonds could excessively increase the proportion of secured liabilities to unsecured liabilities on IDI balance sheets at the expense of the Deposit Insurance Fund. In a failure, secured liabilities on a financial institution's balance sheet are satisfied out of the pledged assets before any of the remaining value in those assets is made available to satisfy the claims of depositors (including the Deposit Insurance Fund as subrogee of the insured depositors) and general creditors. The larger the balance of secured liabilities on the balance sheet, the smaller the value of assets that are available to satisfy depositors and general creditors, and consequently the greater the potential loss to the Deposit Insurance Fund. To address these concerns, the Policy Statement is limited to covered bonds that comprise no more than 4% of a financial institution's total liabilities after issuance.

In order to limit the risks to the Deposit Insurance Fund, the Policy Statement limits its application to "eligible mortgages," defined as covered bond issuances secured by perfected security interests under applicable state and federal law on performing mortgages on one-to-four family residential properties, underwritten at the fully indexed rate and relying on documented income. The Policy Statement provides that eligible mortgages shall be underwritten in accordance with existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such other guidance applicable at the time such covered bonds are issued by any IDI.

The FDIC recognizes that some covered bond programs include mortgage-backed securities in limited quantities. Staff believes that allowing some limited inclusion of AAA-rated mortgage-backed securities as collateral for covered bonds during this interim, evaluation period will support enhanced liquidity for mortgage finance without increasing the risks to the Deposit Insurance Fund. Therefore, covered bonds that include up to 10% of their collateral in AAA-rated mortgage securities backed solely by mortgage loans that are made in compliance with guidance referenced above will meet the standards set forth in the Policy Statement. Securities backed by tranches in other securities or assets (such as Collateralized Debt Obligations) would not be considered to be acceptable collateral.

The Policy Statement provides that the consent of the FDIC, as conservator or receiver, is given to covered bond obligees to exercise their contractual rights over collateral for covered bond transactions conforming to the Policy Statement no sooner than ten (10) business days after a monetary default on an IDI's obligation to the covered bond obligee, as defined below, or ten (10) business days after the effective date of repudiation as provided in a written notice by the conservator or receiver.

The FDIC anticipates that future developments in the marketplace may present interim final covered bond structures and structural elements that are not encompassed within this Policy Statement. FDIC invites comment on whether this Policy Statement should be limited to the currently defined structures or open to future innovations in how covered bond transactions may

be structured in the U.S., and if so, how any future policy should be applied to such innovative elements.

From an insurance perspective, the FDIC seeks comment on whether the issuances of covered bonds should increase an institution's insurance assessment rate or should be included in an institution's assessment base. If so, should such assessment rate increases or inclusion in assessment base only apply when an institution's covered bond liability exceeds 4% of its total liabilities. More generally, the FDIC seeks comment on whether an institution's percentage of secured liabilities to total liabilities should be factored into an institution's insurance assessment rate or whether the total secured liabilities should be included in the assessment base. Finally, FDIC also seeks comment on whether, as part of this Policy Statement, there should also be an overall cap for secured liabilities.

III. Scope and Applicability

This Policy Statement applies to the FDIC in its capacity as conservator or receiver of an insured depository institution.

This Policy Statement only addresses the rights of the FDIC under 12 U.S.C. 1821(e)(13)(C). A previous policy statement entitled "Statement of Policy on Foreclosure Consent and Redemption Rights," August 17, 1992, separately addresses consent under 12 U.S.C. 1825(b), and should be separately consulted.

This Policy Statement does not authorize, and shall not be construed as authorizing, the waiver of the prohibitions in 12 U.S.C. 1825(b)(2) against levy, attachment, garnishment, foreclosure or sale of property of the FDIC, nor does it authorize or shall it be construed as authorizing the attachment of any involuntary lien upon the property of the FDIC. The Policy Statement provides that it shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

Request for Public Comment

The Board of Directors of the FDIC has adopted an interim final Covered Bond Policy Statement. The FDIC requests public comment on the interim

final Covered Bond Policy Statement. The text of the Covered Bond Policy Statement follows:

Covered Bond Policy Statement

Background

Insured depository institutions (“IDIs”) are showing increasing interest in issuing covered bonds. Although covered bond structures vary, in all covered bonds the IDI issues a debt obligation secured by a pledge of assets, typically mortgages. The debt obligation is either a covered bond sold directly to investors, or mortgage bonds which are sold to a trust or similar entity (“special purpose vehicle” or “SPV”) as collateral for the SPV to sell covered bonds to investors. In either case, the IDI’s debt obligation is secured by a perfected first priority security interest in pledged mortgages, which remain on the IDI’s balance sheet. Proponents argue that covered bonds provide new and additional sources of liquidity and diversity to an institution’s funding base. Based upon the information available to date, the FDIC agrees that covered bonds may be a useful liquidity tool for IDIs as part of an overall prudent liquidity management framework and the parameters set forth in this policy statement. Because of the increasing interest IDIs have in issuing covered bonds, the FDIC has determined to issue this policy statement with respect to covered bonds.

(a) Definitions.

(1) For the purposes of this policy statement, a “covered bond” shall be defined as a recourse debt obligation of an IDI with a term greater than one year and no more than ten years, that is secured directly or indirectly by perfected security interests under applicable state and federal law on eligible mortgages, or, for no more than ten percent of the collateral for any covered bond issuance or series, AAA-rated mortgage-backed securities secured by eligible mortgages.

(2) The term “eligible mortgages” shall mean performing mortgages on one-to-four family residential properties, underwritten at the fully indexed rate and relying on documented income in accordance with existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such other guidance applicable at the time such covered bonds are issued by any IDI.

(3) The term “covered bond obligation,” shall be defined as the

portion of the covered bond transaction that is the insured depository institution’s debt obligation, whether to the SPV, mortgage bond trustee, or other parties.

(4) The term “covered bond obligee” is the entity to which the insured depository institution is indebted.

(5) The term “monetary default” shall mean the failure to pay when due (taking into account any period for cure of such failure or for forbearance provided under the instrument or in law) sums of money that are owed, without dispute, to the covered bond obligee under the terms of any *bona fide* instrument creating the obligation to pay.

(6) The term “total liabilities” shall mean, for banks that file quarterly Reports of Condition and Income (Call Reports), line 21 “Total liabilities” (Schedule RC); and for thrifts that file quarterly Thrift Financial Reports (TFRs), line SC70 “Total liabilities” (Schedule SC).

(b) *Coverage.* This policy statement only applies to covered bond issuances made with the consent of the IDI’s primary federal regulator in which the insured depository institution’s total covered bond obligation at such issuance comprises no more than 4% of an insured depository institution’s total liabilities, and only so long as the assets securing the covered bond obligation are eligible mortgages. Additionally, no more than ten percent of the collateral for any covered bond issuance or series may consist of AAA-rated mortgage securities backed solely by eligible mortgages that are considered to be acceptable collateral under the standards set forth in this policy statement.

(c) *Consent to certain actions.* The FDIC as conservator or receiver consents to a covered bond obligee’s exercise of the rights and powers listed in 12 U.S.C. 1821(e)(13)(C), and will not assert any rights to which it may be entitled pursuant to 12 U.S.C. 1821(e)(13)(C), after the expiration of the specified amount of time, and the occurrence of the following events:

(1) If at any time after appointment the conservator or receiver is in a monetary default to a covered bond obligee, as defined above, and remains in monetary default for ten (10) business days after actual delivery of a written request to the FDIC pursuant to paragraph (d) hereof to exercise contractual rights because of such monetary default, the FDIC hereby consents pursuant to 12 U.S.C. 1821(e)(13)(C) to the covered bond obligee’s exercise of any such contractual rights, including liquidation

of properly pledged collateral by commercially reasonable methods, provided no involvement of the receiver or conservator is required.

(2) If the FDIC as conservator or receiver of an insured depository institution provides a written notice of repudiation of a contract to a covered bond obligee, and the FDIC does not pay the damages pursuant to 12 U.S.C. 1821(e) by reason of such repudiation within ten (10) business days after the effective date of the notice, the FDIC hereby consents pursuant to 12 U.S.C. 1821(e)(13)(C) for the covered bond obligee’s exercise of any of its contractual rights, including liquidation of properly pledged collateral by commercially reasonable methods, provided no involvement of the receiver or conservator is required.

(d) *Consent.* Anyone requesting the FDIC’s consent as conservator or receiver pursuant to 12 U.S.C. 1821(e)(13)(C) pursuant to this policy statement should provide to Robert E. Feldman, Executive Secretary, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington DC 20429-0002, a statement of the basis upon which such request is made, and copies of all documentation supporting such request, including without limitation a copy of the applicable contract and of any applicable notices under the contract.

(e) *Limitations.* The consents set forth in this policy statement do not act to waive or relinquish any rights granted to the FDIC in any capacity, pursuant to any other applicable law or any agreement or contract. Nothing contained in this policy alters the claims priority of collateralized obligations. Nothing contained in this policy statement shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of an insured depository institution, provided such interest is not taken in contemplation of the institution’s insolvency, or with the intent to hinder, delay or defraud the IDI or its creditors. Subject to the provisions of 12 U.S.C. 1821(e)(13)(C), nothing contained in this policy statement shall be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of a contract or preventing a covered bond obligee’s exercise of any of its contractual rights, including liquidation of properly pledged collateral by commercially reasonable methods.

(f) *No waiver.* This policy statement does not authorize, and shall not be construed as authorizing the waiver of the prohibitions in 12 U.S.C. 1825(b)(2)

against levy, attachment, garnishment, foreclosure, or sale of property of the FDIC, nor does it authorize nor shall it be construed as authorizing the attachment of any involuntary lien upon the property of the FDIC. Nor shall this policy statement be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(g) *No assignment.* The right to consent under 12 U.S.C. 1821(e)(13)(C) may not be assigned or transferred to any purchaser of property from the FDIC, other than to a conservator or bridge bank.

(h) *Repeal.* This policy statement may be amended or repealed by the FDIC upon no less than 30 days' notice provided in the **Federal Register**, but any amendment or repeal shall not apply to any covered bonds issued in accordance with this policy statement before such amendment or repeal becomes effective.

By order of the Board of Directors:

Dated at Washington, DC this 15th day of April, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8-8750 Filed 4-22-08; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to

contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

PHIL-AM Cargo Express, LLC, 2906 Keats Avenue, Clovis, CA 93611.

Officers: Theodore G. Tanaleon, Member/Manager, (Qualifying Individual), Irma M. Tanaleon, Member/Manager.

Apex Maritime Co. (PDX) Inc., 11818 SE Mill Plain Blvd., Vancouver, WA 98684. *Officers:* Vicky Cheung, President, (Qualifying Individual), Michael Stephenson, Vice President.

American Ocean Line, Inc., 148 The Knoll, Syosset, NY 11791. *Officer:* Harry Taurani, President, (Qualifying Individual).

S.O.E. Lines, Inc., 177-25 Rockaway Blvd., Ste. 201, Jamaica, NY 11434.

Officers: Po Ling Yu, President, (Qualifying Individual), Yat Lee Cheung, Secretary.

Camden Shipping Corporation, 56 Georgetown Road, Bordentown, NJ 08505. *Officers:* James Madden, Sen. Vice President, (Qualifying Individual), Michelle Bunting, President.

PATJAM Shipping Moving and Storage Inc., dba Patrick's Shipping Inc., 3477 NW 19th Street, Lauderdale Lakes, FL 33311. *Officers:* Patrick McNeil, President, (Qualifying Individual), Terrence Pennicooke, Vice President.

Universal Shipping and Trade Corporation, 151 25th Street, Brooklyn, NY 11201. *Officers:* Leslyn Antoine-Patterson, Corp. Secretary, (Qualifying Individual), Shaker Lashucl, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Salcedo Cargo Express, Inc., 1388 Jesus Avenue, Bronx, NY 10452. *Officer:*

Charles Canaan, President, (Qualifying Individual).

Transatlantic Arc LLC, 94-11 59th Avenue, Elmhurst, NY 11373.

Officers: Mark W. Broers, Vice Operating Manager, (Qualifying Individual), Diana G. Petrof, Operating Manager.

GFS Global Logistics, LLC, Six Concourse Parkway, Ste. 1750,

Atlanta, GA 30328. *Officers:* David W. Higgs, Vice President Int'l., (Qualifying Individual), Dan Smith, CEO.

United Logistics Corp., 3650 Mansell Road, Alpharetta, GA 30022. *Officer:* Jason Scott Ewing, Operations Manager, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Precious Enterprises dba JB Cargo, 1559 East Amar Road, Ste. J, West Covina, CA 91792. Simis-Emista P. Baquiran, Sole Proprietor.

Onward Shipping & Clearing Service Inc., 2305 Oak Lane, #2018, Grand Prairie, TX 75051. *Officers:* Julius O. Okunola, President, (Qualifying Individual), Folake Okunola, Vice President.

LDC Import & Export Inc., 19 Yardley Ct., Glendale Heights, IL 60139. *Officer:* Mounir Zamzaoui, President, (Qualifying Individual).

Cybamar USA, LLC, 24551 Warren Avenue, Dearborn Heights, MI 48127. *Officer:* Hassan Salhab, President, (Qualifying Individual).

Transoceanic Shipping Company, Inc., Lakeway II, 3850 N. Causeway Blvd., Suite 1330, Metairie, LA 70002. *Officer:* Thomas J. Griffin, President, (Qualifying Individual).

Amobeige Shipping Corp., 934 Broadway, Bayonne, NJ 07002. *Officer:* Alice Smerda, President, (Qualifying Individual).

Dated: April 18, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8-8807 Filed 4-22-08; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
004299N	CNC Shipping International Inc., 7774 NW., 71st Street Miami, FL 33166.	March 9, 2008.

License No.	Name/Address	Date reissued
011170N	Sage Freight System Inc. dba Sage Container Lines, 182–30 150th Road, #108 Jamaica, NY 11413.	March 5, 2008.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E8–8808 Filed 4–22–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, April 28, 2008.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT:

Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, April 18, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 08–1175 Filed 4–18–08; 4:07 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Department of Health and Human Services, Office of the Secretary,

Office of Public Health and Science, Office of Minority Health.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should e-mail acmh@osophs.dhhs.gov.

DATES: The meeting will be held on May 6, 2008 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Doubletree Paradise Valley Hotel, 5401 N. Scottsdale Road, Scottsdale, Arizona 85250.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–2882, Fax: 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during this meeting will include strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities, as well as other related issues.

Public attendance at the meeting is 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 designated contact person at least 14 business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least five business days prior to the meeting. Any members of the

public who wish to have printed material distributed to ACMH committee members should submit their materials to Garth Graham, M.D., M.P.H., Executive Secretary, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business April 28, 2008.

Dated: April 8, 2008.

Garth N. Graham,

Deputy Assistant Secretary for Minority Health, Office of Minority Health, Office of Public Health and Science, Office of the Secretary, U.S. Department of Health and Human Services.

[FR Doc. E8–8705 Filed 4–22–08; 8:45 am]

BILLING CODE 4150–29–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project:

“Feasibility of secure messaging for pediatric patients with chronic disease: Pilot implementation in pediatric respiratory medicine.” In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on February 15th, 2008 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by May 23, 2008.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at OIRA_submission@omb.eop.gov (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT:

Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by e-mail at doris.lefkowitz@ahrq.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

“Feasibility of secure messaging for pediatric patients with chronic disease: Pilot implementation in pediatric respiratory medicine.”

AHRQ proposes to evaluate how the implementation of a secure e-mail messaging (e-messaging) system between clinicians and adolescent patients affects: (1) Time spent by providers communicating with patients, (2) Emergency Department utilization for medication refills, and (3) qualitative satisfaction with care of the patients. The study will be conducted in the Yale University School of Medicine Pediatric Respiratory Medicine Clinic

Several studies have evaluated the use of e-mail between providers and patients and found that it is typically satisfactory to both, has not been abused by patients, and has not been used inappropriately for urgent items. Studies have not evaluated the use of e-mailing or secure messaging by children or adolescents with chronic diseases as well as their families. The setting of chronic disease provides a natural forum for discussion about the use of

such technologies since these families may need more frequent contact with their care-providers, need more frequent medication refills, and may have close relationships with their providers that encourage a communication genre such as secure messaging. In particular, because many adolescents are comfortable with text messaging and e-mail, the investigators hypothesize that adolescent patients themselves may feel empowered to contact their providers using this medium. This potential shift to having adolescents communicate with the providers presents two main hypotheses of interest. (1) Adolescents may be more prone to send a message that may be of an urgent nature because of the sense that messaging is “instant” as well as a possible feeling of more privacy. This issue presents the concern that adolescents in particular could send a secure message about information that is potentially urgent in nature such as a severe asthma exacerbation or suicidal ideation. Such messages will need immediate attention. (2) Adolescents may be more apt to disclose questions about their care that they would not have otherwise brought up with the provider. By giving adolescents a medium where they feel comfortable communicating, clinicians may be able to better meet the medical and psychosocial needs of adolescents and their families.

Method of Collection

The project will include 300 patient/family participants and 138 provider

participants. Data will be collected from (1) E-messaging content, to understand what children, adolescents and their parents will send in secure messages to their provider; (2) a survey, to determine the demographic characteristics of the patients and their family; and (3) qualitative interviews with patients and their families and clinic staff, to assess their attitudes and satisfaction with e-messaging.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours. Each of the 300 patient/family participants will complete a demographic survey and use the e-messaging system, sending an average of one e-message per month. Thirty of the patient/family participants will be randomly selected to participate in a qualitative interview. Each of the 138 provider participants will use the e-messaging system, responding to about twenty six e-messages per year, and keep a pre- and post-intervention log of patient/provider communications. Ten provider participants will be randomly selected to participate in a qualitative interview. The total burden for all participants is estimated to be 1,898 hours.

Exhibit 2 shows the estimated annualized cost burden for the participants' time to participate in this study. The total cost burden for all participants is estimated to be \$66,114.

EXHIBIT 1. ESTIMATED ANNUALIZED BURDEN HOURS

Interview participants	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Patient/Family Participants:				
Demographic Survey	300	1	10/60	50
E-messaging	300	12	15/60	900
Qualitative Interview	30	1	30/60	15
Provider Participants:				
E-messaging	138	26	15/60	900
Qualitative Interviews	10	1	30/60	5
Pre-intervention Provider Log	138	1	6/60	14
Post-intervention Provider Log	138	1	6/60	14
Total	438	na	na	1,898

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Interview participants	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Patient/Family Participants:				
Demographic Survey	300	50	\$26.20	\$1,310
E-messaging	300	900	\$26.20	\$23,580
Qualitative Survey	30	15	\$26.20	\$393
Provider Participants:				
E-messaging	138	900	\$43.78	\$39,402

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN—Continued

Interview participants	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Qualitative Interviews	10	5	\$43.78	\$219
Pre-intervention Provider Log	138	13.8	\$43.78	\$605
Post-intervention Provider Log	138	13.8	\$43.78	\$605
Total	438	1,898	na	\$66,114

*For Patient/Family Participants: Based upon the mean of the average wages for all occupations, National Compensation Survey, "U.S. Department of Labor, Bureau of Labor Statistics."

*For Provider Participants: Based upon the mean of the average wages for physicians (\$65.54/hr) and nurses (\$43.85/hr) in the New York, New Jersey, Connecticut and Pennsylvania region, National Compensation Survey, "U.S. Department of Labor, Bureau of Labor Statistics." For Pulmonary Fellows: Based upon internal Yale University School of Medicine data.

Estimated Annual Costs to the Federal Government

The total cost to the Federal Government for this project is \$399,970 over a two year period. The average annual cost is \$199,985. The following is a breakdown of the average annual costs:

Direct Costs:	
Personnel	\$159,488.5
Consultancies	5,475
Data support	5,336.5
Indirect Costs:	
Indirect costs	29,685
Total	\$199,985

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 10, 2008.

Carolyn M. Clancy,
Director.

[FR Doc. E8-8445 Filed 4-22-08; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Advisory Council for Healthcare Research and Quality: Request for Nominations for Public Members

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for nominations for public members.

SUMMARY: Section 931 of the Public Health Service Act (PHS Act), 42 U.S.C. 299c, established a National Advisory Council for Healthcare Research and Quality (the Council). The Council is to advise the Secretary of HHS (Secretary) and the Director of the Agency for Healthcare Research and Quality (AHRQ) on matters related to activities of the Agency to improve the quality, safety, efficiency, and effectiveness of health care for all Americans.

Seven current members' terms will expire in November 2008. To fill these positions in accordance with the legislative mandate establishing the Council, we are seeking individuals who are distinguished: (1) In the conduct of research, demonstration projects, and evaluations with respect to health care; (2) in the fields of health care quality research or health care improvement; (3) in the practice of medicine; (4) in other health professions; (5) in representing the private health care sector (including health plans, providers, and purchasers) or administrators of health care delivery systems; (6) in the fields of health care economics, information systems, law, ethics, business, or public policy; and, (7) in representing the interests of patients and consumers of health care. Individuals are particularly sought with experience and success in activities specified in the summary above.

DATES: Nominations should be received on or before June 15, 2008.

ADDRESSES: Nominations should be sent to Ms. Deborah Queenan, AHRQ, 540 Gaither Road, Room 3238, Rockville, Maryland 20850. Nominations also may be faxed to (301) 427-1341.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Queenan, AHRQ, at (301) 427-1330.

SUPPLEMENTARY INFORMATION: Section 931 of the PHS Act, 42 U.S.C. 299c, provides that the Secretary shall appoint to the National Advisory Council for Healthcare Research and Quality twenty-one appropriately qualified individuals. At least seventeen members shall be representatives of the public and at least one member shall be a specialist in the rural aspects of one or more of the professions or fields listed in the above summary. In addition, the Secretary designates, as ex officio members, representatives from other Federal agencies specified in the authorizing legislation, principally agencies that conduct or support health care research, as well as Federal officials the Secretary may consider appropriate. The Council meets in the Washington, DC, metropolitan area, generally in Rockville, Maryland, approximately three times a year to provide broad guidance to the Secretary and AHRQ's Director on the direction of and programs undertaken by AHRQ.

Seven individuals will be selected presently by the Secretary to serve on the Council beginning with the meeting in the spring of 2009. Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the Council. Self-nominations are accepted. Nominations shall include: (1) A copy of the nominee's resume or curriculum vitae; and (2) a statement that the nominee is willing to serve as a member of the Council. Selected candidates will be asked to provide detailed information concerning their financial interests, consultant positions and research grants

and contracts, to permit evaluation of possible sources of conflict of interest.

The Department seeks a broad geographic representation and has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies, and therefore, particularly encourages nominations for appropriately qualified female, minority, and/or physically handicapped candidates.

Dated: April 15, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8-8614 Filed 4-22-08; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Innovative Strategies for Increasing Self Sufficiency (ISIS)—Intervention Strategy Assessment Guide.
OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the Innovative Strategies for Increasing Self-Sufficiency (ISIS) demonstration and evaluation. The ISIS project will test a range of promising strategies to promote employment, self-sufficiency, and reduce dependence on cash welfare. The ISIS project will evaluate multiple employment-focused strategies that build on previous approaches and are adapted to the current Federal, State, and local policy environment. The

major goals of the project include increasing the empirical knowledge about the effectiveness of a variety of programs for low-income families to sustain employment and advance to positions that enable self-sufficiency, as well as producing useful findings for both policymakers and program administrators.

This proposed information collection activity focuses on identifying promising strategies to be tested as part of the study. Through semi-structured discussions, respondents will be asked to comment on the most important strategies and interventions for potential evaluation.

Respondents: Semi-structured discussions will be held with administrators or staff of State agencies, local agencies, and programs with responsibility for employment-related services or activities for welfare and other low-income families; researchers in the field of welfare policy, poverty, economic self-sufficiency, and low-wage labor markets; and policymakers at various levels of government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Intervention Strategy Assessment Guide	400	1	.5	200

Estimated Total Annual Burden Hours: 200.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: OPREinfocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: April 14, 2008.

Brendan C. Kelly,

OPRE Reports Clearance Officer.

[FR Doc. E8-8624 Filed 4-22-08; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Generic Clearance to Conduct Pre-Testing of Surveys.

OMB No.: New Collection.

Description: The Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), intends to request approval from the Office of Management and Budget (OMB) for a generic clearance that will allow OPRE to conduct a variety of data-gathering activities aimed at identifying questionnaire and procedural problems in survey administration. Over the next three years, OPRE anticipates

undertaking a variety of new surveys as part of research projects in the fields of cash welfare, employment and self-sufficiency, Head Start, child care, healthy marriage and responsible fatherhood, and child welfare, among others. In order to improve the development of its research and evaluation surveys, OPRE envisions using a variety of techniques including field tests, respondent debriefing questionnaires, cognitive interviews, and focus groups in order to identify questionnaire and procedural problems, suggest solutions, and measure the relative effectiveness of alternative survey solutions.

Following standard OMB requirements, OPRE will submit a change request to OMB individually for every data collection activity undertaken under this generic clearance. OPRE will provide OMB with a copy of the individual instrument or questionnaire, as well as other materials describing the project and specific survey pre test.

Respondents: The respondents will be identified at the time that each change request is submitted to OMB. Generally, they will be individuals who are

representative of the target groups for

the public assistance research or evaluation project in question.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Survey Development Field Tests, Respondent Debriefing Questionnaires, Cognitive Interviews and Focus Groups	1,000	1	1	1,000

Estimated Total Annual Burden Hours: 1,000.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: OPREinfocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 14, 2008.

Brendan C. Kelly,

OPRE Reports Clearance Officer.

[FR Doc. E8-8625 Filed 4-22-08; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Exploration of Low-Income Couples' Decision-Making Processes.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the Exploration of Low-Income Couples' Decision Making (CDM) Processes study. This project will gather important information that will be useful for improving social services delivery approaches for working with individuals in couple relationships. The proposed collection will consist of a telephone survey and in-home observation of low-income couples. These data collection efforts will examine sources of conflict and assess decision-making processes among low-income couples—especially in relation to issues directly addressed by social service programs (e.g., employment, housing, etc.)

Respondents: Low-income couples.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Estimated annual burden hours
Telephone Survey	90	1	.333	30
In-Home Observation	90	1	2.666	240

Estimated Total Annual Burden Hours: 270.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: OPREinfocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this

document in the **Federal Register**.

Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: April 14, 2008.

Brendan C. Kelly,

Reports Clearance Officer.

[FR Doc. E8-8626 Filed 4-22-08; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Tribal Plan (Form ACF-118-A).

OMB No.: 0970-0198.

Description: The Child Care and Development Fund (CCDF) Tribal Plan serves as the agreement between the applicant (Indian Tribes, tribal consortia and tribal organizations) and the Federal government that describes how tribal applicants will operate CCDF Block

Grant programs. The Tribal Plan provides assurances that the CCDF funds will be administered in conformance with legislative requirements, federal regulations at 45 CFR parts 98 and 99 and other applicable instructions or guidelines

issued by the Administration for Children and Families (ACF). Tribes must submit a new CCDF Tribal Plan every two years in accordance with 45 CFR 98.17.

Respondents: Tribal CCDF programs (259 total).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF Tribal Plan	259	1	17.5	4,532.5
CCDF Tribal Plan Amendments	259	1	1.5	388.5

Estimated Total Annual Burden Hours: 4,921.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: April 16, 2008.

Janean Chambers,
Reports Clearance, Officer.

[FR Doc. E8-8648 Filed 4-22-08; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0227]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on medical device labeling regulations.

DATES: Submit written or electronic comments on the collection of information by June 23, 2008.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1772.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Device Labeling Regulations—21 CFR Parts 800, 801, and 809 (OMB Control Number 0910-0485)—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352), among other things, establishes requirements for the label or labeling of a medical device so that it is not misbranded and subject to a regulatory action. Certain provisions under section 502 of the act require manufacturers, importers, and distributors of medical devices to disclose information about themselves or the devices, on the labels or labeling for the devices. Section 502(b) of the act requires that for packaged devices, the label must bear

the name and place of business of the manufacturer, packer, or distributor as well as an accurate statement of the quantity of the contents. Section 502(f) of the act requires that the labeling for a device must contain adequate directions for use. FDA may however, grant an exemption, if the agency determines that the adequate directions for use labeling requirements are not necessary for the particular case, as it relates to protection of the public health.

FDA regulations under parts 800, 801, and 809 (21 CFR parts 800, 801, and 809) require disclosure of specific information by manufacturers, importers, and distributors of medical devices about themselves or the devices, on the label or labeling for the devices to health professionals and consumers. FDA issued these regulations under the authority of sections 201, 301, 502, and 701 of the act (21 U.S.C. 321, 331, 352, and 371). Most of the regulations under parts 800, 801, and 809 are derived from requirements of section 502 of the act, which provides in part, that a device shall be misbranded if among other things, its label or labeling fails to bear certain required information concerning the device, is false or misleading in any particular way, or fails to contain adequate directions for use.

Reporting Burden

Sections 800.10(a)(3) and 800.12(c) require that the label for contact lens cleaning solutions bear a prominent statement alerting consumers of the tamper-resistant feature. Further, § 800.12 requires that packaged contact lens cleaning solutions contain a tamper-resistant feature, to prevent malicious adulteration.

Section 800.10(b)(2) requires that the labeling for liquid ophthalmic preparations packed in multiple-dose containers provide information on the duration of use and the necessary warning information to afford adequate protection from contamination during use.

Section 801.1 requires that the label for a device in package form, contain the name and place of business of the manufacturer, packer, or distributor.

Section 801.5 requires that labeling for a device include information on intended use as defined under § 801.4 and provide adequate directions to assure safe use by the lay consumers.

Section 801.61 requires that the principal display panel of an over-the-counter (OTC) device in package form must bear a statement of the identity of the device. The statement of identity of the device must include the common name of the device followed by an

accurate statement of the principal intended actions of the device.

Section 801.62 requires that the label for an OTC device in package form must bear a statement of declaration of the net quantity of contents. The label must express the net quantity in terms of weight, measure, numerical count, or a combination of numerical count and weight, measure, or size.

Section 801.109 establishes labeling requirements for prescription devices, in which the label for the device must describe the application or use of the device, and contain a cautionary statement restricting the device for sale by, or on the order of an appropriate professional.

For prescription by a licensed practitioner, § 801.110 establishes labeling requirements for a prescription device delivered to the ultimate purchaser or user. The device must be accompanied by labeling bearing the name and address of the licensed practitioner, directions for use, and cautionary statements if any, provided by the order.

Section 801.150(e) requires a written agreement between firms involved when a non-sterile device is assembled or packaged with labeling that identifies the final finished device as sterile, for which the device is ultimately introduced into interstate commerce to an establishment or contract manufacturer to be sterilized. When a written agreement complies with the requirements under § 801.150(e), FDA takes no regulatory action against the device as being misbranded or adulterated. In addition, § 801.150(e) requires that each pallet, carton, or other designated unit, be conspicuously marked to show its non-sterile nature when introduced into interstate commerce, and while being held prior to sterilization.

Section 801.405(b)(1) provides for labeling requirements for articles, including repair kits, re-liners, pads, and cushions, intended for use in temporary repairs and refitting of dentures for lay persons. Section 801.405(b)(1) also requires that the labeling contain the word "emergency" preceding and modifying each indication-for-use statement for denture repair kits and the word "temporary" preceding and modifying each indication-for-use statement for re-liners, pads, and cushions.

Section 801.405(c) provides for labeling requirements that contain essentially the same information described under § 801.405(b)(1). The information is intended to enable a lay person to understand the limitations of

using OTC denture repair kits, and denture re-liners, pads, and cushions.

Section 801.420(c)(1) requires that manufacturers or distributors of hearing aids develop a user instructional brochure to be provided by the dispenser of the hearing aid to prospective users. The brochure must contain detailed information on the use and maintenance of the hearing aid.

Section 801.420(c)(4) establishes requirements that the user instructional brochure or separate labeling, provide for technical data elements useful for selecting, fitting, and checking the performance of a hearing aid. In addition, § 801.420(c)(4) provides for testing requirements to determine that the required data elements must be conducted in accordance with the American National Standards Institute's (ANSI) "Specification of Hearing Aid Characteristics," ANSI S3.22-1996 (ASA 70-1996); (Revision of ANSI S3.22-1987), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Section 801.421(b) establishes requirement for the hearing aid dispenser to provide prospective users with a copy of the user instructional brochure along with an opportunity to review comments, either orally or by the predominant method of communication used during the sale.

Section 801.421(c) establishes requirements for the hearing aid dispenser to provide a copy of the user instructional brochure to the prospective purchaser of any hearing aid upon request or, if the brochure is unavailable, provide the name and address of the manufacturer or distributor from which it may be obtained.

Section 801.430(d) establishes labeling requirements for menstrual tampons to provide information on signs, risk factors, and ways to reduce the risk of Toxic Shock Syndrome (TSS).

Section 801.430(e)(2) requires menstrual tampon package labels to provide information on the absorbency term based on testing required under § 801.430(f) and an explanation of selecting absorbencies that reduce the risk of contracting TSS.

Section 801.430(f) establishes requirements that manufacturers of menstrual tampons devise and follow an ongoing sampling plan for measuring the absorbency of menstrual tampons. Further, manufacturers must use the method and testing parameters described under this section.

Section 801.435(b), (c), and (h) establishes requirements for condom labeling to bear an expiration date that

is supported by testing that demonstrates the integrity of three random lots of the product.

Section 809.10(a) and (b) establishes requirements that a label for an in vitro diagnostic device and the accompanying labeling (package insert), must contain information identifying its intended use, instructions for use and lot or control number, and source.

Section 809.10(d)(1) provides that the labeling requirements for general purpose laboratory reagents may be exempt from the requirements of § 809.10(a) and (b), if the labeling contains information identifying its intended use, instructions for use, lot or control number, and source.

Section 809.10(e) provides that the labeling for "Analytic Specific Reagents" (ASRs) must provide information identifying the quantity or proportion of each reagent ingredient, instructions for use, lot or control number, and source.

Section 809.10(f) provides that, the labeling for OTC test sample collection systems for drugs of abuse must include information on the intended use, specimen collection instructions, identification system, and information about use of the test results. In addition,

§ 809.10(f) requires that this information be in a language appropriate for the intended users.

Section 809.30(d) requires that advertising and promotional materials for ASRs include the identity and purity of the ASR and the identity of the analyte.

Recordkeeping Burden

Section 801.150(a)(2) establishes recordkeeping requirements for re-processors, re-labelers, or re-packagers to retain a copy of the agreement containing the specifications for the processing, labeling, or repacking of the device for 2 years after the shipment or delivery of the device. Section 801.150(a)(2) also requires that the subject respondents make copies of this agreement available for inspection at any reasonable hour to any officer or employee of the Department of Health and Human Services (DHHS), upon their request.

Section 801.421(d) establishes requirements for hearing aid dispensers to retain copies of all physician statements or any waivers of medical evaluation for 3 years after dispensing the hearing aid.

Section 801.410(e) requires copies of invoices, shipping documents, and

records of sale or distribution of all impact resistant lenses, including finished eyeglasses and sunglasses, be maintained for 3 years by the retailer and made available upon request by any officer or employee of FDA or by any other officer or employee acting on behalf of the Secretary of Health and Human Services.

Section 801.410(f) requires that the results of impact tests and description of the test method and apparatus be retained for a period of 3 years.

Section 801.421(d) requires hearing aid dispensers to retain a copy of any written statement from a physician required under § 801.421(a)(1), or any written statement waiving medical evaluation required under § 801.421(a)(2)(iii) for 3 years after the dispensing the hearing aid.

Section 801.435(g) requires latex condom manufacturers to document and provide, upon request, an appropriate justification for the application of the testing data from one product on any variation of that product to support expiration dating in the user labeling.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
800.10(a)(3) and 800.12(c)	4	10	40	1	40
800.10(b)(2)	4	10	40	40	1,600
801.1	30,000	3.5	105,000	0.1	10,500
801.5	5,000	3.5	17,500	22.35	391,125
801.61	5,000	3.5	17,500	1	17,500
801.62	1,000	5	5,000	1	5,000
801.109	18,000	3.5	63,000	17.77	1,119,510
801.110	10,000	50	500,000	0.25	125,000
801.150(e)	2	1	2	0.50	1
801.405(b)(1)	40	1	40	4	160
801.405(c)	40	1	40	4	160
801.420(c)(1)	275	5	1,375	40	55,000
801.420(c)(4)	275	5	1,375	80	110,000
801.421(b)	10,000	160	1,600,000	0.30	480,000
801.421(c)	10,000	5	50,000	0.17	8,500
801.430(d)	8	5	40	2	80
801.430(e)(2)	8	5	40	2	80

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801.430(f)	8	5	40	80	3,200
801.435(b), (c), and (h)	135	1	135	96	12,960
809.10(a) and (b)	1,700	6	10,200	80	816,000
809.10(d)(1)	300	2	600	40	24,000
809.10(e)	300	25	7,500	1	7,500
809.10(f)	20	1	20	100	2,000
809.30(d)	300	25	7,500	1	7,500
Total					3,197,416

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
801.150(a)(2)	57	1	57	0.50	28
801.410(e)	30	769,000	23,070,000	0.25	5,767,500
801.410(f)	30	769,000	23,070,000	0.25	5,767,500
801.421(d)	10,000	160	1,600,000	0.25	400,000
Total Hours					11,935,028

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

This regulation also refers to previously approved collections of information found in FDA regulations. The collections of information under §§ 800.12(d) and 801.437(i) have been approved under OMB control number 0910–0183; the collections of information under § 800.12(e) have been approved under OMB control number 0910–0231; and the collections of information under § 801.435(g) have been approved under OMB control number 0910–0073.

Further, FDA concludes that labeling statements under §§ 801.63, 801.405(b)(2) and (b)(3), 801.420(c)(2) and (c)(3), 801.430(c) and (e)(1), 801.433, 801.437(d) through (g), 809.30(d)(2) and (d)(3), and 809.30(e) do not constitute a “collection of information” under the PRA. Rather, these labeling statements are “public disclosure” of information originally supplied by the Federal Government to the recipient for the purpose of “disclosure to the public” (5 CFR 1320.3(c)(2)).

Reporting

These estimates are based on FDA’s registration and listing database for medical device establishments, agency

communications with industry, and FDA’s knowledge of and experience with device labeling.

Recordkeeping

These estimates are based on FDA’s registration and listing database for medical device establishments, agency communications with industry, and FDA’s knowledge of and experience with device labeling. In addition, the Vision Council of America provided the growth rate used to estimate the burden under § 801.410(e) through (f).

This regulation also refers to previously approved collections of information found in FDA regulations. The collections of information under §§ 800.12(d) and 801.437(i) have been approved under OMB control number 0910–0183; and the collections of information under § 800.12(e) have been approved under OMB control number 0910–0231.

The information collection requirements under §§ 801.22, 801.63, 801.405(b)(2) and (b)(3), 801.420(c)(2) and (c)(3), 801.430(c) and (e)(1), 801.433, 801.437(d) through (g), 809.30(d)(2) and (d)(3), and 809.30(e) are not considered information collection because the public

information is originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)).

We have not estimated a burden for information that is disclosed to third parties, because it is a “usual and customary” part of a medical device manufacturer, distributor, or importer’s normal business activities. Nor have we estimated a burden for time that is spent designing labels to improve the format or presentation.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at <http://www.regulations.gov>.

Dated: April 16, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–8710 Filed 4–22–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2008-N-0234]

Developing Guidance on Conducting Scientifically Sound Pharmacoeconomic Safety Studies Using Large Electronic Healthcare Data Sets; Public Workshop; Request for Comments**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice of public workshop; request for comments.

SUMMARY: The Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) at the Food and Drug Administration (FDA) are announcing a public workshop entitled "Developing Guidance on Conducting Scientifically Sound Pharmacoeconomic Safety Studies Using Large Electronic Healthcare Data Sets." The purpose of the public workshop is to solicit information and views from interested persons on best practices and principles for the design and evaluation of pharmacoeconomic safety studies using large electronic healthcare data sets. The input from this workshop will be used to develop a draft Guidance to Industry, and to provide consistent review criteria for FDA to use in evaluating protocols and study reports submitted to the agency.

DATES: The public workshop will be held on Wednesday, May 7, 2008, from 8:30 a.m. to 5 p.m. See section III of this document for information on the deadline and on how to attend or present at the meeting. Written or electronic comments must be submitted to the docket by June 7, 2008.

ADDRESSES: The public workshop will be held in the Ballroom at the Crowne Plaza Hotel Washington DC-Silver Spring, MD at 8777 Georgia Ave., Silver Spring, MD 20910.

Regardless of attendance at the public workshop, interested persons may submit written electronic comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Lana Pauls, Center for Drug Evaluation and Research, Food and Drug

Administration, 10903 New Hampshire Ave. Bldg. 51, rm. 6196, Silver Spring, MD 20903, 301-796-0518, FAX: 301-847-8753, e-mail: lane.pauls@fda.hhs.gov.**SUPPLEMENTARY INFORMATION:****I. Background**

As part of the reauthorization of the Prescription Drug User Fee Act (PDUFA IV), FDA committed to certain performance goals (see <http://www.fda.gov/oc/pdufa4/pdufa4goals.html>). In one of these goals, FDA agreed to identify, with input from academia, industry, and others from the general public, epidemiology best practices and to develop guidance(s) describing these practices. In addition, in the Food and Drug Administration Amendments Act of 2007 (FDAAA, Public Law 110-85, 121 Stat. 823 *et seq.*), Congress directed FDA to develop and implement a postmarket risk identification and analysis system that would include, among other things, advanced analysis of drug safety data (FDAAA, section 905, 121 Stat. 944). This workshop represents the first step in meeting the PDUFA goal and will provide valuable information as we build our active postmarket surveillance system.

New technologies and the ability to assemble large data sets for use in epidemiologic research of drug safety issues have precipitated a great deal of discussion over the appropriate use of these data in conducting pharmacoeconomic studies. FDA is committed to developing guidance to identify and encourage the use of best practices in the conduct of epidemiologic studies of drug safety issues by industry, FDA, and academic researchers. Experts from industry, academia, and the general public are invited to contribute ideas and concepts for consideration.

The workshop objectives are as follows: (1) Initiate constructive dialogue and information-sharing among regulators, researchers, the pharmaceutical industry, health organizations, and individuals about the design, conduct and interpretation of pharmacoeconomic safety studies using electronic healthcare data sets; (2) share current FDA experiences regarding the evaluation of protocols and study reports submitted to the agency; and (3) obtain input on developing consistent review criteria for FDA to use in evaluating protocols and study reports submitted to the agency.

Two panel discussions will focus on areas in which the agency requests input.

Panel 1 will focus on characteristics of electronic data used to conduct pharmacoeconomic studies for use in regulatory assessment of product safety. Topics include: differences in health care coverage, determinants of enrollment, country or region of data collection, characteristics of various healthcare systems and how these might impact on the interpretation and the generalizability of the results to the U.S. patient population. Specific questions include:

1. What information and what level of detail are needed for FDA to ensure the appropriateness of the data source to address the product safety questions being asked? How does this differ by type of data source (electronic medical records (EMR) vs. claims)?

2. What are the challenges of using enrollment data for defining study populations in claims databases? Describe effective strategies for addressing the absence of formal enrollment data in some EMR systems.

3. Under what circumstances should FDA consider studies using non-U.S. electronic data sources in its assessment of product safety questions?

Panel 2 will focus on characteristics related to study design, conduct and interpretation of pharmacoeconomic safety studies, specifically those using electronic healthcare data sources. Topics include issues pertinent to definition of exposure, ascertainment of outcome, analysis of data, and interpretation of study findings and will address the following questions:

1. How can FDA assure that the study design accurately captures the clinical events, exposures of interest, and confounding factors needed to answer the product safety question under investigation?

2. What are effective strategies to address confounding by indication and the effect of measured and unmeasured confounders?

3. What are other challenges to internal and external validity in studies using EMR and claims databases? What are the best practices for addressing them?

FDA is working to refine the workshop agenda and to invite panel members. We are seeking broad participation by safety researchers, health system officials, the pharmaceutical industry, and others. We anticipate issuing a summary of the workshop, including a discussion of implications and next steps for further development.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at <http://www.regulations.gov>.

III. Attendance and Registration

The Workshop facility, the Ballroom in the Crowne Plaza Hotel at 8777 Georgia Ave. in Silver Spring, MD is not a secure facility. Seating will be made available on a first-come basis. Individual interested in attending the workshop need not register.

Individuals who wish to speak during the public workshop must register on or before April 7, 2008. You should identify the subject matter you wish to address during the public workshop. Please specify Panel 1, or Panel 2 (see **I. Background**). To register to speak, contact lane.pauls@fda.hhs.gov or call 301-796-0518.

Ample time will be allowed during the scheduled agenda for attendees to ask questions of panelists. In addition, we strongly encourage written comments to the docket.

If you need special accommodations because of disability, please contact Lana Pauls (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the workshop.

IV. Workshop Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI-35), Office of Management Programs, Food and Drug

Administration, 5600 Fishers Lane, rm. 6-30, Rockville, MD 20857.

Dated: April 17, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-8772 Filed 4-22-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Interagency Autism Coordinating Committee.

The meeting will be open to the public, 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 inform the Contact Person listed below in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Date: May 12, 2008.

Time: 9 a.m. to 4 p.m.

Agenda: Agency updates; reports from Services Subcommittee, town hall meeting; presentation of Strategic Planning Workgroup recommendations for IACC strategic plan for autism spectrum disorder (ASD) research; review draft of summary of advances in ASD research.

Place: Ronald Reagan Building and International Trade Center, Rotunda, North Tower, 8th Floor, 1300 Pennsylvania Avenue, NW., Washington, DC 20004, Phone: 202-312-1300.

Contact Person: Tanya Pryor, Interagency Autism Coordinating Committee, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6187, MSC 9669, Bethesda, MD 20892-9669, (301) 443-7153, pryor@mail.nih.gov.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address,

telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, all guests and vehicles are screened upon entry into the underground parking garage at the Ronald Reagan Building. Please allow extra time for this process.

A registration link and information about the meeting will be available on the IACC Web site: <http://www.nimh.nih.gov/research-funding/scientific-meetings/recurring-meetings/iacc/events/index.shtml>.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: April 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8724 Filed 4-22-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 Cancer Institute Initial Review Group; Subcommittee I—Career Development.

Date: May 19–20, 2008.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Robert Bird, PhD, Scientific Review Officer, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8113, MSC 8328, Bethesda, MD 20892-8328, 301-496-7978, birdr@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Technologies for Molecular Analysis of Cancer.

Date: June 25–26, 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: Jeffrey E. DeClue, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8059, Bethesda, MD 20892–8329, 301–496–7904, decluej@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; Centers of Excellence in Cancer Communication Research II.

Date: July 15–17, 2008.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7142, Bethesda, MD 20892, 301–594–9582, vollbert@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8609 Filed 4–22–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials Advisory Committee.

The meeting will be open to the public, 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.

Name of Committee: National Cancer Institute Clinical Trials; Advisory Committee.

Date: June 25, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: Update on the progress of the implementation of the Clinical Trials Working Group and the Translational Research Working Group reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, C-Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., Suite 507, Bethesda, MD 20892, 301–451–5048, prindivs@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8721 Filed 4–22–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & 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.

Date: June 16–17, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Gaithersburg, Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Peter Kozel, PhD, Scientific Review Officer, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, 301–496–8004, kozelp@mail.nih.gov.

Dated: April 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8712 Filed 4–22–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed 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 Eye Institute Special Emphasis Panel; NEI Loan Repayment Program Applications.

Date: May 13, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Division of

Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892-9300, (301) 451-2020, aes@nei.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8605 Filed 4-22-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Maximizing the Scientific Value of the Biologic Specimens from the Women's Health Initiative.

Date: May 21-22, 2008.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: BWI Airport Marriott, 1743 West Nursery Road, Baltimore, MD 21240.

Contact Person: Chang Sook Kim, PhD, Scientific Review Administrator, Review Branch, DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892, 301-435-0314, carolko@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8722 Filed 4-22-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Initial Review Group Genome Research Review Committee; Teleconference.

Date: June 5, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/NHGRI, 5635 Fishers Lane, Twinbrook Conference Room, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, MSC 9306, Bethesda, MD 20814, 301-594-4280, mckenneyk@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health HHS)

Dated: April 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8611 Filed 4-22-08; 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 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 General Medical Sciences Council.

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 General Medical Sciences Council.

Date: May 15-16, 2008.

Closed: May 15, 2008, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892.

Open: May 16, 2008, 8:30 a.m. to adjournment.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, PhD, Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892-6200, (301) 594-4499, hagana@nigms.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles

will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: http://www.nigms.nih.gov/about/advisory_council.html, where an agenda and any additional information for the meeting will be posted when available.

(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: April 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8608 Filed 4-22-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; P01 for Uterine Leiomyoma Research Center Program, Northwestern University, Chicago.

Date: May 13, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National

Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892-9304, (301) 435-6680, skandasa@mail.nih.gov.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; AREA Grant in Development Biology.

Date: May 28-29, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division Of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496-1485, changn@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8610 Filed 4-22-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(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 Mental Health Council.

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 Mental Health Council.

Date: May 22-23, 2008.

Closed: May 22, 2008, 10:30 a.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Open: May 22, 2008, 3:30 p.m. to 5 p.m.

Agenda: Discussion on NIMH programs.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Open: May 23, 2008, 8:30 a.m. to 12:30 p.m.

Agenda: Presentation of NIMH Director's report and discussion on NIMH program and policy issues.

Place: National Institutes of Health, Building 31, C Wing, 31 Center Drive, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892-9609, 301-443-5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nimh.nih.gov/council/advis.cfm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8612 Filed 4-22-08; 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; Health ABC.
Date: May 9, 2008.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496-9666.

Name of Committee: National Institute on Aging Special Emphasis Panel; Regulation of Bone Mass Accrual by Serotonin.

Date: May 22, 2008.

Time: 1:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Lewis, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, MSC-9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301-402-7707, elainelewis@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8613 Filed 4-22-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA CEBRA Review.

Date: May 9, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892-8401, (301) 435-1389, ms80x@nih.gov.

Name of Committee: National Institute on Drug Abuse Initial Review Group; Treatment Research Subcommittee.

Date: June 4-5, 2008.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892-8401, 301-402-6626, gm145a@nih.gov.

Name of Committee: National Institute on Drug Abuse Initial Review Group; Training and Career Development Subcommittee.

Date: July 8-9, 2008.

Time: 9 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: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892-8401, 301-451-4530, el6r@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8715 Filed 4-22-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Develop State-of-the-Art Mechanisms for Epidemiological Research.

Date: May 12, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kristen V Huntley, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, 301-435-1433, huntleyk@mail.nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; CJ

DATS 2: Coordinating Center and Data and Safety Monitoring Board Support.

Date: May 20, 2008.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, (301) 435-1439, lf33c.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8716 Filed 4-22-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Mathematical Cognition and Specific Learning Disabilities.

Date: April 29, 2008.

Time: 2 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6100 Executive Blvd., 5B01, Bethesda, MD 20892.

Contact Person: Anne Krey, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301-435-6908.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8717 Filed 4-22-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; The Interaction of HIV, Drug Abuse and Criminal Justice System.

Date: May 22, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kristen V Huntley, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, 301-435-1433, huntleyk@mail.nih.gov.

Name of Committee: National Institute on Drug Abuse Initial Review Group; Medication Development Research Subcommittee.

Date: June 2, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jose F Ruiz, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Blvd., Rm. 213, MSC 8401, Bethesda, MD 20892, 301-451-3086, ruizjf@nida.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8719 Filed 4-22-08; 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; NIH Support for Conferences and Scientific Meetings.

Date: April 29, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Margaret Weidman, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301-594-3663, weidmanma@nigms.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, 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: April 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8720 Filed 4-22-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2007-0008]

National Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice announces the date, time, location and agenda for the next meeting of the National Advisory Council (NAC). At the meeting, the newly formed subcommittees will be reporting back regarding their work since the meeting in February, 2008. The meeting will be open to the public.

DATES: *Meeting Dates:* Wednesday, May 14, 2008, from approximately 9 a.m. to 5 p.m. and Thursday, May 15, 2008, 9 a.m. to 3:30 p.m. A public comment period will take place on the afternoon of May 15, 2008, approximately between 2:30 p.m. and 3 p.m.

Comment Date: Written comments or requests to make oral presentations must be received by May 6, 2008.

ADDRESSES: The meeting will be held at the Four Points by Sheraton, 10249 W. Irving Park Road, Chicago, IL. Persons wishing to make an oral presentation or who are unable to attend or speak at the meeting may submit written comments. Written comments and requests to make oral presentations at the meeting should be provided to the address listed below and must be received by May 6, 2008. All submissions received must include the Docket ID FEMA-2007-0008 and may be submitted by any one of the following methods:

Federal Rulemaking Portal: <http://www.regulations.gov>. Follow instructions for submitting comments on the Web site.

E-mail: FEMA-RULES@dhs.gov.

Include Docket ID in the subject line of the message.

Facsimile: (866) 466-5370.

Mail: Office of Chief Counsel, Federal Emergency Management Agency, Room

835, 500 C Street, SW., Washington, DC 20472.

Hand Delivery/Courier: Office of the Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All submissions received must include the Docket ID FEMA-2007-0008. Comments received will also be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Advisory Council, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Alyson Price, Designated Federal Officer, Federal Emergency Management Agency, 500 C Street, SW., (E Street, 3rd Floor), Washington, DC 20472, telephone 202-646-3746, fax 202-646-3061, and e-mail FEMA-NAC@dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92-463, as amended (5 U.S.C. App. 1 *et seq.*). The NAC will meet for the purpose of reviewing the progress of the newly formed subcommittees, will receive an update on the Regional Advisory Councils, transition issues and other matters.

Public Attendance: The meeting is open to the public. Please note that the meeting may close early, if all business is finished. Persons with disabilities who require special assistance should advise the Designated Federal Officer of their anticipated special needs as early as possible. Members of the public who wish to make comments on Thursday May 15, between 2:30 p.m. and 3 p.m. are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 3 minutes. For those wishing to submit written comments, please follow the procedure noted above.

Dated: April 15, 2008.

R. David Paulson,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8-8828 Filed 4-22-08; 8:45 am]

BILLING CODE 9111-48-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Country of Origin Marking for the Republic of Kosovo

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of policy.

SUMMARY: On February 18, 2008, the United States recognized the Republic of Kosovo as a sovereign and independent state and announced that full diplomatic relations would begin immediately. This document notifies the public of the name and English spelling that is to be used for country of origin marking on merchandise imported into the United States from the Republic of Kosovo. The notice also establishes a transition period during which Customs and Border Protection (CBP) will permit the importation of merchandise from the newly independent state with the marking, "Serbia."

DATES: April 23, 2008.

FOR FURTHER INFORMATION CONTACT:

Richard Mojica, Regulations and Rulings, Office of International Trade, (202) 572-8789.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Customs and Border Protection (CBP) has authority pursuant to 19 U.S.C. 1304 to determine the character of the words and phrases or abbreviations thereof that will be acceptable as indicating the country of origin, and may require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article.

In view of the political independence of the Republic of Kosovo, and in recognition of their independent status by the United States as of February 18, 2008, merchandise originating in that country and imported into the United States is subject to marking with the English name of the independent state. The short form English name of the

newly independent country is: "Kosovo." It is acceptable for merchandise to be marked using long form names such as "Republic of Kosovo," provided that the short form name is part of the phrase.

Recognizing that manufacturers and importers may need time to adjust to these changes, and that an abrupt change could cause undue hardship, CBP will permit goods from the Republic of Kosovo to be marked "Serbia" until February 18, 2009. After that date, all merchandise originating in the Republic of Kosovo will be required to be marked with the new names as set forth above.

Dated: April 16, 2008.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade, U.S. Customs and Border Protection.

[FR Doc. E8-8753 Filed 4-22-08; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP-2008-0049]

Notice of Meeting of The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (popularly known as "COAC") will meet on May 9, 2008, in Washington, DC. The meeting will be open to the public.

DATE: COAC will meet Friday, May 9th from 9 a.m. to 1 p.m. Please note that the meeting may close early if the committee has completed its business. If you plan to attend, please contact Ms. Wanda Tate on or before Tuesday, May 6, 2008.

ADDRESSES: The meeting will be held at the Ronald Reagan Building in the Horizon Ballroom, 1300 Pennsylvania Avenue, NW., Washington, DC 20004. Written material and comments should reach the contact person listed below by May 2nd. Requests to have a copy of your material distributed to each member of the committee prior to the

meeting should reach the contact person at the address below by May 2, 2008.

Comments must be identified by USCBP-2008-0049 and may be submitted by one of the following methods:

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

- *E-mail:* traderelations@dhs.gov.

Include the docket number in the subject line of the message.

- *Fax:* 202-344-2064.

- *Mail:* Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Room 8.5C, Washington, DC 20229.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the COAC, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Ave., NW., Room 8.5C, Washington, DC 20229; traderelations@dhs.gov; telephone 202-344-1440; facsimile 202-344-2064.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C., app.), DHS hereby announces the meeting of the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The sixth meeting of the tenth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. Post Incident Response.
2. Advance Trade Data ("10+2").
3. Secure Freight Initiative.
4. C-TPAT (Customs-Trade Partnership Against Terrorism) and CSI (Container Security Initiative).

5. Conveyance Security Devices.
6. ACE (Automated Commercial Environment) Programs Status/ITDS (International Trade Data Systems).
7. International Trade Issues/Updates.
8. Import Safety Initiatives.
9. World Customs Organization & Mutual Recognition Status.
10. Proposed Revisions to In-Bond Process.
11. Automated Export System (AES).
12. Agriculture Program Update.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the Ronald Reagan building will have to go through a security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice, preferably by close of business Tuesday, May 6, 2008, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-2064.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: April 17, 2008.

Michael C. Mullen,

Assistant Commissioner, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection.

[FR Doc. E8-8758 Filed 4-22-08; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5186-N-16]

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 23, 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: April 10, 2008.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.
[FR Doc. E8-8068 Filed 4-22-08; 8:45 am]

BILLING CODE 4210-67-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5187-N-23]

HOPE VI Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is required to allow HUD to obligate grant funds in accordance with the HOPE VI program authorizing statute, and to manage the grants that are awarded.

DATES: *Comments Due Date:* May 23, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577-0208) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian_Deitzer@HUD.gov or telephone (202) 402-8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of

the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HOPE VI Program.

OMB Approval Number: 2577-0208.

Form Numbers: HUD-52825-A, HUD-52860-A, HUD-52774, HUD-52780, HUD-52785, HUD-52787, HUD-52861, HUD-52790, HUD-52797, HUD-52798, HUD-52799, HUD-52800, HUD-53001-A, SF-424, SF-LLL, HUD-27061, HUD-27300, HUD-2880, HUD-96010, HUD-96011,

Description of the Need for the Information and Its Proposed Use:

The information is required to allow HUD to obligate grant funds in accordance with the HOPE VI program authorizing statute, and to manage the grants that are awarded.

Frequency of Submission: On occasion, Quarterly, Semi-annually, Annually.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	286		4.81		19.08		26,263

Total Estimated Burden Hours: 26,263.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 18, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8-8833 Filed 4-22-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5187-N-22]

Mortgagor's Certificate of Actual Cost

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Mortgagor's Certificate of Actual Cost is submitted by the mortgagor to certify actual costs of development in order to make an informed determination of mortgage insurance acceptability and to prevent windfall profits. Its use provides a base for evaluating housing programs, labor costs, and physical improvements in connection with the construction of multifamily housing.

DATES: *Comments Due Date:* May 23, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502-0112) and

should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT:

Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian.Deitzer@HUD.gov or telephone (202) 402-8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice

is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mortgagor's Certificate of Actual Cost.

OMB Approval Number: 2502-0112.

Form Numbers: HUD-92330.

Description of the Need for the Information and Its Proposed Use: The Mortgagor's Certificate of Actual Cost is submitted by the mortgagor to certify actual costs of development in order to make an informed determination of mortgage insurance acceptability and to prevent windfall profits. Its use provides a base for evaluating housing programs, labor costs, and physical improvements in connection with the construction of multifamily housing.

Frequency of Submission: On occasion, Other At final endorsement.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	500		1		8		4,000

Total Estimated Burden Hours: 4,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 18, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8-8830 Filed 4-22-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[FR-5130-N-22]

Privacy Act; Proposed New System of Records, Tracking-at-a-Glance® Case Management Services for the Disaster Housing Assistance Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the establishment of a new System of Records, Tracking-at-a-Glance® (TAAG).

SUMMARY: HUD proposes to establish a new Privacy Act record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of records is the TAAG case management system. This record system will be used for program implementation activities related to the Disaster Housing Assistance Program

(DHAP) case management services. DHAP is a Federal Emergency Management Agency (FEMA) pilot grant program to provide temporary rental subsidies and case management for non-HUD assisted individuals and families displaced by Hurricanes Katrina or Rita. HUD is the servicing agency that administers the DHAP program for FEMA.

DATES: Effective Date: This action shall be effective without further notice on May 23, 2008, unless comments are received during or before this period that would result in a contrary determination.

Comment Due Date: May 23, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not accepted. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: The Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402-8073 (This is not a toll-free number.) A telecommunication device for hearing-

and speech-impaired individuals (TTY) is available at (800) 877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: In July 2007, HUD and FEMA executed an Interagency Agreement (IAA) under which HUD acts as the servicing agency for administering the DHAP program. Pursuant to FEMA's grant authority, grants are provided to local PHAs to administer DHAP on behalf of FEMA. Under DHAP, public housing authorities (PHAs) will make rental assistance payments on behalf of eligible families to participating landlords for the duration of the program, ending on March 1, 2009. In order to prepare the family for this eventuality, FEMA requires that case management services be provided for the entire duration of DHAP. The objectives of these services are greater self-sufficiency and permanent housing status for participating individuals and families. This will include assisting program participants identify non-disaster supported housing solutions such as other affordable housing options that may be available for income eligible families. PHAs are required to report case management outputs and outcomes through TAAG, which is the DHAP case management reporting system for the duration of the program. TAAG will contain personal identifying information from PHAs about program participants; such as, name, social security number, etc. Please refer to the following "categories of records" section for other personal/sensitive data

types collected, maintained and disseminated by this system.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records. The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a 88 Stat. 1896; 42 U.S.C. 3535 (d).

Dated: April 16, 2008.

Joseph M. Milazzo,
Acting Chief Information Officer.

HUD/PIH-06

SYSTEM NAME:

Tracking-at-a-Glance® (TAAG) case management system for the Disaster Housing Assistance Program (DHAP).

SYSTEM LOCATION:

Hollywood, Florida.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are covered by this system are individuals and families displaced by Hurricanes Katrina or Rita, who receive rental subsidy through the DHAP and agree to all program requirements including case management.

CATEGORIES OF RECORD IN THE SYSTEM:

Files contain identifying information about the program participants and their household members such as name, social security number, and current address. In addition, the files contain information about education level, employment and training needs, elderly and disabled status, social service needs and service referrals. The client provides information regarding education level, employment and training, disability status and social service needs as information that the case manager may use to assess any barriers to permanent housing attainment and/or increased self-sufficiency. The case manager uses this information in order to identify appropriate service referrals, to help prepare clients for the eventual end of the DHAP in March 2009.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Legal authority for DHAP is based on the Department of Homeland Security's

general grant authority under section 102(b)(2) of the Homeland Security Act, 6 U.S.C. 112, and sections 408(b)(1), 426 and 306(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5174(b)(1), § 5189d and § 5149(a), respectively.

PURPOSE:

TAAG captures pertinent data relating to family self-sufficiency, permanent housing status and service needs. TAAG supports DHAP grantees in their case management efforts, HUD staff in their program monitoring activities and providing required reports to FEMA in fulfillment of its responsibilities outlined within the IAA. The system was procured through contract number: C-DEN-02199. The system allows DHAP grantees to implement and report case management services for FEMA's DHAP program, for which HUD is the servicing agent. This system will assist with the implementation and administering of rental housing assistance and case management services to individuals and families whose residence have been rendered uninhabitable as a result of the disaster caused by Hurricanes Katrina and Rita. The data stored in this system of records may be used for research and statistical purposes. In such cases, data presented in any research report will be aggregated to a level that does not disclose information that can be used to identify any individual represented in the system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include:

- (a) To Case Managers—for caseload management and to track the progress and outcomes of individuals enrolled in the DHAP;
- (b) To PHAs to monitor outcomes and monitor case management activities being provided at the local level;
- (c) To FEMA—quarterly data reporting as required under the IAA to monitor program activities at the national level;
- (d) To HUD or individuals under contract, grant or cooperative agreement to HUD, to monitor PHA efforts and compliance requirements, facilitate technical assistance and for research and evaluation of national program outcomes; and
- (e) To HUD or individuals under contract, grant or cooperative agreement to HUD to monitor PHA activities and

facilitate technical assistance to DHAP grantees.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Records are stored electronically on a computer server located at: Southern Data Systems, 11560 SW 120th Street, Miami, FL 33176.

RETRIEVABILITY:

Records are retrieved by PHA name, participant's name, city, zip code, or general demographic characteristics. Clients cannot be searched through the use of a social security number.

SAFEGUARDS:

Records are maintained on a secure computer network protected by a firewall. Access to system is restricted to authorized users only, requires a user ID and is password protected. No manual files with unique identifier information that would allow an individual to be linked to the information in the file will be maintained.

RETENTION AND DISPOSAL:

Information is archived electronically and stored. Records will be retained and disposed of in accordance with the General Records Schedule included in HUD Handbook 2228.2, appendix 14, items 21–26.

SYSTEM MANAGER AND ADDRESS:

Tony Hebert, Public and Indian Housing, Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned are in accordance with 24 CFR part 16—Implementation of the Privacy Act of 1974. Individuals seeking information, assistance, or inquiry about the existence of records should contact the Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410. Written requests must include the full name, current address, and telephone number of the individual making the request, as well as proof of identity, including a description of the requester's relationship to the information in question.

CONTESTING RECORD PROCEDURES:

The procedures for contesting the contents of records and appealing initial

denials appear in 24 CFR part 16—Implementation of the Privacy Act of 1974. If additional information or assistance is required, contact:

(i) The Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, if contesting the content of record; or

(ii) The Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, for appeals of initial denials.

RECORD SOURCE CATEGORIES:

DHAP housing authority grantees, case managers, contractors, and HUD employees.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8-8844 Filed 4-22-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[FWS-R1-R-2008-N0040; 1265-0000-10137-S3]

Papahānaumokuākea Marine National Monument, Hawai'i

AGENCIES: U.S. Fish and Wildlife Service (FWS), Interior; National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability for the draft monument management plan and environmental assessment; announcement of public meetings; request for comments.

SUMMARY: This notice advises the public that NOAA, FWS, and the State of Hawai'i's Department of Land and Natural Resources (DLNR), and Office of Hawaiian Affairs have prepared a Draft Monument Management Plan (MMP) and associated environmental assessment (EA) for the Papahānaumokuākea Marine National Monument (Monument) located in the Northwestern Hawaiian Islands (NWHI), which includes all federal lands and waters within its boundaries. The State of Hawai'i is a Cooperating Agency on the development of the MMP and EA. The Monument's resources and

management activities, ongoing and proposed, are described in the Draft MMP. The MMP is available for public review and comments. Ten public meetings are scheduled to obtain your comments on and answer your questions about the Draft MMP, see **SUPPLEMENTARY INFORMATION** for details.

DATES: To ensure consideration, we must receive written comments by July 8, 2008.

ADDRESSES: The Draft MMP and EA are available on the FWS and NOAA Web sites <http://www.fws.gov/pacificislands> and <http://hawaiiireef.noaa.gov/>, as well as at local libraries within the State of Hawai'i. You may provide written comments on the Draft MMP and EA by any of the following methods:

U.S. Mail: Papahānaumokuākea Marine National Monument, Attn: Susan White, FWS Superintendent, Box 50167, Honolulu, HI 96850-5000; or

E-mail: PMNM_MMP_Comments@fws.gov.

FOR FURTHER INFORMATION CONTACT: Susan White, FWS Superintendent, phone (808) 792-9480.

SUPPLEMENTARY INFORMATION:

Monument Background

On June 15, 2006, President George W. Bush established the Northwestern Hawaiian Islands Marine National Monument by issuing Presidential Proclamation 8031 (Proclamation) (71 FR 36443, June 26, 2006) under the authority of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the Antiquities Act).

On December 8, 2006, the Secretaries of Commerce and the Interior and the Governor of Hawai'i signed a Memorandum of Agreement to jointly manage Federal and State lands and waters within the Monument as Co-Trustees and to collectively protect, conserve, and enhance Monument marine and terrestrial habitats and resources.

On February 28, 2007, President Bush amended the Proclamation to rename the Monument—Papahānaumokuākea Marine National Monument—to reflect Hawaiian language and culture (72 FR 10031, March 6, 2007).

Location, Size, and Federal and State Resource Management

Proclamation 8031 reserves all lands and interests in lands owned or controlled by the Government of the United States in the Northwestern Hawaiian Islands (NWHI), including emergent and submerged lands and waters out to a distance of approximately 50 nautical miles from the islands.

The Monument is approximately 100 nautical miles wide and extends approximately 1,200 miles around coral islands, seamounts, banks, and shoals. The area includes the:

- Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve,
- Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial,
- Hawaiian Islands National Wildlife Refuge,
- Hawaii State Seabird Sanctuary at Kure Atoll, and
- State of Hawai'i's Northwestern Hawaiian Islands Marine Refuge.

NOAA maintains responsibility for managing the NWHI Coral Reef Ecosystem Reserve, included within the Monument, and has primary responsibility regarding the management of the marine areas of the Monument, in consultation with FWS.

Refuge areas within the Monument, including the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, are managed by FWS.

The State maintains responsibility for managing state lands and waters within the Monument, including the NWHI State Marine Refuge and State Seabird Sanctuary at Kure Atoll.

Public Outreach and the MMP's Relationship to Previous Plans

As directed by Proclamation 8031, the Co-Trustees modified NOAA's Northwestern Hawaiian Islands Proposed National Marine Sanctuary Draft Management Plan (available at <http://www.hawaiiireef.noaa.gov>), as appropriate, to create the Draft MMP. The MMP also builds upon the Interim Midway Visitor Services Plan (available at <http://www.fws.gov/midway>). Nearly 52,000 comments were received during NOAA's Sanctuary planning process, and a total of 6,282 comments were received on FWS's Draft Interim Midway Visitor Services Plan. Comments and issues raised during these planning efforts that are subject to decision by the Co-Trustees were considered during development of the Draft MMP. A summary of public involvement and the issues raised during scoping are included in the Draft MMP.

Management Planning Process and MMP Framework

The Draft EA of the MMP was developed in accordance with the requirements of the National Environmental Policy Act of 1969

(NEPA), as amended (42 U.S.C. 4321 et seq.); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and agency policies and procedures for compliance with those regulations. The EA has also been developed in accordance with the state environmental review requirements under Chapter 343, Hawai'i Revised Statutes.

FWS' refuge comprehensive conservation planning requirements, State of Hawai'i's DLNR planning needs along with consultation with the Office of Hawaiian Affairs regarding Native Hawaiian traditional and cultural resources, rights and practices, and other elements were also incorporated into the Draft MMP. The National Wildlife Refuge System Administration Act of 1966 (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the FWS to develop a comprehensive conservation plan (CCP) for every national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and FWS policies. In addition to conserving wildlife and their habitats, CCPs identify wildlife-dependent recreation available to the public.

Draft MMP/EA Alternatives

Two alternatives are analyzed in the Draft MMP and EA: a No Action Alternative and a Proposed Action Alternative (the preferred alternative). Under the No Action Alternative, the Co-Trustees would continue to implement activities to address priority management needs based on agency-specific plans. Under the Proposed Action Alternative, the Co-Trustees would implement new and expanded activities, in addition to ongoing activities, to manage high priority needs.

The Monument's priority management needs are to: understand and interpret Monument resources, conserve wildlife and habitats, reduce threats to Monument resources, manage human activities, facilitate coordination, and achieve effective operations. Action plans consisting of multiple strategies and activities address the priority management needs. The 22 action plans and corresponding desired outcomes follow.

Marine Conservation Science: Increase understanding of the

distributions, abundances and functional linkages of marine organisms and their habitats to improve ecosystem-based management decisions in the Monument.

Native Hawaiian Culture and History: Increase understanding and appreciation of Native Hawaiian histories and cultural practices related to the Monument and effectively manage cultural resources for their cultural, educational, and scientific values.

Historic Resources: Identify, document, preserve, protect, stabilize, and where appropriate, reuse, recover, and interpret historic resources associated with Midway Atoll and other areas within the Monument.

Maritime Heritage Action Plan: Identify, interpret, and protect maritime heritage resources in the Monument.

Threatened and Endangered Species: Protect marine mammals and aid in the recovery of threatened and endangered plants and animals within the Monument.

Migratory Birds: Conserve migratory bird populations and habitats within the Monument.

Habitat Management and Conservation: Protect and maintain all the native ecosystems and biological diversity of the Monument.

Marine Debris: Reduce the adverse effects of marine debris to Monument resources and reduce the amount of debris entering the North Pacific Ocean.

Alien Species: Detect, control, eradicate where possible, and prevent the introduction of alien species into the Monument.

Maritime Transportation and Aviation: Investigate, identify, and reduce potential threats to the Monument from maritime and aviation traffic.

Emergency Response: Minimize damage to Monument resources through coordinated emergency response and assessment.

Permitting: Implement an effective and integrated permit program for the Monument that manages, minimizes, and prevents negative human impacts by allowing access only for those activities consistent with Presidential Proclamation 8031 and the implementing regulations of the Monument.

Enforcement: Achieve compliance with all regulations within the Monument.

Midway Atoll Visitor Services: Offer opportunities for visitors to discover, enjoy, appreciate, protect, and honor the unique natural, cultural, and historic resources of the Monument.

Agency Coordination: Successfully collaborate with government partners to achieve publicly supported, coordinated management in the Monument.

Constituency Building and Outreach: Cultivate an informed, involved constituency that supports and enhances conservation of the natural, cultural, and historic resources of the Monument.

Native Hawaiian Community Involvement: Engage the Native Hawaiian community in active and meaningful involvement in the Monument management.

Ocean Ecosystems Literacy: Cultivate an ocean ecosystems stewardship ethic, contribute to the Nation's science and cultural literacy, and create a new generation of conservation leaders through formal environmental education.

Central Operations: Conduct effective and well-planned operations with appropriate human resources and adequate physical infrastructure in the main Hawaiian Islands to support management of the Monument.

Information Management: Consolidate and make accessible relevant information to meet educational, management, and research needs for the Monument.

Coordinated Field Operations: Coordinate field activities and provide adequate infrastructure to ensure safe and efficient operations while avoiding impacts to the ecosystems in the Monument.

Evaluation: Determine the degree to which management actions are achieving the goals of the Monument.

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, it cannot be guaranteed that we will be able to do so.

Public Meetings

We will hold a statewide series of meetings where you will have opportunities to ask questions about the MMP and provide formal comments. Except for the Washington, D.C., meeting, each meeting will include two sessions—Session 1 will be an informal “talk story” session, and Session 2 will be a more formal meeting where you may present comments. Session times will be the same on each date, Session

1 will be held from 5:30 p.m. to 7 p.m., and Session 2 will be held from 7 p.m. to 8:30 p.m. Meeting details are

available on the following Web sites: <http://www.fws.gov/pacificislands> and <http://hawaiiireef.noaa.gov/>. The

Washington, DC, meeting will begin at 1 p.m. and end at 4 p.m. The meeting dates and locations follow:

Number	Date	Location
1	June 9, 2008	Wai'anae Parks and Recreation Complex, 85–601 Farrington Highway, Wai'anae, O'ahu.
2	June 11, 2008	Auditorium, Main Interior Building, 1849 C Street, NW., Washington, DC.
3	June 12, 2008	Maui Arts and Cultural Center, One Cameron Way, Kahului, Maui.
4	June 13, 2008	Lāna'i High and Elementary School, 555 Frasier Avenue, Lāna'i City, Lāna'i.
5	June 16, 2008	Kūlana 'O'iwi Hālau, 610 Maunaloa Hwy., Kaunakakai, Moloka'i.
6	June 17, 2008	He'eia State Park, 46–465 Kamehameha Highway, Kāne'ohe, O'ahu.
7	June 18, 2008	King Kamehameha Hotel, 75–5660 Palani Road, Kailua-Kona, Kona, Hawai'i.
8	June 19, 2008	Mokupāpapa Discovery Center, 308 Kamehameha Ave., Suite 109, Hilo, Hawai'i.
9	June 23, 2008	Hilton Kaua'i Beach Resort, 4331 Kauai Beach Drive, Līhu'e, Kaua'i.
10	June 24, 2008	Japanese Cultural Center, 2454 South Beretania Street, Honolulu, O'ahu.

Next Step

After the comment period ends for the Draft MMP and EA, we will analyze the comments and address them in the final MMP.

Dated: April 8, 2008.

David J. Wesley,

Acting Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration, Silver Spring, Maryland.

[FR Doc. E8–8362 Filed 4–22–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0088; 96300–1671–0000–P5]

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT:

Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Endangered Species

Permit no.	Applicant	Receipt of application Federal Register notice	Permit issuance date
152106, 152108, 152110	Dirk Arthur dba Stage Magic, Inc.	72 FR 56785; October 4, 2007	March 17, 2008.
152105, 152111, 152112, 160974, 162714, 162725.	Dirk Arthur dba Stage Magic, Inc.	72 FR 56785; October 4, 2007	March 18, 2008.
170290	Dirk Arthur dba Stage Magic, Inc.	72 FR 72749; December 21, 2007	March 18, 2008.
168186	Saint Louis Zoo	72 FR 73349; December 27, 2007	March 13, 2008.

Endangered Marine Mammals

Permit no.	Applicant	Receipt of application Federal Register notice	Permit issuance date
837923	Gordon B. Bauer, New College of Florida	72 FR 73350; December 27, 2007	March 24, 2008.

Dated: April 4, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits,
Division of Management Authority.

[FR Doc. E8-8786 Filed 4-22-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R4-R-2008-N0006; 40136-1265-
0000-S3]

Lake Woodruff National Wildlife Refuge, Volusia and Lake Counties, FL

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability: Draft
comprehensive conservation plan and
environmental assessment; request for
comments.

SUMMARY: We, the U.S. Fish and
Wildlife Service (Service) announce the
availability of a draft comprehensive
conservation plan and environmental
assessment (Draft CCP/EA) for the Lake
Woodruff National Wildlife Refuge for
public review and comment. In this
Draft CCP/EA, we describe alternatives,
including our proposed action to
manage this refuge for the 15 years
following approval of the Final CCP.
Also available for review and comment
are draft compatibility determinations.

DATES: To ensure consideration, we
must receive your written comments by
May 23, 2008.

ADDRESSES: To provide written
comments or to obtain a copy of the
Draft CCP/EA, please contact Cheri
Ehrhardt, Area Planner, Merritt Island
National Wildlife Refuge, P.O. Box
6504, Titusville, FL 32782; or you may
e-mail: LakeWoodruffCCP@fws.gov. A
copy of the Draft CCP/EA is available on
compact diskette or hard copy. The
Draft CCP/EA may also be accessed and
downloaded from the Service's Internet
site: [http://www.fws.gov/southeast/
planning](http://www.fws.gov/southeast/planning).

FOR FURTHER INFORMATION CONTACT:
Cheri Ehrhardt; Telephone: 321/861-
0667.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP
process for the Lake Woodruff National
Wildlife Refuge. We started this process
through a notice in the **Federal Register**
on July 26, 2006 (71 FR 42412).

Lake Woodruff National Wildlife
Refuge was established in 1964. This
21,500-acre refuge is comprised of
approximately 11,100 acres of

freshwater marsh; 7,200 acres of
hardwood swamps; 2,400 acres of
uplands; and more than 800 acres of
lakes, streams, and canals. The refuge
also has an additional 652 acres of
conservation easement lands on two
tracts. The primary purpose of the
refuge is for the protection of migratory
birds.

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 for developing a CCP is to
provide refuge managers with a 15-year
plan for achieving refuge purposes and
contributing toward 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.

Public scoping began in July 2006.
Issues identified by the public,
intergovernmental partners, and the
Service include: Impacts of human
population growth and increased
development adjacent to the refuge
boundary; threats and impacts to listed
species and migratory birds; lack of a
comprehensive habitat management
program; spread of exotic, invasive, and
nuisance species; lack of baseline data
and coordinated research; need for
enhanced interagency coordination;
need for cooperative management
agreements with the State for navigable
(State-owned) waterways on the refuge;
and lack of sufficient access onto refuge
properties.

CCP Actions We Are Considering, Including Proposed Action

We developed four alternatives for
managing the refuge and chose
Alternative D as the proposed action. A
full description of each alternative is in
the Draft CCP/EA. We summarize each
alternative below:

Under Alternative A, current
management of the refuge would

continue. The refuge would continue to
survey, maintain habitats, and limit
disturbance to threatened and
endangered species. The refuge would
survey, monitor, and maintain habitat to
benefit migratory birds, including
waterfowl, shorebirds, wading birds,
marsh birds, and landbirds. It would
coordinate with other agencies to
control aquatic weeds in the navigable
waters. There would be incidental feral
hog control as part of the deer hunting
program. Forest management activities
would maintain upland pine and
bottomland hardwood habitats. The
refuge would manage 450 acres of
impoundments and 11,000 acres of
freshwater marshes. Upland sheet flow
restoration efforts would continue.
Under this alternative, resource
protection would not change. Limited
archaeological surveys would be
conducted as part of timber sales. The
refuge would continue to increase safety
at the main access railroad crossing and
maintain the access road. The visitor
services' program would not be
expanded. Deer and feral hog hunting
opportunities would be maintained at
current levels. Turkey surveys would be
conducted to determine population
status. Fishing opportunities would be
maintained. As part of wildlife and
photography, the refuge would maintain
an observation tower, interpretive trails,
hiking trails, and a photo-blind.
Horseback riding would continue on the
Volusia Tract, and commercial guided
boat tours would be conducted via
special use permits. The refuge would
conduct 15 environmental and
interpretive programs annually. Friends
group membership and volunteer levels
would remain the same. Refuge
administration would remain the same
with the following six employees: refuge
manager, biologist, fire specialist,
engineering equipment operator, and
forestry technician (2 career-seasonal
employees).

Under Alternative B, wildlife and
habitat management would increase.
The refuge would evaluate the
expansion of impoundments to provide
more habitats for waterfowl, shorebirds,
and wading birds. The refuge would
limit public access to certain areas to
decrease disturbance. It would
intensively survey and monitor
migratory birds. Manipulation of water
levels in the impoundments would
favor native plant species, and the
refuge would focus exotic plant control
to support migratory birds. Feral hog
and coyote management would be the
same as under Alternative A. Habitats
would be restored to support migratory
birds through prescribed fire and forest

thinning. The refuge would work with partners to ensure water quality, quantity, minimum flows and levels, and natural hydrology to support migratory birds. The refuge would work to develop cooperative management agreements with the State for the navigable waters on the refuge. It would conduct a refuge boundary survey. Under Alternative B, resource protection would increase.

Archaeological resources would be managed the same as under Alternative A. The refuge would evaluate the need to improve the access road. Alternative B would expand visitor services. Hunting and fishing opportunities would be increased, but the refuge would ensure that these activities do not impact migratory birds. The refuge would seasonally close key areas to the public to limit disturbance to migratory birds and eliminate horseback riding. It would incorporate migratory bird themes into commercial guided tour messages. The refuge would develop on- and off-site education and interpretive programs with messages focused on migratory birds and the minimization of human impacts. It would train staff, volunteers, teachers, and tour operators to incorporate interpretive themes into programs. Refuge administration would expand under Alternative B. In addition to the 6 positions listed under Alternative A, the following positions would be added for a total of 15 positions: Wildlife specialist (assistant refuge manager), office assistant, biologist, biological science technician (2), maintenance worker (2), law enforcement officer, and park ranger.

Under Alternative C, management would focus on the needs of rare, threatened, and endangered species. More areas on the refuge would be seasonally closed to limit disturbance to priority species. Management of migratory birds would be decreased as the impoundment acreage would decline to support certain listed species. Exotic species control would benefit listed species. Upland and bottomland forest management would focus on the needs of listed species. The refuge would work with partners to conduct herpetological and fish surveys and to protect water resources to support listed species. Archaeological resources would be managed as under Alternative A. The refuge would evaluate the need to improve the access road. It would work with partners to protect wildlife crossing the railroad tracks. Under Alternative C, visitor services would be reduced. The refuge would ensure that hunting and fishing do not impact listed species. The refuge would seasonally

close key areas to the public to limit disturbance to listed species and would eliminate horseback riding. It would incorporate listed species conservation themes into commercial guided tour messages. The refuge would develop on- and off-site education and interpretive programs with messages focused on listed species and the minimization of human impacts. It would train staff, volunteers, teachers, and tour operators to incorporate interpretive themes into programs. Friends and volunteer levels and efforts would be increased and focused on the needs of listed species. Refuge administration would expand under Alternative C. In addition to the 6 positions listed under Alternative A, the following positions would be added for a total of 18 positions: Wildlife specialist (assistant refuge manager), office assistant, biologist (2), biological science technicians (2), non-fire forestry technician, maintenance worker (2), law enforcement officer (2), and park ranger.

Under Alternative D, the proposed alternative, wildlife and habitat diversity would be emphasized. This alternative would expand wildlife and habitat management efforts on the refuge. Some key areas would be seasonally closed to the public to limit disturbance to rare, threatened, and endangered species, as well as to protect vulnerable habitats. For migratory birds, the refuge would intensively survey, monitor, and manage the impoundments for multi-species use. Exotic species control efforts would be similar to Alternatives B and C in the level of effort but the focus would be on maintaining biodiversity. The refuge would work with the State to determine the impacts of coyotes. If feral hog control measures become necessary, trapping would be considered. Upland habitats would be managed for biodiversity. Herpetological and fish surveys and monitoring efforts would increase. The refuge would work with the State to develop appropriate cooperative management agreements for the navigable waters on the refuge. A refuge boundary survey would be conducted. The refuge would conduct a complete archaeological survey, and develop a regular patrol and enforcement program. With regards to the railroad, the refuge would work with partners to protect wildlife movement across the railroad tracks. It would evaluate the need to improve the road and determine alternative access routes onto the refuge. Visitor services would expand under this alternative but the refuge would ensure that hunting and fishing do not impact wildlife and habitat diversity. It would evaluate the

potential for turkey hunting. It would continue to allow horseback riding on the Volusia Tract through special use permits. Biodiversity themes would be incorporated into commercial guided tour messages. The refuge would develop on- and off-site education and interpretive programs, with messages focused on biodiversity and the minimization of human impacts. The refuge would train staff, volunteers, teachers, and tour operators to incorporate interpretive themes into programs. It would increase Friends group and volunteer efforts to support wildlife and habitat diversity. As part of refuge administration, the refuge would include maintenance programs in support of biodiversity and biological integrity. In addition to the 6 positions listed under Alternative A, the following positions would be added for a total of 11 positions: Wildlife specialist (assistant refuge manager), biological science technician, maintenance worker, law enforcement officer, and park ranger.

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.

Next Step

After the comment period ends for the Draft CCP/EA, we will analyze the comments and address them in the form of a Final CCP and Finding of No Significant Impact.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57.

Dated: February 13, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8-8760 Filed 4-22-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2008-N0072; 96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by May 23, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Zoological Society of San Diego, San Diego, CA, PRT-069323

The applicant requests an amendment and renewal of their permit to authorize the export and re-export of captive-bred/captive hatched live specimens and the export of viable eggs of California condors (*Gymnogyps californianus*) originating in the United States, as well as the re-export of wild live specimens of condors originating in Mexico, to La Secretaria de Medio Ambiente y Recursos Naturales (SEMARNAT), San Angel, Mexico, for re-introduction into the wild to enhance the survival of the species through completion of identified tasks and objectives mandated under the U.S. Fish and Wildlife Service California Condor Recovery Plan. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Zoological Society of San Diego, San Diego, CA, PRT-057398.

The applicant requests an amendment and renewal of their permit to authorize

the import of wild live specimens, viable and non-viable eggs, biological samples and salvaged materials of California condors (*Gymnogyps californianus*) originating in Mexico, as well as the re-import of captive-bred/captive hatched live specimens, viable and non-viable eggs, biological samples and salvaged materials of condors originating in the United States, to enhance the survival of the species through completion of identified tasks and objectives mandated under the U.S. Fish and Wildlife Service California Condor Recovery Plan. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Memphis Zoo, Memphis, TN, PRT-052166.

The applicant requests renewal of their permit for scientific research with two giant pandas (*Ailuropoda melanoleuca*) currently held under loan agreement with the Government of China and under the provisions of the USFWS Panda Policy. The proposed research will cover all aspects of behavior, reproductive physiology, genetics, nutrition, and animal health and is a continuation of activities currently in progress. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Thomas J. Hammond, Oakland Twp., MI, PRT-175465.

The applicant requests a permit to import the sport-hunted trophy of one cheetah (*Acinonyx jubatus*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: Chattanooga Zoo, Chattanooga, TN, PRT-178755.

The applicant requests a permit to import one captive-born male jaguar (*Panthera onca*) from Complejo Ecologico Municipal, Presidencia Roque Sáenz Peña, Argentina, for the purpose of enhancement of survival of the species.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director (**ADDRESSES** above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate.

The holding of such a hearing is at the discretion of the Director.

Applicant: Jimmie R. Ryan, Alabaster, AL, PRT-179123.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: March 21, 2008.

Lisa J. Lierheimer,
Senior Permit Biologist, Branch of Permits,
Division of Management Authority.

[FR Doc. E8-8765 Filed 4-22-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2008-N0080; 96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by May 23, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications

should be submitted to the Director (address above).

Applicant: Dallas World Aquarium, Dallas, TX, PRT-179127.

The applicant requests a permit to export fifty seven female captive-born Orinoco crocodiles (*Crocodylus intermedius*) to Venezuela for the purpose of enhancement of the species through re-introduction into the wild and conservation education.

Applicant: Zoological Society of Philadelphia, Philadelphia, PA, PRT-174613.

The applicant requests a permit to import one female jaguar (*Panthera onca*) from the Belize Zoo and Tropical Education Center, Belize City, Belize for the purpose of enhancement of the species through captive propagation and conservation education.

Applicant: Zoological Society of Philadelphia, Philadelphia, PA, PRT-174614.

The applicant requests a permit to import biological samples from one female jaguar (*Panthera onca*) from the Belize Zoo and Tropical Education Center, Belize City, Belize, for medical evaluation prior to the jaguar's import, for the purpose of enhancement of the species through captive propagation and conservation education.

Applicant: Cincinnati Zoo & Botanical Garden, Cincinnati, OH, PRT-171630.

On March 17, 2008, (73 FR 14266), we published a request by the applicant for a permit to import black-footed cats (*Felis nigripes*) from Cat Conservation Trust, Cradock, South Africa for the purpose of enhancement of the survival of the species. Subsequent to this publication, it was determined that the number of animals published to be imported was incorrect; the actual number of black-footed cats to be imported is three males and two females. Therefore, we are republishing this request with the correct quantity.

Applicant: Thomas E. Ferry, Ponca, NE, PRT-177153.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jay R. Bollinger, Wenatchee, WA, PRT-174402.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa,

for the purpose of enhancement of the survival of the species.

Applicant: Thomas J. Hammond, Oakland Twp, MI, PRT-179304.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Leah R. Wirth, Beavercreek, OR, PRT-178910.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: James R. Martell, Glenns Ferry, ID, PRT-179699.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: James W. Box, Bloomfield, IA, PRT-179716.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: William A. Ladd, Unalakleet, AK, PRT-179759.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: March 28, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8-8766 Filed 4-22-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2008-N0089; 96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by May 23, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Mark L. Pease, The Woodlands, TX, PRT-177238.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa,

for the purpose of enhancement of the survival of the species.

Applicant: Kevin D. Smith, Melba, ID, PRT-176078.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: George D. Cook Jr., Inverness, FL, PRT-178714.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Dirk Arthur dba Stage Magic Inc., Las Vegas, NV, PRT-170807.

The applicant request a permit to export and re-import "Bosco" a captive-born male Bengal tiger (*Panthera tigris tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Jeffrey S. Berlew, Angola, IN, PRT-179904.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Darwin J. Vander Esch, Riggins, ID, PRT-180222.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound

polar bear population in Canada for personal, noncommercial use.

Applicant: Robert P. Remillard, Newport, NH, PRT-180229.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: April 4, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8-8787 Filed 4-22-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Bureau of Indian Education, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for the Adult Education Annual Report Form, OMB # 1076-0120, requires renewal. The current Adult Education Annual Report Form, with no appreciable changes, will be submitted after the comment period to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. 350(c)(2)(A). The Department of the Interior is soliciting public comments on the renewal.

DATES: Written comments must be submitted on or before June 23, 2008.

ADDRESSES: Mail comments to Kevin Skenandore, Acting Director, Bureau of Indian Education, Department of the Interior, 1849 C St. NW., Mail Stop 3609-MIB, Washington, DC 20240, or hand deliver to room 3610 at the above address.

FOR FURTHER INFORMATION CONTACT: Keith Neves, Bureau of Indian Education, Department of the Interior, 1849 C Street, NW., MS-3609-MIB, Washington, DC 20240, 202-208-3601.

SUPPLEMENTARY INFORMATION:

I. Information Collection Abstract

The regulations under 25 CFR part 46, subpart A contain the program requirements that govern the Adult Education Program. The information collection is necessary to assess the need for adult education programs in accordance with 25 CFR 46.20, Program

Requirements, and section 46.30, Records and Reporting Requirements. Information collected from the contractors will be used for administrative planning, setting long and short-term goals, and analyzing and monitoring the use of funds. This collection expires June 30, 2008.

Title of the Collection of Information: Adult Education Program Annual Report Form.

OMB Control Number: 1076-0120.

Type of Review: Renewal of a currently approved information collection.

Brief Description of the Collection of Information: The collection of information provides pertinent data concerning the adult education programs. Submission of this information is necessary to assess the need for adult education programs. The information is needed for the utilization and management of program resources to provide education opportunities for adult American Indians and Alaska Natives to complete high school requirements, and to gain new skills and knowledge for individual student self-enhancement. The Bureau of Indian Education and tribally controlled programs use the information collected with the annual report for fiscal accountability and appropriate direct services documentation. The results of the data are used for administrative planning.

Affected Entities: Tribal adult education administrators.

Estimated Number of Respondents: 70.

Proposed Frequency of Responses: Annually.

Estimated Time per Response: 4 hours.

Total Annual Burden Hours: 280 hours (reporting 4 hours per response x 70 respondents = 280 hours).

II. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including the hours and costs) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through

the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 3610, during the hours of 8 a.m. to 4:30 p.m., EST, Monday thru Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number.

Dated: April 17, 2008.

Sanjeev "Sonny" Bhagowalia,

Chief Information Officer—Indian Affairs.

[FR Doc. E8-8763 Filed 4-22-08; 8:45 am]

BILLING CODE 4310-6W-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-09-1320-EL, WYW176107]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License, Antelope Coal Co., WYW176107, Wyoming.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as

amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Antelope Coal Co., a subsidiary of Rio Tinto Energy America on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described land in Converse and Campbell Counties, WY:

T. 40 N., R. 71 W., 6th P.M., Converse County, Wyoming

Sec. 18: Lots 5, 6, 10 through 20;

Sec. 19: Lots 5 through 12;

T. 40 N., R. 72 W., 6th P.M., Converse County, Wyoming

Sec. 1: Lots 5 through 20;

Sec. 12: Lots 4 through 11;

Sec. 13: Lots 9 through 16;

Sec. 24: Lots 1 through 8;

T. 41 N., R. 71 W., 6th P.M., Campbell County, Wyoming

Sec. 8: Lots 1, 2, 7, 8, 13 and 14, N¹/₂SE¹/₄;

Sec. 9: Lots 1 through 16;

Sec. 10: Lots 3 through 6, 11 through 14;

Sec. 17: Lots 1, 2, 7 through 16;

Sec. 19: Lots 5, 6, 11, and 12;

Sec. 20: Lots 1 through 8;

Sec. 21: Lots 1 through 8;

Sec. 28: Lots 3 through 6.

Containing 5121.53 acres, more or less.

DATES: Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Antelope Coal Co. as provided in the **ADDRESSES** section below, which must be received within 30 days after publication of this Notice of Invitation in the **Federal Register**.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW176107): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604. The written notice should be sent to the following addresses: Antelope Coal Co., c/o Rio Tinto Energy America, Attn: Tom Suchomel, Caller Box 3009, Gillette, WY 82717, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003.

SUPPLEMENTARY INFORMATION: All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the

exploration program is to obtain supplemental geotechnical data from several previous drilling programs and to assist with the planning of future expansions of the mine.

This notice of invitation will be published in *Douglas Budget* of Douglas, WY and *The News-Record* of Gillette, WY, once each week for two consecutive weeks beginning the week of April 28, 2008, and in the **Federal Register**.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(c)(1).

Dated: April 16, 2008.

Larry Claypool,

Acting Deputy State Director, Minerals and Lands.

[FR Doc. E8-8751 Filed 4-22-08; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Sho-Deen, Inc., and Sho-Deen Construction Company, L.L.C.*, Case No. 07 C 2900, was lodged with the United States District Court for the Northern District of Illinois on April 11, 2008. This proposed Consent Decree concerns a complaint filed by the United States against the Defendants pursuant to Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendants for discharging dredged and fill material into Mill Creek without a permit. The proposed Consent Decree requires payment of a civil penalty, and payment for off-site mitigation.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Kurt Lindland, Assistant United States Attorney, United States Attorney's Office, 5th Floor, 219 S. Dearborn Street, Chicago, Illinois 60604 and refer to *United States v. Sho-Deen, Inc., and Sho-Deen Construction Company, L.L.C.*, Case No. 07 C 2900, including the USAO # 2007V00571.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois. In addition, the proposed Consent Decree may be

viewed on the World Wide Web at <http://www.usdoj.gov/enrd/open.html>.

Kurt N. Lindland,

Assistant United States Attorney.

[FR Doc. E8-8647 Filed 4-22-08; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on March 17, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Audible Magic Corporation, Los Gatos, CA; Klipsch Group, Inc., Indianapolis, IN; Malata Group (HK) Limited, North Point, HONG KONG—CHINA; and Taiyo Yuden Co., Ltd., Tokyo, JAPAN have been added as parties to this venture. Also, Capgemini U.S. LLC, Irving, TX; Industrial Technology Research Institute, Hsin chu, TAIWAN; Shenzhen Oriental Digital Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; and TechniSat Digital GmbH, Daun, GERMANY have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on December 18, 2007. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on January 28, 2008 (73 FR 4918).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8-8629 Filed 4-22-08; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Devicenet Vendor Association, Inc.

Notice is hereby given that, on March 18, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open DeviceNet Vendor Association, Inc. ("ODVA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Power Electronics S.L., Valencia, SPAIN; Beijing Sevenstar Electronics, Beijing, PEOPLE'S REPUBLIC OF CHINA; GE Multilin, Markham, Ontario, CANADA; Aerotech, Inc., Pittsburgh, PA; Phoenix Digital Corporation, Scottsdale, AZ; Weed Instrument Co., Inc., Round Rock, TX; Nor-Cal Products, Inc., Yreka, CA; TPC Mechatronics Co., Ltd., Seoul, REPUBLIC OF KOREA; Cervis, Inc., Warrendale, PA; Meggitt Airdynamics, Inc., a Division of Whittaker Controls, Corona, CA; Toshiba Schneider Inverter Corporation, Mie-Pref, JAPAN; HONDA TSUSHIN KOGYO CO., LTD., Tokyo, JAPAN; and SensoPart Industriesensorik GmbH, Weiden, GERMANY have been added as parties to this venture.

Also, Siemens Energy & Automation, Inc., Johnson City, TN; Hitachi High-Tech Control Systems Corporation (Hitachi Naka Electronics Co. Ltd.), Ibaraki-ken, JAPAN; Nohken, Inc., Tokyo, JAPAN; Lika Electronic SNC, Carre' (VI), ITALY; SensArray Corporation, Austin, TX; Kawasaki Heavy Industries, Ltd., Hyogo, JAPAN; Siemens PA PS, Grand Rapids, MI; Partlow, Gurnee, IL; and Redwood MicroSystems, Inc., Menlo Park, CA have withdrawn as parties to this venture.

In addition, the following members have changed their names: Kuroda Precision Industries, Ltd. to Kuroda

Pneumatics Ltd., Kanagawa, JAPAN; Enercon-Nord Electronic GmbH to NORD Electronic DRIVESYSTEMS GmbH, Bargteheide DE, GERMANY; and Crouse-Hinds Molded Products to Cooper Interconnect, Division of Cooper Crouse-Hinds, LaGrange, NC.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on November 14, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 2007 (72 FR 74331).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8-8622 Filed 4-22-08; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on March 21, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, IBM, Somers, NY; Lifetime, New York, NY; Secure Path Technology, Los Angeles, CA; Video Communications Inc., Springfield, MA; and Rick Turbeville, Waynesboro, VA have been added as parties to this venture. Also, DG FastChannel, Irving, TX; Joanneum Research, Graz, AUSTRIA; and MESoft, Inc., Los Angeles, CA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on December 18, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 22, 2008 (73 FR 3755).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8-8628 Filed 4-22-08; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 17, 2008.

The Department of Labor (DOL) hereby announces the submission of 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 this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: king.darrin@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-6974 (these are not a toll-free numbers), E-mail: OIRA_submission@omb.eop.gov within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate

consideration, comments should reference the OMB Control Number (see below).

The OMB 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 submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Extension without change of a previously approved collection.

Title: Producer Price Index Survey.

OMB Control Number: 1220-0100.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 6,400.

Total Estimated Annual Burden Hours: 12,800.

Total Estimated Annual Costs Burden: \$0.

Description: The Producer Price Index (PPI), one of the Nation's leading economic indicators, is used as a measure of price movements, as an indicator of inflationary trends, for inventory valuation, and as a measure of purchasing power of the dollar at the primary market level. It also is used for market and economic research and as a basis for escalation in long-term contracts and purchase agreements. The purpose of the PPI collection is to accumulate data for the ongoing monthly publication of the PPI family of indexes. For addition information, see related notice published at 73 FR 15 on January 23, 2008.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E8-8703 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Office of the Secretary

Notice of Public Hearing To Collect Information To Assist in the Development of the List of Goods From Countries Produced by Child Labor or Forced Labor

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of public hearing to collect information to assist in the development of a list of goods from countries produced by child labor or forced labor in violation of international standards; request for submission of testimony.

SUMMARY: The Department of Labor ("DOL") will hold a public hearing for the purpose of gathering factual information regarding the use of child labor and forced labor worldwide in the production of goods at 10:30 a.m. on Wednesday, May 28, 2008. The hearing will take place in the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Ave., NW., Washington DC 20210, and will be open to the public. This hearing is conducted pursuant to section 105(b)(1) of the Trafficking Victims Protection Reauthorization Act of 2005 ("TVPRA of 2005"), Public Law 109-164 (2006), and as set forth in the Notice of Procedural Guidelines for the Development and Maintenance of the List of Goods From Countries Produced by Child Labor or Forced Labor ("Guidelines"), 72 FR 73374 (December 27, 2007). All members of the public attending the hearing must register by May 14 in order to facilitate building security. DOL is now accepting requests from all interested parties to provide oral and/or written testimony and/or exhibits at the hearing. Each presentation will be limited to 10 minutes and must be submitted in writing to the Office of Child Labor, Forced Labor, and Human Trafficking by May 7. The Department is not able to provide financial assistance to those wishing to travel to attend the hearing. Those unable to attend the hearing are invited to submit written testimony. Please refer to the **DATES, FURTHER INFORMATION**, and "Scope of Interest" sections of this Notice for additional instructions on registration, notification, and submission requirements.

The DOL Office of Child Labor, Forced Labor, and Human Trafficking ("Office") is currently developing a list of goods ("the List") from countries that the Office has reason to believe are produced by child labor or forced labor

in violation of international standards. DOL is required to develop and make available to the public the List pursuant to the TVPRA of 2005. Information provided at the hearing will be considered by the Office in developing the List. Testimony should be confined to the specific topic of the use of child labor and forced labor in the production of goods internationally, as well as information on government, industry, or third-party actions and initiatives to address these problems. The Office is particularly interested in information tending to demonstrate the presence or absence of a significant incidence of child labor or forced labor in the production of a particular good.

DATES: The hearing is scheduled for Wednesday, May 28, 2008. Parties who intend to present testimony at the hearing must notify DOL of their intention to appear, in writing, by 5 p.m., April 30. Presenters will be required to submit four written copies of their full testimony in English and all documentary evidence and/or exhibits to the Office by 5 p.m., May 7. Those attending but not presenting at the hearing must register by May 14. The record will be kept open for additional written testimony until 5 p.m., June 11, 2008. Information received after that date may not be taken into consideration in developing the initial List, but will be considered by the Office as the List is maintained and updated in the future.

To Give Notice of Intention To Appear, Submit Written Testimony, or for Further Information, Contact: Charita Castro, Office of Child Labor, Forced Labor, and Human Trafficking, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693-4843 (this is not a toll-free number). Written testimony and documentary evidence may be submitted by the following methods:

- *Facsimile (fax):* Permitted for submissions of 10 pages or fewer. ILAB/Office of Child Labor, Forced Labor, and Human Trafficking at 202-693-4830.

- *Mail, Express Delivery, Hand Delivery, and Messenger Service:* Charita Castro/Leyla Strotkamp at U.S. Department of Labor, ILAB/Office of Child Labor, Forced Labor, and Human Trafficking, 200 Constitution Ave., NW., Room S-5317, Washington, DC 20210.

- *E-mail:* ilab-tvptra@dol.gov.

Note that security-related problems may result in significant delays in receiving materials by mail.

To Register To Attend the Hearing, Contact: Leyla Strotkamp, Office of Child Labor, Forced Labor, and Human Trafficking, Bureau of International

Affairs, U.S. Department of Labor at (202) 693-4813 or Strotkamp.Leyla@dol.gov. Please provide Ms. Strotkamp with attendees' contact information, including name, organization, address, phone number, and e-mail address.

Opportunity To Appear: The hearing is open to the public, and all interested parties are welcome to attend. However, only a party who files a complete notice of intention to appear will be able to present at the hearing. The presiding official reserves the right to limit oral statements in the interest of time and to otherwise keep the hearing focused.

Special Accommodations: Persons who wish to request any of the following accommodations should contact Ms. Strotkamp by April 30: a presentation that exceeds 10 minutes; technical assistance for a presentation; submission of exhibits or other physical evidence for the record; or accommodation of a disability.

For presentations that exceed 10 minutes and/or include the submission of evidence, ILAB will review each submission and determine if it warrants the additional time requested. If ILAB believes the requested additional time is excessive, it will allocate an appropriate amount of time to the presentation, and notify the participant before the hearing. ILAB may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements; ILAB may request any participant to return for additional questioning at a later time.

Scope of Interest: DOL requests information that is current and directly addresses the nature and extent of child labor or forced labor in the production of goods, or the nature and extent of actions and initiatives to combat child labor and forced labor. Governments that have ratified International Labor Organization ("ILO") Convention 138 (Minimum Age), Convention 182 (Worst Forms of Child Labor), Convention 29 (Forced Labor) and/or Convention 105 (Abolition of Forced Labor) may wish to submit relevant copies of their responses to any Observations or Direct Requests by the ILO's Committee of Experts on the Application of Conventions and Recommendations. Exhibits submitted may include studies, reports, statistics, new articles, electronic media, or other sources, as set forth in section "Information Requested on Child Labor and Forced Labor" of 72 FR 73374 (December 27, 2007).

Submitters of oral or written testimony should take into consideration the "Sources of Information and Factors Considered in the Development and Maintenance of the List" (Section A of

the Procedural Guidelines), as well as the definitions of child labor and forced labor contained in Section C of the Guidelines. Refer to 72 FR 73374 (December 27, 2007).

Where applicable, testimony providing factual information should indicate its source or sources, and copies of the source material should be provided. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided.

Written testimony, and written copies of oral testimony, should be submitted to the addresses and by the deadlines set forth above. Submissions made via fax, mail, express delivery, hand delivery, or messenger service should clearly identify the person filing the submission and should be signed and dated. Submissions made via mail, express delivery, hand delivery, or messenger service should include an original plus three copies of all materials and attachments. If possible, submitters should also provide copies of such materials and attachments on a CD-ROM or similar electronic media. Note that security-related screening may result in significant delays in receiving comments and other written materials submitted by regular mail.

Government classified information will not be accepted. The Office may request that classified information brought to its attention be declassified. Submissions containing confidential or personal information may be redacted by the Office before being made available to the public, in accordance with applicable laws and regulations. The Official Record of this Public Hearing, including statements submitted for the record, will be published and made available to the public on the DOL Web site.

SUPPLEMENTARY INFORMATION: Section 105(b)(1) of the TVPRA of 2005, Public Law 109-164 (2006), directed the Secretary of Labor, acting through the Bureau of International Labor Affairs, to "carry out additional activities to monitor and combat forced labor and child labor in foreign countries." Section 105(b)(2) of the TVPRA, 22 U.S.C. 7112(b)(2), listed these activities as:

(A) Monitor the use of forced labor and child labor in violation of international standards;

(B) Provide information regarding trafficking in persons for the purpose of forced labor to the Office to Monitor and Combat Trafficking of the Department of

State for inclusion in [the] trafficking in persons report required by section 110(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b));

(C) Develop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs has reason to believe are produced by forced labor or child labor in violation of international standards;

(D) Work with persons who are involved in the production of goods on the list described in subparagraph (C) to create a standard set of practices that will reduce the likelihood that such persons will produce goods using the labor described in such subparagraph; and

(E) Consult with other departments and agencies of the United States Government to reduce forced labor and child labor internationally and ensure that products made by forced labor and child labor in violation of international standards are not imported into the United States.

The Office carries out the DOL mandates in the TVPRA. The Guidelines provide the framework for ILAB's implementation of the TVPRA mandate, and establish procedures for the submission and review of information and the process for developing and maintaining the List. In addition to the Office's efforts under the TVPRA, the Office conducts and publishes research on child labor and forced labor worldwide. The Office consults such sources as DOL's *Findings on the Worst Forms of Child Labor*; the Department of State's annual *Country Reports on Human Rights Practices* and *Trafficking in Persons Report*; reports by governmental, non-governmental, and international organizations; and reports by academic and research institutions and other sources.

The Office will evaluate all information received according to the processes outlined in the published Guidelines, 72 FR 73374 (December 27, 2007). Goods that meet the criteria outlined in the Guidelines will be placed on an initial List, and published in the **Federal Register** and on the DOL Web site. DOL intends to maintain and update the List over time, through its own research, interagency consultations, and additional public submissions of information.

Signed at Washington, DC, this 17th day of April, 2008.

Charlotte M. Ponticelli,

Deputy Under Secretary for International Affairs.

[FR Doc. E8-8709 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-28-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; PTE 86-128

ACTION: Notice.

SUMMARY: The Department of Labor (Department), 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 continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). 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 Employee Benefits Security Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 86-128 for certain transactions involving employee benefit plans and securities broker-dealers.

A copy of the proposed information collection request (ICR) 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 23, 2008.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information. Send comments to Mr. G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N-5718, Washington, DC 20210. Telephone: (202) 693-8410 Fax: (202) 219-4745 (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 86-128 permits persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of employee benefit plans. The exemption also allows sponsors of pooled separate

accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts in order to recapture brokerage commissions for benefit of employee benefit plans whose assets are maintained in pooled separate accounts managed by the insurance companies. This exemption provides relief from certain prohibitions in section 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of Code section 4975(c)(1)(E) or (F).

In order to insure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department has included in the exemption five information collection requirements. The first requirement is written authorization executed in advance by an independent fiduciary of the plan whose assets are involved in the transaction with the broker-fiduciary. The second requirement is, within three months of the authorization, the broker-fiduciary furnish the independent fiduciary with any reasonably available information necessary for the independent fiduciary to determine whether an authorization should be made. The information must include a copy of the exemption, a form for termination, and a description of the broker-fiduciary's brokerage placement practices. The third requirement is that the broker-fiduciary must provide a termination form to the independent fiduciary annually so that the independent fiduciary may terminate the authorization without penalty to the plan; failure to return the form constitutes continuing authorization. The fourth requirement is for the broker-fiduciary to report all transactions to the independent fiduciary, either by confirmation slips or through quarterly reports. The fifth requirement calls for the broker-fiduciary to provide an annual summary of the transactions. The annual summary must contain all security transaction-related charges incurred by the plan, the brokerage placement practices, and a portfolio turnover ratio.

II. Review Focus

The Department 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; 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 is requesting an extension of the currently approved ICR pertaining to Prohibited Transaction Class Exemption 86-128 for certain transactions involving employee benefit plans and securities broker-dealers. The Department is not proposing or implementing changes to the existing ICR at this time.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: PTE 86-128 for Certain Transactions Involving Employee Benefit Plans and Securities Broker-Dealers.

Type of Review: Extension of a currently approved collection.

OMB Numbers: 1210-0059.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 4,200.

Total Responses: 284,000.

Frequency of Response: Quarterly; Annually.

Total Annual Burden: 93,530 hours.

Total Annual Cost (Operating & Maintenance): \$183,550.

Comments submitted in response to this request 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: April 16, 2008.

Joseph S. Piacentini,
*Director, Office of Policy and Research,
Employee Benefits Security Administration.*

[FR Doc. E8-8701 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,858]

Household Utilities, Inc., Kiel, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated April 7, 2008, a petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on March 5, 2008. The Notice of determination was published in the **Federal Register** on March 21, 2008 (73 FR 15218).

The determination was based on the Department's findings that sales and production of industrial parts, medical carts and medical cabinets increased in 2007 as compared to 2006 and no shift in production to a foreign source occurred.

The request for reconsideration alleges that sales and production decreased in January, 2008 and customers of the subject firm shifted production abroad.

The Department has carefully reviewed the request for reconsideration and will investigate the period of time as defined by the petitioner which is under the relevant period of the investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 17th day of April 2008.

Elliott S. Kushner,
*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E8-8781 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 5, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 5, 2008. The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 16th day of April 2008.

Erin FitzGerald,
Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA PETITIONS INSTITUTED BETWEEN 4/7/08 and 4/11/08]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63139	Valspar—Furniture Sales Group & Int'l Color Design Center (Comp).	High Point, NC	04/07/08	04/04/08
63140	IntriCon Tibbetts Corporation (Comp)	Camden, ME	04/07/08	04/01/08

APPENDIX—Continued

[TAA PETITIONS INSTITUTED BETWEEN 4/7/08 and 4/11/08]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63141	GE Consumer and Industrial, GEA BPO-LLC (IBEW)	Bloomington, IN	04/07/08	04/03/08
63142	Kimball Electronics Tampa, Inc. (Comp)	Tampa, FL	04/07/08	04/07/08
63143	Powermate Corporation (State)	Kearney, NE	04/07/08	04/04/08
63144	Teletex@Home, Inc. (State)	Englewood, CO	04/07/08	04/04/08
63145	Jarden Plastic Solutions (Comp)	Tupper Lake, NY	04/07/08	04/04/08
63146	Perry Marketing Corporation (Comp)	Frisco, TX	04/07/08	04/04/08
63147	The Cutting Company, Inc. (18014)	Bath, PA	04/07/08	04/04/08
63148	Rosy Production, Inc. (Wkrs)	Brooklyn, NY	04/07/08	03/03/08
63149	Astro Air (Comp)	Jacksonville, TX	04/08/08	03/05/08
63150	Enercon (Comp)	Gray, ME	04/08/08	04/07/08
63151	Kretz Lumber Company, Inc. (Comp)	Antigo, WI	04/08/08	04/07/08
63152	Troy, LLC (USW)	Harrisville, WV	04/08/08	04/07/08
63153	General Electric Company Gicero Cal-Rod Plant (Comp)	Cicero, IL	04/08/08	04/01/08
63154	Advantage Printing (Comp)	Hickory, NC	04/08/08	04/07/08
63155	Amphenol-TCS (Comp)	Nashua, NH	04/08/08	03/03/08
63156	Temic Automotive of North America (NA), Inc. (Comp)	Elma, NY	04/08/08	04/07/08
63157	MEMC Electronic Materials (State)	St. Peters, MO	04/08/08	04/04/08
63158	Silver City Lumber, Inc. (Comp)	Three Forks, MT	04/08/08	04/02/08
63159	Ametek, Floorcare and Specialty Motors (Comp)	Kent, OH	04/08/08	04/07/08
63160	Vesuvius Buffalo (USW)	Buffalo, NY	04/08/08	04/03/08
63161	Elrae Industries, Inc. (Comp)	Alden, NY	04/08/08	03/27/08
63162	Whirlpool Corporation (Wkrs)	Cleveland, TN	04/09/08	04/01/08
63163	Saint-Gobain Performance Plastics (Comp)	Bristol, RI	04/09/08	04/08/08
63164	SB Acquisition, LLC (State)	Fryeburg, ME	04/09/08	04/08/08
63165	Maco Steel (Wkrs)	Belmont, MI	04/09/08	03/27/08
63166	Westminster Ceramics (State)	Bakersfield, CA	04/09/08	04/08/08
63167	Russell Corporation (Comp)	Alexander City, AL	04/09/08	04/02/08
63168	Akrion SCP Services (Comp)	Boise, ID	04/09/08	04/08/08
63169	Ford Batavia/Sharonville (UAW)	Batavia, OH	04/10/08	04/09/08
63170	General Electric (State)	Plainville, CT	04/10/08	04/07/08
63171	Wesley Mancini, Ltd (Wkrs)	Charlotte, NC	04/10/08	04/09/08
63172	Mueller Company (USW)	Decatur, IL	04/10/08	04/09/08
63173	Parker Hannifin Corporation (Comp)	Lebanon, TN	04/10/08	04/08/08
63174	Harvey Industries (Wkrs)	Wabash, IN	04/10/08	04/09/08
63175	R. Klein Jewelry Company (Comp)	Rockville Centre, NY	04/10/08	04/09/08
63176	Masonite International Corporation (Comp)	Mobile, AL	04/11/08	04/07/08
63177	Ryerson Steel (Wkrs)	Chicago, IL	04/11/08	04/08/08
63178	Pre-Press/PMG (Wkrs)	Plymouth, MA	04/11/08	04/08/08

[FR Doc. E8-8774 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-62,393]

**American Axle & Manufacturing,
Buffalo Gear and Axle Facility,
Including On-Site Leased Workers
From Henkel Corporation, Buffalo, NY;
Amended Certification Regarding
Eligibility To Apply for Worker
Adjustment Assistance and Alternative
Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and

Alternative Trade Adjustment Assistance on November 21, 2007, applicable to workers of American Axle & Manufacturing, Buffalo Gear and Axle Facility, Buffalo, New York. The notice was published in the **Federal Register** on December 10, 2007 (72 FR 69710).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of rear axle and steering linkage assemblies.

New information shows that leased workers of Henkel Corporation were employed on-site at the Buffalo, New York location of American Axle & Manufacturing, Buffalo Gear and Axle Facility. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers

of Henkel Corporation working on-site at the Buffalo, New York location of the subject firm.

The intent of the Department's certification is to include all workers employed at American Axle & Manufacturing, Buffalo Gear and Axle Facility, Buffalo, New York who were adversely-impacted by a shift in production of rear axle and steering linkage assemblies to Canada and Mexico.

The amended notice applicable to TA-W-62,393 is hereby issued as follows:

All workers of American Axle & Manufacturing, Buffalo Gear and Axle Facility, including on-site leased workers from Henkel Corporation, Buffalo, New York, who became totally or partially separated from employment on or after October 18, 2006, through November 21, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of April 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-8776 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,619; TA-W-62,619A]

OEM/Erie, Inc., Including On-Site Leased Workers From Career Concepts Staffing Services Erie, PA; Including an Employee in Support of OEM/Erie, Inc., Erie, PA Operating Out of Madison Heights, MI: Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 3, 2008, applicable to workers of OEM/Erie, Inc., including on-site leased workers from Career Concepts Staffing Services, Erie, Pennsylvania. The notice was published in the **Federal Register** on March 21, 2008 (73 FR 15217).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information shows that a worker separation has occurred involving an employee in support of the Erie, Pennsylvania facility of OEM/Erie, Inc. operating out of Madison Heights, Michigan. Mr. Edward Conger provided engineering functions supporting the production of plastic trim automotive parts that was produced at the Erie, Pennsylvania facility of the subject firm.

Based on these findings, the Department is amending this certification to include an employee in support of the Erie, Pennsylvania facility operating out of Madison Heights, Michigan.

The intent of the Department's certification is to include all workers of OEM/Erie, Inc., Erie, Pennsylvania who were adversely affected by increased imports.

The amended notice applicable to TA-W-62,619 is hereby issued as follows:

All workers of OEM/Erie, Inc., including on-site leased workers from Career Concepts Staffing Services, Erie, Pennsylvania (TA-W-62,619) including an employee in support of OEM/Erie, Inc., Erie, Pennsylvania operating out of Madison Heights, Michigan (TA-W-62,619A), who became totally or partially separated from employment on or after December 13, 2006, through March 3, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of April 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-8779 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the period of *April 7 through April 11, 2008*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment

Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA-W-63,133; *Mitch Murch's Maintenance Management, Working on-site at Briggs & Stratton Corp., Rolla, MO: January 25, 2007.*

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,755; *G4 Products, LLC, Formerly known as Geiger Manufactured Products Group, Lewiston, ME: January 17, 2007.*

TA-W-62,933; *A.H. Schreiber Company, Inc., Gordon Garment Div., Atwork & Bright Services, Bristol, VA: March 28, 2008.*

TA-W-63,100; *Chillicothe Paper, Inc., A Subsidiary of Newpage Corporation, Chillicothe, OH: April 1, 2007.*

TA-W-63,112; *Wolverine Finance, LLC, Wolverine Tube, including workers residing in Alabama, Ardmore, TN: March 31, 2007.*

TA-W-63,122; *Chromcraft Revington, Inc., Formerly known as Peters Revington Furniture, Delphi, IN: April 2, 2007.*

TA-W-62,936; *Bradford Dyeing Association, Inc., Bradford, RI: February 28, 2007.*

TA-W-63,089; *Garment Technology, Inc., Signum, LLC, Gaffney, SC: March 27, 2007.*

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,956; *General Mills, Inc., Old El Paso Meals Division, Poplar, WI: March 3, 2007.*

TA-W-62,960; *Russell Corporation, Spalding/Huff Sports Division, Sussex, WI: April 22, 2008.*

TA-W-62,984; *Saint-Gobain Sekurit, on-site leased workers of HCS Resource, Shelby Township, MI: March 5, 2007.*

TA-W-62,996; *Vanity Fair Brands, LP, New York Office, New York, NY: March 10, 2007.*

TA-W-62,996A; *Vanity Fair Brands, LP, Alpharetta, GA: March 10, 2007.*

TA-W-63,043; *Grammer Industries, Inc., A Subsidiary of Grammer AG, Automotive Division, on-site leased workers of Corestaff Services, Piedmont, SC: March 20, 2007.*

TA-W-63,043A; *Grammer Industries, Inc., A Subsidiary of Grammer AG, Sales and Engineering Office, on-site leased workers of Westaff, Troy, MI: March 20, 2007.*

TA-W-63,086; *K-Industries, USA, LLC, Riviera Beach, FL: March 27, 2007.*

TA-W-63,114; *Colgate-Palmolive, on-site workers of Adecco, Jeffersonville, IN: March 24, 2008.*

TA-W-63,118; *ARC Automotive, Inc., A Subsidiary of Sequa Corporation, Knoxville, TN: April 1, 2007.*

TA-W-63,006; *Air Products and Chemicals, Polyurethane Chemicals Division, Paulsboro, NJ: March 17, 2007.*

TA-W-63,028; *Fujifilm Manufacturing U.S.A., Inc., on-site leased workers of Staffsource, Inc., Greenwood, SC: February 19, 2007.*

TA-W-63,135; *Leica Geosystems HDS, LLC, Leica Geosystems, Inc., Bus.*

Unit, Aerotek, San Ramon, CA: April 2, 2007.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,915; *Furniture Makers Supply Company, Lexington, NC: February 21, 2007.*

TA-W-62,916; *Lexington Abrasive Belts, Subsidiary of Furniture Makers Supply Co., Lexington, NC: February 21, 2007.*

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA-W-63,133; *Mitch Murch's Maintenance Management, Working on-site at Briggs & Stratton Corp., Rolla, MO:*

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA-W-63,009; *RSA, The Security Division of EMC, A Subsidiary of EMC, Bedford, MA.*

TA-W-63,094; *J J's Mae, Inc., dba Rainbeau, San Francisco, CA.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met. *None.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA-W-62,908; *U.S. Timber Company, Baker City, OR.*

TA-W-62,995; *RSDC of Michigan, LLC, Holt, MI.*

TA-W-63,030; *Daisy Outdoor Products, Neosho, MO.*

TA-W-63,010; *Rotor Coaters International, leased workers of Trillium Staffing and Poch Staffing, Saginaw, MI.*

TA-W-63,101; *Modern Textile, Inc., Oakville, CT.*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-62,706; *TJD Fabrications, Inc., Plattsburgh, NY.*

TA-W-62,989; *Rexel, Inc., Branch 3210/ Division Office, Rocky Mountain Division, Denver, CO.*

TA-W-63,054; *Skynet Satellite Corporation, Formerly known as Loral Skynet Corp., A Subsidiary of Telesat, Hawley, PA.*

TA-W-63,061; *Springs Global, US, Inc., Spring Direct Division, Lancaster, SC.*

TA-W-63,075; *Russound, Also know as Folded Metal Products, Inc., Newmarket, NH.*

TA-W-63,095; *Western Union Financial Services, Inc., Bridgeton, MO.*

TA-W-63,103; *HD Supply, Inc., Plumbing and HVAC Division, Columbus, GA.*

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA. *None.*

I hereby certify that the aforementioned determinations were issued during the period of April 7 through April 11, 2008. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be

mailed to persons who write to the above address.

Dated: April 17, 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8-8775 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,752]

Dynamerica Manufacturing, LLC, Muncie, IN; Notice of Negative Determination on Reconsideration

On April 1, 2008, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on April 11, 2008 (73 FR 19896).

The initial investigation resulted in a negative determination based on the finding that criteria I.B. and II.B. have not been met. There were no plant sales or production declines nor was there as shift in production from the subject firm abroad.

In the request for reconsideration the petitioner stated that he did not have exact knowledge of the subject firm's sales or production, but alleged that "DynAmerica was and still is struggling financially" and provided a history of the declining employment at the subject firm.

On reconsideration, the Department contacted a company official to address these allegations. The official confirmed the accuracy of the statements released by the subject firm in the initial investigation regarding sales and production at Dynamerica Manufacturing LLC, Muncie, Indiana. Furthermore, the company official provided additional financial documentation supporting the facts that sales and production at the subject firm increased from 2006 to 2007.

The petitioner further stated that the subject firm acquired a facility in Mexico and alleged that production has been shifted from Muncie facility to Mexico. In particular, the petitioner alleged, that the subject firm "shipped presses and multislides to Mexico and the dies to make parts that they were running at DynAmerica."

The company official stated that Dynamerica Manufacturing LLC manufactures metal stampings in the

plant in Mexico. The official emphasized that metal stampings manufactured in Mexico are not like or directly competitive with automotive safety components manufactured at Muncie plant.

Furthermore, the company official stated that there was no shift in production of automotive safety components from Dynamerica Manufacturing LLC, Muncie, Indiana to Mexico in 2006 and 2007. The machinery mentioned by the petitioner in the request for reconsideration were purchased by Dynamerica specifically for its Mexican facility. The documentation shows that this machinery was shipped to Muncie plant for maintenance, safety and fit of tooling prior to being shipped to Mexico. "Once the tool was debugged in the press, the tool and press was shipped Mexico." The official stated that the reason for the workers separations is related to a domestic shift in plant production.

The investigation on reconsideration revealed that sales and production and the subject firm increased from 2006 to 2007 and that there was no shift in production abroad of articles like or directly competitive with the products manufactured by workers of the subject firm.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Dynamerica Manufacturing, LLC, Muncie, Indiana.

Signed at Washington, DC, this 17th day of April, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-8780 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,613]

Longview Fibre Paper and Packaging, Inc., Longview Mill, Formerly Fibre Company, Longview, WA; Notice of Revised Determination on Reconsideration

By application dated March 28, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for

Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA).

The initial investigation resulted in a negative determination signed on March 18, 2008, was based on the finding that imports of kraft paper did not contribute importantly to worker separations at the subject plant and there was no shift in production of kraft paper from the subject firm abroad. The denial notice will soon be published in the **Federal Register**.

In the request for reconsideration, the petitioner provided additional information regarding the subject firm's customers and also requested the Department of Labor conduct further analysis of imports that are like or directly competitive with kraft paper.

The Department further reviewed responses of a sample customer survey conducted during the initial investigation. On further analysis, it has been determined that a significant number of customers increased their imports of kraft paper while decreasing their purchases from the subject firm from 2006 to 2007.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with kraft paper produced at Longview Fibre Paper and Packaging, Inc., Longview Mill, Longview, Washington, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Longview Fibre Paper and Packaging, Inc., Longview Mill, formerly Longview Fibre Company, Longview, Washington, engaged in production of kraft

paper, who became totally or partially separated from employment on or after December 27, 2006, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC., this 15th day of April, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-8778 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,608]

Precision Magnetics, Division of Arnold Magnetics Technology, Wayne, NJ; Notice of Revised Determination on Reconsideration

On March 3, 2008, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on March 11, 2008 (73 FR 13013).

The previous investigation initiated on December 27, 2007, resulted in a negative determination issued on February 4, 2008, was based on the finding that, during the relevant period, the subject firm did not shift production of magnetic components and assemblies to a foreign country and did not import magnetic components and assemblies. The determination also stated that the workers' separations were attributed to a domestic shift of production. The denial notice was published in the **Federal Register** on February 22, 2008 (73 FR 9836).

In the request for reconsideration, the petitioner provided additional information regarding production at the subject firm, imports and customers.

Upon further investigation the Department requested a list of customers from the subject firm. New information revealed that Precision Magnetics, Division of Arnold Magnetic Technologies, Wayne, New Jersey supplies component parts for machined housings and covers for gearboxes and generators produced by the primary firm, and at least 20 percent of its production or sales is supplied to a manufacturer whose workers were certified eligible to apply for adjustment assistance.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Precision Magnetics, Division of Arnold Magnetic Technologies, Wayne, New Jersey qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Precision Magnetics, Division of Arnold Magnetic Technologies, Wayne, New Jersey, who became totally or partially separated from employment on or after December 26, 2006, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 17th day of April 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-8777 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-63,078]

Mavrick Metal Stamping Incorporated, Mancelona, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 27, 2008 in response to a petition filed by a company official on behalf of workers at Mavrick Metal Stamping Incorporated, Mancelona, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 16th day of April 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-8782 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-63, 201]

Mpc Computers, LLC; La Vergne, TN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 15, 2008 in response to a petition filed by a company official on behalf of workers at MPC Computers, LLC, La Vergne, Tennessee. The workers at the subject facility produce computers.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 17th day of April 2008.

Richard Church

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-8773 Filed 4-22-08; 8:45 am]

BILLING CODE 4510-FN-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Literature (application review): May 15, 2008 in Room 714. A portion of this meeting, from 12:30 p.m. to 1 p.m., will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 12 p.m. and from 1 p.m. to 6 p.m., will be closed.

Folk and Traditional Arts (application review): May 29-30, 2008 in Room 716. A portion of this meeting, from 2 p.m. to 3 p.m. on May 30th, will be open to the public for a policy discussion. The

remainder of the meeting, from 9 a.m. to 6 p.m. on May 29th, and from 9 a.m. to 2 p.m. and 3 p.m. to 5 p.m. on May 30th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

Dated: April 16, 2008.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E8-8550 Filed 4-22-08; 8:45 am]

BILLING CODE 7537-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on May 8-10, 2008, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 22, 2007 (72 FR 59574).

Thursday, May 8, 2008, Conference Room T-2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.-8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make

opening remarks regarding the conduct of the meeting.

8:35 a.m.-10:30 a.m.: Selected Chapters of the SER Associated with ESBWR—Design Certification Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and General Electric-Hitachi Nuclear Energy (GEH) regarding selected Chapters of the NRC staff's Safety Evaluation Report (SER) with Open Items associated with the Economic Simplified Boiling Water Reactor (ESBWR) design certification application.

Note: A portion of this session may be closed to protect information that is proprietary to GEH and its contractors pursuant to 5 U.S.C. 552b(c)(4).

10:45 a.m.-12:30 p.m.: Insights from PHEBUS-FP Tests (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the findings of the large-scale integral tests conducted in connection with the PHEBUS-FP Program and their implications on containment iodine behavior.

1:30 p.m.-3:30 p.m. Draft NUREG/CR Report on PRA Methods for Digital Systems (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Brookhaven National Laboratory (BNL) regarding draft NUREG/CR-XXX Report on Approaches for Using Traditional PRA Methods for Digital Systems and other related matters.

3:45 p.m.-7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report responding to the EDO Response dated January 17, 2008, to the December 20, 2007, ACRS Report on the Susquehanna Power Uprate Application.

Friday, May 9, 2008, Conference Room T-2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.-8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.-9:15 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—Discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future ACRS meetings as well as discussion of matters related to the

conduct of ACRS business, including anticipated workload and member assignments.

9:15 a.m.–9:30 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

9:30 a.m.–10 a.m.: Subcommittee Report (Open)—The Committee will hear a report by and hold discussions with the Chairman of the ACRS Subcommittee on Plant License Renewal regarding the license renewal application for the Shearon Harris Nuclear Power Plant that was discussed during the Subcommittee meeting on May 7, 2008.

10:15 a.m.–12 p.m.: Preparation for Meeting with the Commission on June 5, 2008 (Open)—The Committee will discuss proposed topics for meeting with the Commission on June 5, 2008.

1:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, May 10, 2008, Conference Room T-2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the

possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92-463, I have determined that it may be necessary to close a portion of this meeting noted above to discuss and protect information classified as proprietary to GEH and its contractors pursuant to 5 U.S.C 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Girija S. Shukla, Cognizant ACRS staff (301-415-6855), between 7:30 a.m. and 4 p.m., (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at pdr@nrc.gov, or by calling the PDR at 1-800-397-4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> or <http://www.nrc.gov/reading-rm/doc-collections/> (ACRS & ACNW Mtg. schedules/agendas).

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301-415-8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: April 17, 2008.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8-8764 Filed 4-22-08; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-022 and 52-023]

Progress Energy; Acceptance for Docketing of an Application for Combined License for Shearon Harris Units 2 and 3

By letter dated February 18, 2007, Progress Energy Carolinas, Inc. (PEC), submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a combined license (COL) for two AP1000 advanced passive pressurized water reactors in accordance with the requirements contained in 10 CFR part 52, "Licenses, Certifications and Approvals for Nuclear Power Plants." These reactors will be identified as Shearon Harris Units 2 and 3 and located near the town of New Hill, in Wake County, North Carolina. A notice of receipt and availability of this application was previously published in the **Federal Register** (72 FR 66200) on March 11, 2008.

The NRC staff has determined that PEC has submitted information in accordance with 10 CFR part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," and 10 CFR part 52 that is acceptable for docketing. The docket numbers established for Units 2 and 3 are 52-022, and 52-023, respectively.

The NRC staff will perform a detailed technical review of the application. Docketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with Subpart L, "Informal Hearing Procedures for NRC Adjudications," of 10 CFR part 2 and will receive a report on the COL application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.87, "Referral to the Advisory Committee on Reactor Safeguards (ACRS)." If the Commission finds that the COL application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue a COL, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR Part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental

scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Finally, the Commission will announce in a future **Federal Register** notice the opportunity to petition for leave to intervene in the hearing required for this application by 10 CFR 52.85.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. The application is also available at <http://www.nrc.gov/reactors/new-licensing/col.html>. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland this 17th day of April 2008.

For the Nuclear Regulatory Commission.

Serita Sanders,

Lead Project Manager, AP1000 Projects Branch 2, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8-8762 Filed 4-22-08; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57675; File No. SR-ISE-2008-15]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Relating to Limitation of Liability

April 17, 2008.

I. Introduction

On March 5, 2008, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² a proposal to amend ISE

Rule 705, "Limitation of Liability," to codify that the ISE may compensate Members for losses resulting directly from the malfunction of the ISE's physical equipment, devices, and/or programming. The proposed rule change was published for comment in the **Federal Register** on March 17, 2008.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

ISE Rule 705(a) provides, in general, that the Exchange is not liable for any losses arising from the use of the Exchange's facilities, systems, or equipment. The ISE notes, however, that, from a customer service perspective, the Exchange may compensate a Member for certain identified losses. Accordingly, the ISE proposes to amend ISE Rule 705 to codify that the ISE may compensate Members, in both its stock and options markets, for losses resulting directly from the malfunction of the ISE's physical equipment, devices, and/or programming.⁴ Under the proposal, the ISE's payments for the aggregate of all claims related to the use of the ISE on a single trading day would not exceed \$250,000, and this amount would be allocated proportionally among all claims if the claims arising on a single trading day exceeded \$250,000.⁵ Claims for compensation under the rule must be submitted in writing no later than the opening of trading on the business day following the day on which the use of the Exchange gave rise to the claim.⁶ Once in receipt of a claim, the ISE will verify that: (i) A valid order was accepted into the Exchange's systems; and (ii) an Exchange system failure occurred during the execution or handling of that order.⁷ The ISE represents that the determination to compensate a Member will be made on an equitable and non-discriminatory basis without regard to the status of the Member, *i.e.*, whether the Member is a Primary Market Maker, a Competitive Market Maker, or an Electronic Access Member of the Exchange.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange.⁸ In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,⁹ which requires, in part, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposal will amend ISE Rule 705 to codify the ISE's policies with respect to compensating Members for losses resulting directly from the malfunction of the ISE's physical equipment, devices, and/or programming. The Commission believes that the codification of these policies should add greater transparency to the ISE's rules. In addition, the Commission notes that the ISE's rule is similar to rules adopted by other exchanges.¹⁰

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-ISE-2008-15) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-8735 Filed 4-22-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57679; File No. SR-CBOE-2008-45]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Taker Fees on the CBOE Stock Exchange

April 17, 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 April 15, 2008, the Chicago Board Options

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See, e.g., Nasdaq Rule 4626(b) and NYSE Arca Rules 14.2(b) and (c).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57450 (March 7, 2008), 73 FR 14290.

⁴ See ISE Rule 705(d).

⁵ See ISE Rule 705(d)(1) and (2).

⁶ See ISE Rule 705(d)(3).

⁷ See ISE Rule 705(d)(3).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange, Incorporated ("Exchange" or "CBOE") 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 Exchange has designated this proposal as one establishing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders it 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 modify its fees applicable to the CBOE Stock Exchange ("CBSX"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), 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 CBSX Fees Schedule lists the fees applicable to trading on CBSX. Those fees include transaction fees, which are based on whether the executing member is "taking" liquidity or "making" liquidity in connection with the transaction. Takers have been charged at a rate of \$0.0029 per share. This filing proposes to increase the taker transaction fee for intermarket sweep orders ("ISOs") and immediate-or-cancel orders ("IOC orders") that execute on CBSX to \$0.0030 per share. The taker transaction fee for other order types would remain unchanged.

The Exchange believes the proposed change will encourage order providers to take advantage of order handling features available on CBSX to non-IOC and non-ISO order types (such as the step-up flash process⁵), while maintaining a fee structure that is competitive with the transaction fees charged by other exchanges. The proposed changes took effect on Wednesday, April 16, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(2) thereunder.⁹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-CBOE-2008-45 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-2008-45. 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-CBOE-2008-45 and should be submitted on or before May 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-8784 Filed 4-22-08; 8:45 am]

BILLING CODE 8010-01-P

⁵ See CBOE Rule 52.6.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 19b-4(f)(2).

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION**[Disaster Declaration # 11217 and # 11218]****Mississippi Disaster # MS-00017****AGENCY:** U.S. Small Business Administration.**ACTION:** Notice.**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 04/16/2008.*Incident:* Severe Storms and Tornadoes.*Incident Period:* 04/04/2008.**EFFECTIVE DATE:** 04/16/2008.*Physical Loan Application Deadline Date:* 06/16/2008.*Economic Injury (EIDL) Loan Application Deadline Date:* 01/16/2009.**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Newton, Rankin, Scott, Warren.

Contiguous Counties:

Mississippi: Claiborne, Clarke, Copiah, Hinds, Issaquena, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba, Simpson, Smith, Yazoo.

Louisiana: East Carroll, Madison, Tensas.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11217 C and for economic injury is 11218 O.

The States which received an EIDL Declaration # are Mississippi, Louisiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 16, 2008.

Steven C. Preston,*Administrator.*

[FR Doc. E8-8759 Filed 4-22-08; 8:45 am]

BILLING CODE 8025-01-P**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Safety Improvements Report Accident Prevention Counselor Activity Reports****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice and request for comments.**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Accident Prevention Counselor Activity Reports are used by counselors to advise the FAA of Accident Prevention Program accomplishments.**DATES:** Please submit comments by June 23, 2008.**FOR FURTHER INFORMATION CONTACT:**Carla Mauney on (202) 267-9895, or by e-mail at: Carla.Mauney@faa.gov.**SUPPLEMENTARY INFORMATION:****Federal Aviation Administration (FAA)***Title:* Safety Improvements Report Accident Prevention Counselor Activity Reports.*Type of Request:* Revision of an approved collection.*OMB Control Number:* 2120-0057.*Form(s):* FAA Forms 8740-5 and 8740-6.*Affected Public:* A total of 4,792 Respondents.*Frequency:* The information is collected on occasion.*Estimated Average Burden per Response:* Approximately 6 minutes per response.*Estimated Annual Burden Hours:* An estimated 2,042 hours annually.*Abstract:* Safety improvement reports are used by airmen to notify the FAA of hazards to flight operations. Accident

Prevention Counselor Activity Reports are used by counselors to advise the FAA of Accident Prevention Program accomplishments.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES-200, 800 Independence Ave., SW., Washington, DC 20591.*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 17, 2008.

Carla Mauney,*FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.*

[FR Doc. E8-8726 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-13-M**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Agency Information Collection Activity Seeking OMB Approval****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice.**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 6, 2007, vol. 72, no. 234, page 68947. The information collected is from airmen and is used to determine compliance with FAA regulations regarding second-in-command certification for the operation of aircraft.**DATES:** Please submit comments by May 23, 2008.**FOR FURTHER INFORMATION CONTACT:**Carla Mauney at Carla.Mauney@faa.gov.**SUPPLEMENTARY INFORMATION:**

Federal Aviation Administration (FAA)

Title: Certification: Second in Command (SIC) Pilot Type Rating, Federal Regulation part 61.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120-0693.

Forms(s): 8710-1.

Affected Public: An estimated 3,000 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 6 minutes per response.

Estimated Annual Burden Hours: An estimated 300 hours annually.

Abstract: The information collected is from airmen and is used to determine compliance with FAA regulations regarding second-in-command certification for the operation of aircraft.

ADDRESS: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 17, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. E8-8729 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; General Operating and Flight Rules—FAR 91

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Part A of Subtitle VII of the Revised Title 49 U.S.C. authorizes the issuance of regulations governing the use of navigable airspace. Information is collected to determine compliance with Federal regulations.

DATES: Please submit comments by June 23, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267-9895, or by e-mail at: Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:**Federal Aviation Administration (FAA)**

Title: General Operating and Flight Rules—FAR 91.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120-0005.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 21,197 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 11 hours per response.

Estimated Annual Burden Hours: An estimated 235,164 annually.

Abstract: Part A of Subtitle VII of the Revised Title 49 U.S.C. authorizes the issuance of regulations governing the use of navigable airspace. Information is collected to determine compliance with Federal regulations. Respondents are individual airmen, state or local governments, and businesses.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES-200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department,

including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 17, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. E8-8731 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 6, 2007, vol. 72, no. 234, pages 68947-68948. 14 CFR part 17 sets forth procedures for filing solicitation protests and contract claims in the FAA's Office of Dispute Resolution for Acquisition.

DATES: Please submit comments by May 23, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:**Federal Aviation Administration (FAA)**

Title: FAA Office of Dispute Resolution Procedures for Protests and Contract Disputes, 14 CFR Part 17.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120-0632.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 40 respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 20.5 hours per response.

Estimated Annual Burden Hours: An estimated 820 hours annually.

Abstract: 14 CFR part 17 sets forth procedures for filing solicitation protests and contract claims in the FAA's Office of Dispute Resolution for Acquisition. The regulations seek factual and legal information from protesters or claimants primarily through written submissions.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 17, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. E8-8737 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Barnes Municipal Airport, Westfield, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the City of Westfield, Massachusetts request to change a portion (14.99 acres) of Airport property from aeronautical use to non-aeronautical use. The property is located off of Falcon Drive in Westfield, Massachusetts and is identified by the City Assessors Office as Map 72R, Parcel 63. Upon disposition the property will be used for construction of a stormwater

detention basin associated with the construction of a Target Distribution Center. The property was acquired under ADAP Project No. 7-25-0053-02.

The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments must be received on or before May 23, 2008.

ADDRESSES: Documents are available for review by appointment by contacting Mr. Christopher Willenborg, Airport Manager at Barnes Municipal Airport, 110 Airport Road, Westfield, Massachusetts 01085-5331, Telephone 413-572-6275 or by contacting Donna R. Witte, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781-238-7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781-238-7624.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Issued in Burlington, Massachusetts on April 7, 2008.

LaVerne F. Reid,

Manager, Airports Division, New England Region.

[FR Doc. E8-8738 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City of Bakersfield, Kern County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed 24th Street Improvement Project in Kern County, California.

FOR FURTHER INFORMATION CONTACT:

Kelly Hobbs, Senior Environmental Planner, Southern San Joaquin Valley Management Branch, Caltrans, 2015 E. Shields Avenue, Suite 100, Fresno, CA 93726, telephone: 559-243-8222.

SUPPLEMENTARY INFORMATION:

Effective July 1, 2007, the FHWA assigned, and the Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the delegated NEPA lead agency will prepare an EIS on a proposal to improve the existing 24th Street from State Route (SR) 99 to M Street in the City of Bakersfield. Analysis supporting the EIS will determine the type of facility necessary to meet the existing and future transportation needs along 24th Street. The proposed project would improve transportation operations along 24th Street and the Oak Street/24th Street intersection to accommodate existing and future traffic volumes and achieve acceptable levels of service within the corridor. The proposed infrastructure improvements would alleviate existing traffic congestion and would result in improvement of local circulation. The proposed EIS would evaluate a set of three alternatives for the improvements to the Oak Street/24th Street intersection, a set of three alternatives for the proposed widening of 24th Street between Oak Street and D Street; and reconstruction of 23rd Street and 24th Street between D Street and M Street (approximately 1.7 miles).

The No Action Alternative would be considered and result in no action being taken and no improvements would be made to the facility.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting will be held on April 30, 2008, from 4:30 to 7:30 p.m. at 1300 17th Street, Bakersfield, California, at the Kern County Superintendent of Schools Conference Rooms, 1st Floor, to provide additional opportunities for public input on the proposed project.

A public hearing will be held. A Public Notice will be issued to announce the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and the EIS should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 16, 2008.

Nancy Bobb,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E8-8795 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cameron County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent (NOI).

SUMMARY: FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed South Padre Island Second Access project in Cameron County, Texas. Publication of this Notice of Intent (NOI) will serve to rescind a previous NOI published in July 2003 for the same project. The proposed project would link State Highway (SH) 100 on the mainland with Park Road (PR) 100 on South Padre Island. Currently, vehicular access to South Padre Island is limited to the Queen Isabella Memorial Causeway connecting the City of Port Isabel and the Town of South Padre Island. The proposed project would provide a second connection from the Texas mainland to South Padre Island in Cameron County, Texas. The proposed project would consist of construction predominantly on new right-of-way.

FOR FURTHER INFORMATION CONTACT: Donald E. Davis, District Engineer, Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701, Telephone (512) 536-5960.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and the Cameron County Regional Mobility Authority (CCRMA) is preparing an EIS for the proposed project which would involve the construction of a second access between SH 100 and PR 100. The amount of additional right-of-way to be acquired

would depend upon the alternative selected and is not known at this time.

The proposed project will consider several alternatives intended to satisfy the identified need and purpose. The current purpose is emergency evacuation, economic development, and to enhance safety and mobility. The alternatives will include the no-build alternative, Transportation System Management/Transportation Demand Management, mass transit, and roadway build alternatives. The roadway build alternatives may range from a two-lane to a six-lane road and may include limited access and non-limited access (arterial) designs, and toll and non-toll lanes.

The EIS will evaluate potential direct, indirect, and cumulative impacts from construction and operation of the proposed project including, but not limited to, the following: Impacts or displacements to residents and businesses; detours; air and noise impacts from construction equipment, and operation of the project; water quality impacts from the construction area and from roadway storm water runoff; impacts to waters of the United States; impacts to historic and archeological resources; impacts to floodplains and irrigation canals; impacts to socio-economic resources (including environmental justice and limited English proficiency populations); indirect impacts; cumulative impacts; land use; regional and local economic interactions; vegetation including seagrass beds, dense thorn-scrub habitat, and riparian vegetation; wildlife; and aesthetic and visual resources.

The project may require the following approvals:

- Section 106, National Historic Preservation Act (NHPA)—Advisory Council on Historic Preservation (ACHP), Texas Historical Commission (THC), and State Historic Preservation Office (SHPO).
- Navigable Waterway Permit—United States Coast Guard (USCG).
- Section 404 Clean Water Act and Section 10 Rivers and Harbors Act—US Army Corps of Engineers (USACE).
- Section 7 Endangered Species Act—US Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries).
- Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) and the Marine Mammal Protection Act—NOAA Fisheries.
- Section 402 Clean Water Act, National Pollutant Discharge Elimination System (NPDES)—US

Environmental Protection Agency (USEPA).

- Section 401 Water Quality Certification—Texas Commission on Environmental Quality (TCEQ).

- Coastal Zone Management Program—General Land Office (GLO).

If a build alternative advances from the DEIS and FEIS, the actual approvals required may change after field surveys are completed and an alternative is selected for the project through a ROD.

A scoping meeting is an opportunity for participating agencies, cooperating agencies, and the public to be involved in defining the draft Need and Purpose for the proposed project, the range of alternatives for consideration in the draft EIS, and to comment on the methodologies to evaluate alternatives. The scoping meeting will also include a draft coordination plan and schedule for agency and public comment. A scoping meeting for the proposed project will be held in May 2008.

In addition to any scoping meetings, a series of meetings to solicit public comment will be held during the environmental review process. They will be held during appropriate phases of the project development process. Public notices will be given stating the date, time, and location of the meeting or hearing and will be published in English as well as Spanish. Provision will be made for those with special communication needs, including translation if requested. Correspondence will be sent to federal, state, and local agencies, and to organizations and individuals who have previously expressed or are known to have an interest in the project, which will describe the proposed project and solicit comments. Comments and suggestions from all interested parties are invited to ensure that the full range of issues related to the proposed project are identified and addressed. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 17, 2008.

Donald E. Davis,

District Engineer, Austin, Texas.

[FR Doc. E8-8783 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Supplemental Environmental Impact Statement: I-70 Kansas City to St. Louis, MO**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement (EIS) will be prepared for the approved I-70 First and Second Tier environmental documents. The I-70 corridor for this Supplemental EIS is from the I-470 interchange in Kansas City to near the Lake St. Louis interchange in St. Louis. The project length is approximately 199 miles.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Casey, Environmental Projects Engineer, FHWA Division Office, 3220 West Edgewood, Suite H, Jefferson City, MO 65109, Telephone: (573) 636-7104; or Mr. Kevin Keith, Chief Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751-2803.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare a Supplemental EIS to consider the impacts of dedicated truck lanes. This Supplemental EIS will include all necessary environmental, cultural resource, social and economic studies and will be coordinated closely with the public, city and county officials, Metropolitan Planning Organizations, Regional Planning Commissions, and resource agencies, as appropriate.

The FHWA and MoDOT completed a First Tier EIS for the I-70 corridor in December, 2001. Subsequent to the First Tier, FHWA and MoDOT completed Second Tier environmental documents for seven sections of independent utility across the corridor. The Second Tier documents were completed in 2006. The First Tier evaluated the I-70 corridor in a general nature and recommended the improvement strategy of reconstructing and widening the existing facility. The Second Tier documents evaluated the environmental impacts of this strategy. The evaluations in these traditional environmental documents were based on the I-70 facility consisting of three 12-foot lanes in each direction with 12-foot shoulders along with a 124-foot grassed median. The only exceptions were in the urban areas approaching Kansas City, Columbia, through the Warrenton-

Wright City-Wentzville area, and the area known as Mineola Hill.

A study Management Group (SMG) was assembled during the First Tier environmental process and was continued through the Second Tier process. Periodic SMG progress meetings were held during the First and Second Tier processes with resource agency personnel, including representatives from the Missouri Department of Natural Resources, the Missouri Department of Conservation, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Natural Resources Conservation Service, and the Environmental Protection Agency. Coordination with the SMG has been re-initiated for the Supplemental EIS process.

This Supplemental EIS will begin with an evaluation and comparison of a truck-only strategy to the Preferred Strategy identified in the original EIS. If the evaluation process results in the recommendation of the truck-only strategy, several alternatives for implementing truck-only lanes will be developed and evaluated to determine which are reasonable and which, if any, are not. It is anticipated that truck-only alternatives will provide four lanes of travel in each direction—two lanes for truck and two lanes for general-purpose traffic. Also, there are several different methods for providing access at interchanges, ranging from simple merge options to more complicated truck/car interchanges. Interchange operations and their related impacts will be evaluated during the supplemental process. In addition, the Supplemental EIS will consider funding options for the project. The study will not recommend a specific option, but will look at the issues and challenges associated with applying these funding options.

To date, a preliminary coordination/scoping meeting was held on January 29, 2008. Resource agencies from the reconvened SMG attended and participated in the meeting. It was agreed that existing coordinating and cooperating agency agreements already in place from the first and second tier processes will remain in effect for the supplemental process. Numerous opportunities for public input will be provided. The Improve I-70 project website will be updated to include the Supplemental EIS and there will be regular outreach to both the local and state-wide media. There will be two separate series of public meetings. Each will have meetings at three locations along the study corridor. Community advisory groups will be re-established in Columbia and Kingdom City. A meeting

with Kingdom City was held on January 23, 2008. Opportunities for briefing/listening sessions with key statewide stakeholders or groups will be provided. A formal location public hearing will take place at three locations along the corridor, along with informal two-hour drop-in centers prior to public meetings and hearing. Public notice will be given announcing the time and place of all public meetings and the hearings. The Supplemental Draft EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the Supplemental EIS should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 17, 2008.

Peggy J. Casey,
Environmental Project Engineer, Jefferson City.

[FR Doc. E8-8761 Filed 4-22-08; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Ex Parte No. 678]

Consummation of Rail Line Abandonments That Are Subject to Historic Preservation and Other Environmental Conditions

AGENCY: Surface Transportation Board, DOT.

ACTION: Statement of board policy.

SUMMARY: The Surface Transportation Board is issuing this policy statement to clarify when, under the agency's regulation at 49 CFR 1152.29(e)(2), a carrier may "consummate" abandonment and file a "notice of consummation" of the abandonment of a rail line where the Board has imposed conditions on its abandonment authorization in order to satisfy section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, or the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA). In cases where a condition is imposed under NHPA, a notice of

consummation should not be filed for any part of the line until the historic review process is completed and the condition is removed. However, where a NHPA condition is needed only for a segment of the line or for a particular structure or structures, the railroad may request that the Board modify the condition to allow the railroad to salvage the portions of the line not affected by that condition. In contrast, a condition imposed under NEPA that is related to salvage activities is not a regulatory barrier to consummation of an abandonment.¹ A notice of consummation may be filed prior to satisfying such a salvage condition. However, filing a notice of consummation in that situation does not remove the condition, which must still be satisfied if and when salvage activities are conducted. If a property encumbered with salvage conditions changes ownership, the new owner must show that it agrees to abide by the salvage conditions at the time of conveyance by referencing the conditions in the instrument of conveyance, and providing a copy of the instrument of conveyance to the Board so that it can be filed in the pertinent abandonment proceeding. Additionally, railroads are cautioned to comply fully with section 106 of NHPA.

DATES: *Effective Date:* This policy statement is effective on April 23, 2008.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245-0395, [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION:

The Board is issuing this policy statement to address when a "notice of consummation"—required under the agency's regulation at 49 CFR 1152.29(e)(2) to signify that a railroad intends to fully abandon a line and remove it from the national rail transportation system—may be filed in cases where the Board has imposed conditions on its abandonment authorization to satisfy section 106 of NHPA or to satisfy NEPA. This policy statement discusses each of these situations.

A railroad may not "abandon" a rail line (i.e., be relieved of its common carrier obligation to provide rail service over that line and dispose of the property for non-rail use) without express permission from the Board. *Chi. & N. W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 321-22 (1981). Under 49 U.S.C. 10903, the Board may affirmatively approve the abandonment of a line by determining that the public convenience and necessity require or permit the proposed abandonment. Alternatively, the agency may authorize abandonment by granting an exemption (individually or by class of rail lines) under 49 U.S.C. 10502. See 49 CFR 1152.50 and 1152.60. Under either procedure, the Board must meet its responsibilities under other Federal statutes, including NEPA, NHPA, and the National Trails System Act (Trails Act) at 16 U.S.C. 1247(d). To meet those responsibilities, the Board may need to impose conditions that limit or postpone the carrier's ability to exercise its abandonment authorization in whole or in part.

The abandonment authority issued by the Board is permissive authority that the railroad may or may not decide to exercise. The agency retains jurisdiction over rail properties until abandonment authority has been consummated. *Hayfield N. R.R. Co. v. Chi. & N. W. Transp. Co.*, 467 U.S. 622, 633-34 (1984). Thus, it is important to be able to determine with certainty when abandonment authority is exercised.

To exercise the authority and "consummate" an abandonment, a railroad must manifest a clear intent to abandon through its statements and actions, including discontinuing operations and "salvage" of the line (removing rails and other materials from the property). See *Birt v. STB*, 90 F.3d 580, 585 (D.C. Cir. 1996) (*Birt*). Since 1997, under the Board regulation at 49 CFR 1152.29(e)(2), a railroad is required to file a "notice of consummation" with the agency within 1 year of the service date of the decision permitting abandonment to signify that it has exercised the authority granted and intends that the property be removed from the interstate rail network. Under the regulation, a notice of consummation is deemed conclusive on the issue of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions, including Trails Act conditions that permit rail banking and interim trail use on railroad rights-of-way that would otherwise be abandoned). The regulation provides that if, after 1 year from the date of service of a decision permitting

abandonment, consummation has not been effected by the railroad's filing of a notice of consummation, and there are no legal or regulatory barriers to consummation, the authority to abandon automatically expires (unless the Board has granted an extension). Once abandonment authority expires, a new proceeding would have to be instituted if the railroad wants to abandon the line. If, however, any legal or regulatory barrier to consummation exists at the end of the 1-year time period, the notice of consummation is due to be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier. A railroad can file a request for an extension of time to file a notice, for good cause shown, if it does so sufficiently in advance of the expiration of the deadline to allow for timely processing.

Until 49 CFR 1152.29(e)(2) was adopted, there was no rigid formula for determining whether a railroad intended to exercise its permissive abandonment authority; rather, where there was an issue regarding consummation, the Board and the courts examined the facts on a case-by-case basis. *Birt*, 90 F.3d at 585-86; *Black v. ICC*, 762 F.2d 106, 112-13 (D.C. Cir. 1985). Nor was there any specific time period during which abandonment had to be consummated. The notice of consummation requirement was added to provide certainty and reduce litigation (primarily in cases involving the Trails Act) regarding whether a railroad's actions demonstrated its intent to abandon the line after an abandonment authorization had become effective. Compare *Becker v. STB*, 132 F.3d 60, 63 (D.C. Cir. 1997) and *Fritsch v. ICC*, 59 F.3d 248, 253 (D.C. Cir. 1995) (trail conditions could not be imposed because abandonments had already been consummated) with *Birt*, 90 F.3d at 588 (Board retained jurisdiction to impose a trail condition because railroad's actions did not show an intent to abandon).

Recently, however, there has been some confusion regarding how the notice of consummation requirement applies to abandonment cases where conditions have been imposed to meet the Board's obligations under NHPA or NEPA. Because 49 CFR 1152.29(e)(2) does not specifically address those situations, the Board is issuing this policy statement to clarify when a notice of consummation may be filed (if the railroad wishes to consummate the abandonment) in such cases.

Historic Review Conditions Under NHPA. Where the historic review process is ongoing, the Board generally

¹ See, e.g., Consummation notice filed by the Santa Clara Valley Transportation Authority (SCVTA) on May 8, 2007, in *Santa Clara Valley Transportation Authority—Abandonment Exemption—In Santa Clara and Alameda Counties, CA*, STB Docket No. AB-980X (notifying the Board of SCVTA's consummation of abandonment authority although it had not yet engaged in salvage activities and, therefore, had not yet complied with a salvage condition that the Board had attached to that authority).

imposes a condition prohibiting the railroad from selling the line, altering any sites or structures on the line, or conducting salvage activities on the line until the historic review process is complete and the Board removes the condition. This maintains the status quo pending completion of the historic review process. In some instances, where it becomes apparent that mitigation (i.e., documentation of the historic resources) is necessary only for a portion of the line or for a particular structure or structures, the Board may modify the condition to allow salvage of the rest of the line. But otherwise, abandonment may not be consummated, and potentially historic property may not be disturbed for any part of the line, until either there is a formal final determination by the Board's Section of Environmental Analysis (SEA) (acting on behalf of the Board) that the project would have no adverse effect on historic resources or a Memorandum of Agreement is entered into that sets forth the appropriate mitigation (i.e., documentation) to satisfy section 106 and the historic review condition is removed.

In some instances, railroads have sought to consummate the abandonment of part or all of a railroad line before the historic review process required by section 106 of NHPA is complete and the historic preservation condition imposed by the Board has been modified or removed. By this policy statement, the Board clarifies that, regardless of whether a section 106 condition applies to the entire line or is more limited, an historic preservation condition is a regulatory barrier to consummation. Therefore, a railroad should not file a notice of consummation seeking to remove the property from the Board's jurisdiction until the historic review process has been completed and the Board has removed the section 106 condition.

The Board recognizes that in some cases there can be an overriding need for partial consummation and that partial consummation could be in the public interest (for example, where a portion of the line is needed to complete a highway project that is important to the community and the historic preservation condition applies only to another part of the line or to a structure that would not be disturbed by the highway project), or could further a legitimate private interest. Therefore, the Board's policy will be that, for good cause shown, a railroad may make a request to file a notice of consummation for a portion of the line prior to formal removal of a section 106 condition. The Board would then consider, on a case-

by-case basis, whether to waive its no-partial-consummation policy. The Board's primary concern in considering such requests will be to assure that partial consummation would not compromise satisfactory completion of the historic preservation process.

In some cases railroads have taken actions affecting rail property without first seeking abandonment authority. When this occurs on inactive lines, we generally do not discover these actions until after the fact when the carrier seeks abandonment authority. Such actions are unlawful. Not only is the rail line unlawfully severed from the national transportation system when this occurs, but the Board's ability to carry out its obligations under NEPA and NHPA may then be adversely affected. The Board will continue to carry out its obligations under those statutes and will take whatever steps necessary to enforce compliance with them. Railroads that take such actions may find not only that obtaining abandonment authority is delayed, but that the Board will require historic preservation training for the railroad's staff members who are involved with abandonment projects and require the railroad to document the in-house measures that it will implement to prevent such actions from occurring in the future. Other possible actions the Board may take include restricting the railroad's future ability to employ expedited procedures to obtain abandonment authority, imposing a financial penalty, and seeking a legal remedy against the railroad in a court of law.

Other Environmental Conditions. Most other environmental conditions imposed by the Board in abandonment cases relate to salvage activities. As discussed above, salvage activities can be one indicium of a railroad's intent to abandon. However, it is not necessary for a railroad to salvage a rail line in order to consummate abandonment authority. A railroad may decide not to salvage the line immediately upon being relieved of its service obligations, but rather to leave the track and ties in place. Therefore, the Board's policy is that a salvage condition,² unlike a section 106 condition, typically is not a regulatory barrier to the filing of a notice of consummation, and thus the existence of a salvage condition has no bearing on the consummation deadline.

² Salvage conditions are imposed on a case-by-case basis, but examples of conditions imposed in the past include permitting the railroad to salvage the line only during a particular time of year and requiring the railroad to provide notice to, or consult with, appropriate agencies prior to salvaging the line.

However, the salvage condition remains in place as a condition that attaches to the property and applies to salvage activities whenever they occur, even if salvage is conducted years later by a successor interest. Therefore, our policy will be to require any successor interest to agree to the condition by referencing the condition in the purchase contract or other instrument of conveyance, and by submitting a copy of that instrument of conveyance to the Board so that it can be filed in the docket of the relevant abandonment proceeding.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. This action clarifies that conditions imposed by the Board under section 106 of NHPA are barriers to abandonment consummation, while NEPA salvage conditions are not. It also requires successor interests in properties encumbered with salvage conditions to reference the conditions in the instruments of conveyance, and to provide a copy of the instrument of conveyance to the Board so that it can be filed in the pertinent abandonment proceeding docket. These requirements will require little additional work and should not have a significant economic impact on a substantial number of small entities.

Decided: April 16, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8-8771 Filed 4-22-08; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing

information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, "OCC Communications Questionnaire and Usability Test Survey." The OCC is also giving notice that it has submitted the collection to OMB for review.

DATES: Comments must be submitted on or before May 23, 2008.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1-5, Attention: 1557-0226, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-4448, or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557-0226, 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: You can request additional information or a copy of the collection from Mary Gottlieb, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: OCC Communications Questionnaire.

OMB Control Number: 1557-0226.

Description: The OCC is proposing to continue to collect information from national banks regarding the quality, timeliness, and effectiveness of OCC communications products, such as booklets, issuances, and CDs, and expand its collection to include a usability test of its Web site. Case scenarios would be presented to users to test their ability to find information or

complete a task on the Web site. Completed questionnaires will provide the OCC with information needed to properly evaluate the effectiveness of its paper and electronic communications products. The OCC would use the information to identify problems and to improve its service to national banks.

Type of Review: Regular review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: Communications Questionnaire: 2,600. Usability Test: 300.

Estimated Total Annual Responses: Communications Questionnaire: 2,600. Usability Test: 300.

Estimated Frequency of Response: 1 to 2 times annually.

Estimated Time per Respondent: Communications Questionnaire: 10 minutes.

Usability Test: 1 hour.

Estimated Total Annual Burden: 1,100 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

On February 15, 2008, the OCC published a notice in the **Federal Register** soliciting comments for 60 days on this information collection (73 FR 8931). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 17, 2008.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. E8-8739 Filed 4-22-08; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, "Community Reinvestment Act Regulation—12 CFR 25." The OCC is also giving notice that it has submitted the collection to OMB for review.

DATES: Comments must be submitted on or before May 23, 2008.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 1-5, Attention: 1557-0160, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-4448, or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557-0160, 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: You can request additional information or a copy of the collection from Mary Gottlieb, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Community Reinvestment Act Regulation—12 CFR part 25.

OMB Control Number: 1557-0160.

Description: The CRA requires the Federal banking agencies (Agencies) to assess the record of banks and savings associations in helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations; and to take this record into account in evaluating applications for mergers, branches, and certain other corporate activities. The CRA statute requires the Agencies to issue regulations to carry out its purposes.

Each Agency must provide written CRA evaluations of the institutions they supervise. The public portion of each written evaluation must present the agency's conclusions with respect to the CRA performance standards identified in its regulations; include the facts and data supporting those conclusions; and contain the institution's CRA rating and the basis for that rating.

The data collection requirements in the CRA regulations are necessary for the Agencies to examine, assess, and assign a rating to an institution's CRA performance and to prepare the public section of the written CRA performance evaluation.

Type of Review: Regular review.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,712.

Estimated Total Annual Responses: 1,712.

Estimated Frequency of Response: On occasion.

Estimated Time per Respondent: 70.84 hours.

Estimated Total Annual Burden: 121,282 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

On February 15, 2008, the OCC published a notice in the **Federal Register** soliciting comments for 60 days on this information collection (73 FR 8930). The OCC received no comments. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide the information to the OCC.

Dated: April 17, 2008.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. E8-8740 Filed 4-22-08; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002-32 and Revenue Procedure 2006-21

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002-32, Waiver of 60-month Bar on Reconsolidation after Disaffiliation and Revenue Procedure 2006-21, Revenue Procedure to eliminate impediments to e-filing consolidated returns and reduce reporting requirements.

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to R. Joseph Durbala, at (202) 622-3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: 2002-32, Waiver of 60-month Bar on Reconsolidation after Disaffiliation; 2006-21, Revenue Procedure to eliminate impediments to e-filing consolidated returns and reduce reporting requirements.

OMB Number: 1545-1784.

Revenue Procedure Number: 2002-32 and 2006-21.

Abstract: Revenue Procedure 2002-32 provides qualifying taxpayers with a waiver of the general rule of § 1504(a)(3)(A) of the Internal Revenue Code barring corporations from filing consolidated returns as a member of a group of which it had been a member for 60 months following the year of disaffiliation; Revenue Procedure 2006-21 modifies Rev. Proc. 89-56, 1989-2 C.B. 643, Rev. Proc. 90-39, 1990-2 C.B. 365, and Rev. Proc. 2002-32, 2002-1 C.B. 959, to eliminate impediments to the electronic filing of Federal income tax returns (e-filing) and to reduce the reporting requirements in each of these revenue procedures.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated number of respondents: 20.

The estimated annual burden per respondent varies from 2 hours to 8 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated total annual reporting burden: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2008.

Allan Hopkins,

OMB Reports Clearance Officer.

[FR Doc. E8-8818 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8050

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8050, Direct Deposit of Corporate Tax Refund.

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Direct Deposit of Corporate Tax Refund.

OMB Number: 1545-1762.

Form Number: 8050.

Abstract: Form 8050 is used to request that the IRS deposit a tax refund of (\$1

million or more) directly into an account at any U.S. bank or other financial institution (such as a mutual fund, credit union, or brokerage firm) that accepts direct deposits.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 210,000.

Estimated Time per Respondent: 1 hour, 40 minutes.

Estimated Total Annual Burden Hours: 348,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 8, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8819 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041-N

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041-N U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-6665, or through the internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

OMB Number: 1545-1776.

Form Number: 1041-N.

Abstract: An Alaska Native Settlement Trust (ANST) may elect under section 646 to have the special income tax treatment of that section apply to the trust and its beneficiaries. This one-time election is made by filing Form 1041-N and the form is used by the ANST to report its income, etc., and to compute and pay any income tax. Form 1041-N is also used for the special information reporting requirements that apply to ANSTs.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 34 hrs.

Estimated Total Annual Burden Hours: 680.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 9, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8821 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8717

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8717, User Fee for Employee Plan Determination Letter Request.

DATES: Written comments should be received on or before June 23, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622-6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224 or through the internet at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: User Fee for Employee Plan Determination Letter Request.

OMB Number: 1545-1772.

Form Number: 8717.

Abstract: The Omnibus Reconciliation Act of 1990 requires payment of a "user fee" with each application for a determination letter. Because of this requirement, the Form 8717 was created to provide filers the means to make payment and indicate the type of request.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Responses: 100,000.

Estimated Time per Response: 4 hours 21 minutes.

Estimated Total Annual Burden Hours: 438,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 11, 2008.

Allan M. Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8821 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9620.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9620, Race and National Origin Identification.

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (202) 622-6688, or at Internal Revenue Service, room 6129, 1111

Constitution Avenue, NW., Washington, DC 20224, or through the internet, at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Race and National Origin Identification.

OMB Number: 1545-1398.

Form Number: 9620.

Abstract: Form 9620 is an optically scannable form that is used to collect race and national origin data on all IRS employees and new hires. The form is a valuable tool in allowing the IRS to meet its diversity/EEO goals and as a component of its referral and tracking system and recruitment program.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and the Federal Government.

Estimated Number of Respondents: 50,000.

Estimated Time per Response: 3 min.

Estimated Total Annual Burden

Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 11, 2008.

Allan M. Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8823 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2678

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2678, Employer Appointment of Agent.

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622-3634, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION: Title: Employer Appointment of Agent.

OMB Number: 1545-0748.

Form Number: 2678.

Abstract: Internal Revenue Code section 3504 authorizes a fiduciary, agent or other person to perform acts of an employer for purposes of employment taxes. Form 2678 is used to empower an agent with the responsibility and liability of collecting and paying the employment taxes including backup withholding and filing the appropriate tax return.

Current Actions: There are no changes being made to the burden previously approved by OMB at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, not-for-profit

institutions, farms and the Federal Government.

Estimated Number of Respondents: 95,200.

Estimated Time per Respondent: 3 minutes.

Estimated Total Annual Burden

Hours: 47,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8824 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099-A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099-A, Acquisition or Abandonment of Secured Property.

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Acquisition or Abandonment of Secured Property.

OMB Number: 1545-0877.

Form Number: 1099-A.

Abstract: Form 1099-A is used by persons who lend money in connection with a trade or business, and who acquire an interest in the property that is security for the loan or who have reason to know that the property has been abandoned, to report the acquisition or abandonment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Responses: 386,356.

Estimated Time per Response: 10 min.

Estimated Total Annual Burden Hours: 61,817.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8825 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8718

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8718, User Fee for Exempt Organization Determination Letter Request.

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, at Internal Revenue

Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: User Fee for Exempt Organization Determination Letter Request.

OMB Number: 1545-1798.

Form Number: Form 8718.

Abstract: The Omnibus Reconciliation Act of 1990 requires payment of a "user fee" with each application for a determination letter. Because of this requirement, the Form 8718 was created to provide filers the means to enclose their payment and indicate what type of request they were making.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 200,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden

Hours: 16,667.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8826 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 9087]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, TD 9087, Exclusions From Gross Income of Foreign Corporations (§ 883(a) and (c)).

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, at (202) 622-3634, or at Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224, or through the Internet, at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Exclusions From Gross Income of Foreign Corporations.

OMB Number: 1545-1677.

Regulation Project Number: TD 9087.

Abstract: This regulation contains rules implementing the portions of section 883(a) and (c) of the Internal Revenue Code that relate to income derived by foreign corporations from the

international operation of a ship or ships or aircraft. The rules provide, in general, that a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships or aircraft shall exclude qualified income from gross income for purposes of United States Federal income taxation, provided that the corporation can satisfy certain ownership and related documentation requirements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions and individuals or households.

Estimated Number of Respondents: 16,400.

Estimated Time per Respondent: 1 hr., 27 min.

Estimated Total Annual Burden Hours: 23,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8834 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 9270]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the existing final rulemaking, TD 9270, Reporting of Gross Proceeds Payment to Attorneys.

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to, R. Joseph Durbala at (202) 622-3634, or at Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224, or through the Internet, at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Reporting of Gross Proceeds Payment to Attorneys.

OMB Number: 1545-1644.

Regulation Project Number: TD 9270.

Abstract: This document contains final regulations relating to the reporting of payments of gross proceeds to attorneys. The regulations reflect changes to the law made by the Taxpayer Relief Act of 1997 (1997 Act). The final regulations will affect attorneys who receive payments of gross proceeds on behalf of their clients and will affect certain payors (for example, defendants in lawsuits and their insurance companies and agents) that,

in the course of their trades or businesses, make payments to these attorneys.

Current Actions: There is no change to this proposed regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

The burden is reflected in the burden of Form 1099-MISC.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8837 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-209837-96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG-209837-96, (TD 8742), Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections (§§ 301.9100-2 and 301.9100-3).

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, at (202) 622-3634, or at Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224, or through the Internet, at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time to Make Elections.

OMB Number: 1545-1488.

Regulation Project Number: REG-209837-96.

Abstract: This final regulation provides the procedures for requesting an extension of time to make certain elections, including changes in accounting method and accounting period. In addition, the regulation provides the standards that the IRS will use in determining whether to grant taxpayers extensions of time to make these elections.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8840 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE-14-81]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, EE-14-81, Deductions and Reductions In Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations (§§ 1.404A-5, 1.404A-6 and 1.404A-7).

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, at (202) 622-3634, or at Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224, or through the Internet, at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Deductions and Reductions In Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations.

OMB Number: 1545-1393.

Regulation Project Number: EE-14-81.

Abstract: The regulation provides guidance regarding the limitations on deductions and adjustments to earnings and profits (or accumulated profits) for certain foreign deferred compensation plans. The information required by the regulation will be used by the IRS to administer section 404A of the Internal Revenue Code and to accurately determine the correct deductions and reductions in earnings and profits attributable to deferred compensation plans maintained by foreign subsidiaries and foreign branches of domestic corporations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,250.

Estimated Time Per Respondent: 508 hours.

Estimated Total Annual Burden Hours: 634,450.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8841 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL-121-90, INTL-292-90, and INTL-361-89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations INTL-121-90 (TD 8733), INTL-292-90 (TD 8305), and INTL-361-89 (TD 8292), Treaty-Based Return Positions (§§ 301.6114-1 and 301.7701(b)-7).

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, at (202) 622-3634, or at Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224, or through the Internet, at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Treaty-Based Return Positions.

OMB Number: 1545-1126. Regulation Project Numbers: INTL-121-90, INTL-292-90, and INTL-361-89.

Abstract: Regulation section 301.6114-1 sets forth reporting requirements under Code section 6114 relating to treaty-based return positions. Persons or entities subject to these reporting requirements must make the required disclosure on a statement attached to their return or be subject to a penalty. Regulation section 301.7701(b)-7(a)(4)(iv)(C) sets forth the reporting requirement for dual resident S corporation shareholders who claim treaty benefits as nonresidents of the U.S. Persons subject to this reporting requirement must enter into an agreement with the S corporation to withhold tax pursuant to procedures prescribed by the Commissioner.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 6,020.

Estimated Time Per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 6,015.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8843 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI-28-96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI-28-96 (TD 8801), Arbitrage Restrictions on Tax-Exempt Bonds (§ 1.148-5).

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown, (202) 622-6688, Internal Revenue Service, room 6129, 1111 Constitution Ave., NW., Washington, DC 20224, or through the Internet at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on tax-Exempt Bonds.

OMB Number: 1545-1490.

Regulation Project Number: FI-28-96.

Abstract: This regulation provides guidance concerning the arbitrage restrictions applicable to tax-exempt bonds issued by state and local governments and contains rules regarding the use of proceeds of state and local bonds to acquire higher yielding investments. The regulation provides safe harbors for establishing the fair market value of all investments purchased for yield restricted defeasance escrows. Further, the regulation requires that issuers must retain certain records and information with the bond documents. The recordkeeping requirements are necessary for the IRS to determine that an issuer of tax-exempt bonds has not paid more than fair market value for nonpurpose investments under section 148 of the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: State, local, or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 1,400.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,425.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information

displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 11, 2008.

Allan M. Hopkins,

IRS, Reports Clearance Officer.

[FR Doc. E8-8846 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-107644-98 (Final)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG-107644-98 (Final), Dollar-Value LIFO Regulations; Inventory Price Index Computation Method.

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of regulation should be directed to Allan Hopkins, at the Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, by phone at (202) 622-6665, or on the Internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Dollar-Value LIFO Regulations; Inventory Price Index Computation Method.

OMB Number: 1545-1767.

Regulation Project Number: REG-107644-98 (Final).

Abstract: Section 1.472-2 of the Income Tax Regulations requires a taxpayer to file an application to use the LIFO inventory method. Section 1.472-3(a) requires an electing taxpayer to attach a statement with its federal income tax return for the year of election. This statement generally must be made on Form 970, Application To Use LIFO Inventory Method. Section 1.472-8(e)(5) of the existing regulations and section 1.472-8(e)(iv)(A) of the final regulations provide that a taxpayer may use the IPIC method only if its election appears on Form 970. In addition, § 1.472-8(e)(iii)(B)(3) of the final regulations requires a taxpayer that elects to use a representative appropriate month to indicate its election on Form 970.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 8, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8854 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5309

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5309, Application for Determination of Employee Stock Ownership Plan.

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the form and instructions should be directed to Allan

Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-6665, or through the internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Determination of Employee Stock Ownership Plan.

OMB Number: 1545-0284.

Form Number: 5309.

Abstract: Internal Revenue Code section 404(a) allows employers an income tax deduction for contributions to their qualified deferred compensation plans. Form 5309 is used to request an IRS determination letter about whether the plan is qualified under Code section 409 or 4975(e)(7).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 462.

Estimated Time per Respondent: 11 hrs, 28 minutes.

Estimated Total Annual Burden Hours: 5300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: March 26, 2008.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8-8856 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 3319

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Publication 3319, Low-Income Taxpayer Clinics—2002 Grant Application Package and Guidelines.

DATES: Written comments should be received on or before June 23, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of publication should be directed to Carolyn N. Brown, at (202) 622-6688, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Taxpayer Clinics—2005 Grant Application Package and Guidelines.

OMB Number: 1545-1648.

Publication Number: Publication 3319.

Abstract: Publication 3319 outlines requirements of the IRS Low-Income Taxpayer Clinics (LITC) program and provides instructions on how to apply for a LITC grant award. The IRS will review the information provided by applicants to determine whether to award grants for the Low-Income Taxpayer Clinics.

Current Actions: There are no changes being made to the publication at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not for-profit institutions.

Estimated Number of Respondents: 825.

Estimated Time For Program Sponsors: 60 hours.

Estimated Time For Student and Program Participants: 2 hours.

Estimated Total Annual Burden Hours: 6,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 11, 2008.

Allan M. Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8-8857 Filed 4-22-08; 8:45 am]

BILLING CODE 4830-01-P

Corrections

Federal Register

Vol. 73, No. 79

Wednesday, April 23, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Management Grant Program

Correction

In notice document E8-6429 beginning on page 17355, in the issue of Tuesday, April 1, 2008, make the following corrections:

1. On page 17356, in the first column, in the second paragraph of •Priority III, in the 19th line, “Section 111.3” should read “Section III.3”.

2. On the same page, in the second column, in the last paragraph of

•Priority III, in the 4th line, “Priority H” should read “Priority II”.

3. On the same page, in the second column, in the same paragraph, in the 5th line, “Priority if” should read “Priority III”.

4. On page 17358, in the third column, at the 6th dashed item, in the second line, “Section H” should read “Section II”.

5. On page 17360, in the first column, in the first bulleted item, in the second line, “IRS” should read “IHS”.

6. On page 17361, in the third column, in the second line, “IEIS” should read “IHS”.

7. On page 17362, at the third bulleted item, in the second line, “IRS” should read “IHS”.

8. On the same page, in the second column, under the **VII. Agency Contact(s)** heading, in the 5th line, “announcement, Grant-related ” should read “announcement. Grant-related”.

9. On the same page, in the same column, in the 11th line, “submission, and” should read “submission and”.

10. On the same page, in the same column, in the 6th line from the bottom,

“Gamesmanship” should read “Grantsmanship”.

[FR Doc. Z8-6429 Filed 4-22-08; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release 34-57526A; File No. S7-06-07]

RIN 3235-AJ80

Proposed Rule Changes of Self-Regulatory Organizations

Correction

In rule document E8-8267 appearing on page 20782 in the issue of Thursday, April 17, 2008, make the following correction:

In the third column, under the **SUPPLEMENTARY INFORMATION** heading, in the 14th line, “May 8, 2008.” should read “[insert date 21 days from publication in the **Federal Register**].”.

[FR Doc. Z8-8267 Filed 4-22-08; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Wednesday,
April 23, 2008**

Part II

Department of Education

34 CFR Part 200

**Title I—Improving the Academic
Achievement of the Disadvantaged;
Proposed Rule**

DEPARTMENT OF EDUCATION**34 CFR Part 200****RIN 1810-AB01****[Docket ID ED-2008-OESE-0003]****Title I—Improving the Academic Achievement of the Disadvantaged****AGENCY:** Office of Elementary and Secondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing programs administered under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to clarify and strengthen current Title I regulations in the areas of assessment, accountability, public school choice, and supplemental educational services.

DATES: We must receive your comments on or before June 23, 2008.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under “How To Use This Site.”

- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Zollie Stevenson, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., room 3W230, Washington, DC 20202-6132.

Privacy Note: The Department’s policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions will be posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

FOR FURTHER INFORMATION CONTACT: Zollie Stevenson, Jr. at 202-260-1824. If you use a telecommunications device for the deaf (TDD), you may call the

Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:**Invitation to Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *Regulations.gov*. You may also inspect the comments, in person, in room 3W202, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The No Child Left Behind Act of 2001 (NCLB), which amended and reauthorized the ESEA, fundamentally changed the way States and local school districts help ensure that all students meet grade-level expectations or better. The law’s core principles, particularly in Title I, guide the nation’s conversation on education: annual

assessments, publicly reported data, assistance for students and schools that fall behind, and accountability for results. NCLB’s focus on accountability means that all States are now collecting better information to help schools, educators, policymakers, and parents make the best decisions for students. The Federal government has supported NCLB’s implementation with significant resources: \$165 billion in funding for NCLB from 2002 to 2008, including an increase of 40 percent in current dollars since 2001. This funding increase was accompanied by a philosophical change—that education is not just about how much we’re spending, but about how well we’re serving students.

The 2007–2008 school year is the sixth full school year since the passage of NCLB. Throughout these six years, we carefully monitored the law’s implementation. We gained valuable information from States, districts, and schools about how implementation of the law’s requirements could be improved to ensure that all students reach proficiency in reading/language arts and mathematics by the 2013–2014 school year. For example, in the first several years following the passage of NCLB, we received frequent requests from States to provide additional flexibility to measure the achievement of students with disabilities and students with limited English proficiency (LEP) for purposes of adequate yearly progress (AYP) determinations. In response to these requests, the Department promulgated regulations to permit States to include in their AYP determinations the proficient and advanced scores of students with disabilities assessed based on alternate and modified academic achievement standards, as well as regulations that provide flexibility in the assessment of, and accountability for, recently arrived and former LEP students.

During this time, States developed more sophisticated State data systems that now permit more accurate calculations of high school graduation rates, as well as the measurement of individual student academic growth from one year to the next. Higher-quality State accountability and assessment systems are in place thanks to the rigorous standards established under NCLB, the assessment and accountability peer review process, and most importantly, the hard work of the States.

With these advancements, we believe that it is time to further amend and update our regulations to address certain key areas. Accordingly, these proposed regulations build on the

advancements of State accountability and assessment systems, while incorporating key feedback from the field into an even clearer vision of what it takes to educate each and every one of our Nation's schoolchildren.

We want to ensure that these regulations are as effective as possible in advancing the key principles of NCLB and, therefore, want to provide the opportunity for as much public input on the proposed regulations as possible. The public will have 60 days to comment on these proposed regulations. We also will provide opportunities for public input during regional public meetings; the dates, times, and locations of these meetings will be announced in a separate notice in the **Federal Register**.

These proposed regulations would clarify and strengthen current regulations in the areas of assessment, accountability, supplemental educational services (SES), and public school choice. Specifically, the proposed regulations address the following key areas:

- Assessing higher-order thinking skills through multiple measures.
- Increasing subgroup accountability.
- Ensuring that States and local educational agencies (LEAs) include State data from the National Assessment of Educational Progress (NAEP) on State and local report cards.
- Establishing a uniform and accurate method that States must use to calculate high school graduation rates and setting high school graduation rate goals for AYP purposes.
- Including disaggregated graduation rates in AYP calculations.
- Permitting the inclusion of measures of individual student academic growth in a State's definition of AYP.
- Creating a National Technical Advisory Council to advise the Secretary on complex issues related to State assessment and accountability systems.
- Identifying schools and LEAs for improvement.
- Ensuring that parents receive the information they need to exercise their public school choice and SES options.
- Providing information to the public about participation in SES and public school choice.
- Strengthening the requirements for schools in restructuring.
- Requiring States to be more transparent about how they monitor LEAs' implementation of SES and strengthening the evidence that States must consider when approving and monitoring SES providers.

- Using SES and school choice funds for parent outreach.
- Maximizing use of funds for public school choice-related transportation and SES.

Issuing regulations that strengthen Title I implementation in these areas will help bring about higher-quality assessments and stronger accountability for results, as well as provide parents with the information they need to make informed decisions about public school choice and SES. We look forward to receiving your comments on these proposed regulations to ensure that they accomplish our intended objectives.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Section 200.2—State Responsibilities for Assessment

Statute: Section 1111(b)(3)(C)(vi) of the ESEA states that assessments must involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding.

Current Regulations: Section 200.2(b)(7) of the Title I regulations essentially repeats the statutory language.

Proposed Regulations: Proposed § 200.2(b)(7)(i) and (ii) would clarify that measures of student academic achievement may include multiple types of questions that range in complexity and reflect the cognitive concepts and processes in the State content standards within a single assessment, as well as multiple assessments within a subject area.

Reasons: There has been some misunderstanding among parents, teachers, and administrators that student achievement, for purposes of accountability determinations under Title I, must be based on a single assessment. This is not true; in fact, the law requires that a State's assessment include "multiple measures." The proposed language would clarify what is meant by this concept, which is included in the law to ensure that a State's assessment system measure the full range of cognitive complexity in the State's academic content standards. Assessments, therefore, should include items that measure both higher order thinking skills (e.g., reasoning, synthesis, analysis) as well as knowledge and recall items to assess the depth and breadth of mastery of a particular content domain. In so doing,

States may use a single test or several tests, or rely on one item format or several item formats (such as multiple choice or constructed response).

Specifically, the proposed regulatory changes would clarify that, to meet the requirement to use multiple measures, a State may also choose to develop an assessment that relies on a combination of question formats, so long as the assessment reflects the degree of complexity of the cognitive concepts and processes in the State content standards. Multiple assessments to measure student achievement in a subject area may also be used in order to assess mastery of the breadth of a particular content domain. For example, some States use reading and writing assessments to calculate AYP in reading/language arts; other States use algebra and probability assessments to calculate AYP for mathematics.

These clarifications are necessary to ensure that States clearly understand that their assessments may include single or multiple item formats, and that they may use multiple assessments to measure a specific content domain; they do not impose new requirements or require States to change their current assessment systems.

Section 200.7—Disaggregation of Data

Statute: Section 1111(b)(2)(C)(v) of the ESEA requires a State to define AYP so that its annual measurable objectives apply to all students as well as to specific subgroups of students—that is, economically disadvantaged students; students from major racial and ethnic groups; students with disabilities; and LEP students. Section 1111(b)(2)(f) of the ESEA makes clear that, for a school or LEA to make AYP, all students as well as each subgroup of students must meet or exceed the State's annual measurable objectives. Sections 1111(h)(1)(C) and 1111(h)(2) require that States and LEAs report on their report cards academic achievement data disaggregated by these same subgroups. Sections 1111(b)(2)(C) and 1111(h)(1)(C) of the ESEA, however, do not require a State to use such disaggregated data for determining AYP or reporting achievement data by subgroup if the number of students in a subgroup is insufficient to yield statistically reliable information or if the results would reveal personally identifiable information about an individual student.

Current Regulations: Section 200.7(a) prohibits a State from using disaggregated data for one or more subgroups to report achievement results or to identify schools in need of improvement, corrective action, or

restructuring if the number of students in a subgroup is insufficient to yield statistically reliable information. Accordingly, § 200.7(a)(2) requires a State, using sound statistical methods, to determine and justify in its State Plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used (e.g., for determining AYP and for reporting subgroup achievement on State and LEA report cards).

Proposed Regulations: In determining a minimum subgroup size, a State must balance achieving statistical reliability with maximizing inclusion of subgroups for accountability purposes (consistent with the statutory requirements to hold schools and LEAs accountable for the achievement of specific subgroups). Thus, proposed § 200.7(a)(2)(i)(B) would require a State, as it considers statistical reliability in setting its minimum subgroup size, to ensure, to the maximum extent practicable, that all student subgroups are included, particularly at the school level, for purposes of making accountability decisions.

Proposed § 200.7(a)(2)(ii) would require each State to revise its Consolidated State Application Accountability Workbook (which is part of the State Plan and is hereafter referred to as the Accountability Workbook) to include (1) an explanation of how the State's minimum subgroup size meets proposed § 200.7(a)(2)(i); (2) an explanation of how other components of the State's AYP definition, in addition to the State's minimum subgroup size, interact to affect the statistical reliability of the data and to ensure maximum inclusion of all students and student subgroups; and (3) information on the number and percentage of students and student subgroups excluded from school-level accountability determinations.

Proposed § 200.7(a)(2)(iii) would require each State to submit a revised Accountability Workbook that incorporates the information in proposed § 200.7(a)(2)(ii) for technical assistance and peer review no later than six months after the effective date of the regulation.

Reasons: One of the most significant aspects of NCLB is its focus on holding schools and LEAs accountable for the achievement of specific student subgroups. Prior to NCLB, the overall achievement of students in a school often masked the low achievement of certain subgroups of students. To ensure that schools and LEAs are held accountable for the achievement of all their students, NCLB specifically

requires that specified student subgroups must meet a State's annual measurable objectives and other academic indicators in order for a school or LEA to make AYP. NCLB also requires that States and LEAs report to the public on the achievement of their student subgroups.

These disaggregation requirements are tempered by the need to ensure statistical reliability and privacy. Thus, sections 1111(b)(2)(C)(v) and 1111(h)(1)(C) of the ESEA and current § 200.7 do not require accountability determinations or reporting by student subgroup if the size of the subgroup is too small to yield statistically reliable results or would reveal personally identifiable information about individual students. Current § 200.7(a)(1), therefore, requires a State to set a minimum subgroup size. A minimum subgroup size that is too small may yield unreliable data or reveal the identity of individual students. A minimum subgroup size, however, should be no larger than necessary to ensure the protection of privacy for individuals and to allow for statistically reliable results of the aggregate performance of the students who make up a subgroup. Moreover, the minimum subgroup size should be small enough to ensure the maximum inclusion of student subgroups in accountability decisions, consistent with the statutory requirements to disaggregate data.

Some have argued that the heterogeneous nature of student populations requires a relatively large minimum subgroup size in order to reflect accurately the achievement of students in AYP determinations. We believe, however, that in many cases minimum subgroup sizes are larger than is necessary to ensure statistically reliable information; the result is that a large number of subgroups (e.g., low-income students, students in some racial or ethnic subgroups, LEP students, and students with disabilities) are excluded from school-level accountability determinations.

Some estimates indicate that large minimum subgroup sizes result in nearly 2 million students (or about 1 in every 14 test scores) not being counted in NCLB subgroup accountability determinations at the school level and minority students are as much as seven times more likely than white students to have their scores excluded from school-level AYP subgroup calculations.¹ Under the current regulations and

statute, in order for a school to be held accountable for a student subgroup, the number of students in that subgroup must exceed the State-established minimum subgroup size. Logically, the larger a State's minimum subgroup size, the less likely students will constitute an accountability subgroup at the school level and, thus, the school would not be held accountable for the performance of that subgroup.

Setting minimum subgroup sizes that are statistically reliable has been a challenge for States. This challenge may stem from the fact that the concept of "statistical reliability" normally refers to the adequacy of a sample size to produce results with enough precision to meet the purpose of a study or report. The larger the sample drawn, the smaller the sampling error, variability, and confidence intervals around the estimate, and the higher the resulting precision of the estimate. However, under NCLB, all students in the tested grades are required to be assessed. Therefore, in the NCLB context, statistical reliability is obtained through the requirement to test the population of students while addressing concerns about instability of scores in small subgroups by using a minimum subgroup size. The use of a minimum subgroup size is not as much a "sampling" issue, as it is a protection to minimize the instability of scores that may occur when there are a small number of scores in a population. A minimum subgroup size mitigates the instability of scores and reduces the likelihood that an extreme score (high or low) will positively or negatively affect the overall score for the subgroup.

There have been a number of developments in State assessment and accountability systems since NCLB was enacted and Accountability Workbooks were first approved. These developments have provided States the opportunity to be more precise, consistent, and transparent in the application of statistical reliability concepts under NCLB. Specifically, when NCLB was enacted, most States did not yet assess all students in grades three through eight and once in the high school grade span as required under NCLB. Now, virtually all students in all required grades are assessed; therefore, test scores generally reflect actual proficiency levels of schools rather than estimates based on the scores of students in one grade. States also have more options to accurately assess student learning, particularly for students with disabilities and LEP students. In addition, States have made tremendous advances in their abilities to gather and analyze student

¹ Bass, F., Ziegler Dizon, N., & Feller, B. (2006, April 18). *States Omit Minorities' School Scores*. Associated Press.

achievement data. These advances help States strike a more optimal balance between reasonable subgroup accountability and inclusion of the maximum number of students in school-level AYP determinations.

For these reasons, the proposed regulations would require a State to ensure that its minimum subgroup size is large enough to produce statistically reliable information for all purposes for which disaggregated data are used (e.g., the use of data for reporting and making accountability decisions) yet limited to the smallest number possible in order to maximize the inclusion of student subgroups in accountability decisions.

Furthermore, while the proposed regulations would not require a specific minimum subgroup size, they would require each State to revise its Accountability Workbook to explain how the State's current or proposed minimum subgroup size meets § 200.7(a)(2)(i). A State would also be required to explain how other elements of the State's AYP definition (such as the use of confidence intervals, performance indexes, and uniform averaging; the State's definition of full academic year), in concert with the State's minimum subgroup size, affect the statistical reliability of accountability determinations as well as impact the inclusion of all students and student subgroups in those determinations. States that propose large minimum subgroup sizes and include other components in their AYP definitions that result in the exclusion of large numbers of students or student subgroups would be subject to close scrutiny.

The proposed regulations would also require each State to include in its Accountability Workbook data on the number and percentage of students and subgroups that are excluded from school-level accountability decisions as a result of the various components of the State's AYP definition. Making this information available through a State's Accountability Workbook should enable the public to gain a better understanding of how schools are being held accountable for the performance of their students and student subgroups.

Finally, we are proposing that each State submit its Accountability Workbook, incorporating the information required by the proposed regulations, for technical assistance and peer review. We believe this would be an appropriate time to again have outside experts examine all the factors that bear on the statistical reliability of and inclusion of students in States' accountability systems. This will help the Department determine whether

those systems are designed to produce reliable accountability determinations that maximize the inclusion of students and student subgroups, particularly in school-level accountability determinations. The Department will work with the National Technical Advisory Council that would be established under the proposed regulations to develop appropriate guidelines for the peer review.

Section 200.11—Participation in NAEP

Statute: Section 1111(c)(2) of the ESEA requires States to participate in the National Assessment of Educational Progress (NAEP) in reading and mathematics for the fourth and eighth grades as a condition of receiving Title I funds, and section 1112(b)(1)(F) of the ESEA requires districts, if selected, to participate in the NAEP. The general authorization for the NAEP requirements is outlined in section 411 of the National Education Statistics Act of 1994 (20 U.S.C. 9010).

Current Regulations: Section 200.11 requires each State that receives funds under Title I, part A of the ESEA to participate in biennial State NAEP academic assessments of fourth and eighth grade reading and mathematics. It also requires an LEA that receives these funds to participate, if selected, in the State NAEP assessments.

Proposed Regulations: Proposed § 200.11(c) would require a State to report the most recent available academic achievement results from NAEP reading and mathematics assessments on the same public report card as it reports the results of its State assessments. It also would require an LEA to report the State NAEP assessment data on its report card.

Reasons: The NAEP is the only nationally representative and continuing assessment of what America's students know and can do in various grades and subject areas and, therefore, is an important source of information about student achievement. We propose to require States and LEAs to include information on NAEP scores on the same report cards that provide data on the performance of students on State assessments to ensure that NAEP data are easily accessible and available to parents and the public and to provide them with a tool to compare how students in a State are performing on the NAEP with student performance on State assessments.

The Department recognizes that simple comparisons of student performance on the NAEP and State assessments cannot be made without some understanding of the key differences between the two

assessments. For example, the NAEP is not aligned with State academic content and achievement standards and, therefore, does not necessarily reflect the curriculum and instruction to which students are exposed in the classroom. Therefore, the Department encourages States to provide information to parents on how to interpret the NAEP and State data. When the NAEP assessment information is presented in the appropriate context, the Department believes information on how students in a State are performing on State assessments compared to their performance on the NAEP will provide for greater transparency and give parents another tool to assess the education system in their State.

Section 200.19—Other Academic Indicators

Statute: Section 1111(b)(2)(C) of the ESEA outlines the specific components that must be included in a State's definition of AYP. Subparagraph (vi) of that section specifically provides that a State's definition of AYP must include, in accordance with section 1111(b)(2)(D) of the ESEA, other academic indicators, and that the other academic indicator for high schools must be the graduation rate. (Graduation rate is generally defined in this section as the percentage of students who graduate from secondary school with a regular diploma in the standard number of years.) Section 1111(b)(2)(I)(i) of the ESEA further provides that, if any group of students identified in section 1111(b)(2)(C)(v)² does not meet the annual measurable objectives in any particular year, the school, under what is commonly known as the "safe harbor" provision, is still considered to have made AYP for that year if the percentage of students in that group who did not meet or exceed the proficient level of academic achievement on the State assessment for that year decreased by 10 percent from the previous year, and that group made progress on one or more of the other academic indicators.

Current Regulations: Section 200.19(a)(1) of the regulations reflects the statutory requirements and requires States to use graduation rate as the other academic indicator for determining AYP for high schools. Under the current regulations, States have some flexibility in calculating graduation rates. States also have flexibility in setting

² These groups are: (1) All public elementary and secondary school students, (2) economically disadvantaged students, (3) students from major racial and ethnic groups, (4) students with disabilities, and (5) students with limited English proficiency.

graduation rate goals or determining the improvement in graduation rates needed for a school or district to make AYP. Graduation rate is defined in the regulations as: (1) the percentage of students, measured from the beginning of high school, who graduate from high school with a regular diploma (not including an alternative degree, such as a General Educational Development (GED) credential or another type of certificate that is not fully aligned with the State's academic standards) in the standard number of years; or (2) another definition, developed by the State and approved by the Secretary in the State Plan, that more accurately measures the rate of student graduation from high school with a regular diploma. In defining graduation rate, the State must avoid counting a dropout as a transfer.

Section 200.19(d)(1) states that a State may, but is not required to, hold schools and LEAs accountable for achieving higher goals on its other academic indicators, including, with respect to high schools, the graduation rate, over the course of the timeline established by the State under § 200.15. Further, § 200.20 provides that, in order for a school or LEA to make AYP, each subgroup of students must meet or exceed the State's annual measurable objectives and the State's goals for the other academic indicator.

Section 200.19(d)(2)(i) requires a State to disaggregate its other academic indicators by subgroup for purposes of reporting under section 1111(h) of the ESEA and for using the "safe harbor" provision to determine AYP. Section 200.19(d)(2)(ii) states that a State need not disaggregate those indicators for determining AYP except as provided for in section 1111(b)(2)(C)(vii) (which permits States to establish any other academic indicators in addition to those required under section 1111(b)(2)(C)(vi)).

Proposed Regulations: We propose several changes to the regulations regarding the use of high school graduation rate as the other academic indicator for determining AYP for high schools.

Definition of graduation rate. Consistent with the definition adopted

by the National Governors Association (NGA), and agreed to by all 50 governors in 2005, proposed § 200.19(a)(1) would require States to use a uniform and accurate method of calculating graduation rates by defining graduation rate as the number of students who graduate in the standard number of years with a regular high school diploma divided by the number of students who form the "adjusted cohort" for that graduating class. The "adjusted cohort" is the group of students who entered the 9th grade four years earlier, and any students who transferred into or entered the cohort in grades 9 through 12, minus any students removed from the cohort. To remove a student from the cohort, a school or LEA would need to confirm that the student either enrolled in another educational program that culminates in the award of a regular high school diploma or is deceased. A student who is retained in grade, enrolls in a GED program, or leaves school for any other reason would remain in the adjusted cohort for the purposes of calculating the graduation rate.

Proposed § 200.19(a)(1)(i)(C)(2) would permit a State to propose, for approval by the Secretary, an alternate definition of "standard number of years" that would apply to limited categories of students who, under certain conditions, may take longer to graduate (as is the case, for example, for a small number of students with disabilities or students in "early college high schools" who earn an associate's degree along with a high school diploma).

A State that does not have in effect a system to accurately track transfers for calculation of the graduation rate defined in proposed § 200.19(a)(1)(i) would be required to use the averaged freshman graduation rate (AFGR) on a transitional basis. The AFGR would be defined as the number of high school students who graduate in the standard number of years with a regular high school diploma divided by the number of students in the incoming freshman class four years earlier, which is estimated by averaging the enrollment of that freshman class with the

enrollment of that class in eighth grade the prior year and in tenth grade the subsequent year. For any school or district that does not have an eighth grade, the AFGR would be estimated by averaging the enrollment of the freshman class with the enrollment of the tenth grade class in the subsequent year. The proposed regulations would not permit States to use the AFGR to calculate graduation rates after 2011–2012; after 2011–2012, all States would have to calculate graduation rates under proposed § 200.19(a)(1).

Graduation rate goals and continuous and substantial improvement measures. Proposed § 200.19(d)(1) would provide two ways for States to determine whether their schools and LEAs meet the graduation rate component of AYP. Beginning in the 2008–2009 school year, in order for a high school or LEA to be considered to have met the other academic indicator for purposes of determining AYP, the school or LEA must either (1) meet a graduation rate goal, established by the State and approved by the Secretary that represents the rate the State expects all high schools to achieve; or (2) demonstrate continuous and substantial improvement from the prior year toward meeting or exceeding that goal, as defined by the State and approved by the Secretary.

Disaggregation of graduation rates. Proposed § 200.19(e)(1) would require each State, no later than the 2012–2013 school year, to calculate the graduation rate at the school, LEA, and State levels in the aggregate and disaggregated by the subgroups in § 200.13(b)(7)(ii) for reporting under section 1111(h) of the ESEA and for determining AYP. Proposed § 200.19(e)(2)(i) and (ii) would require a State, prior to the 2012–2013 school year, to disaggregate the graduation rate data at the school, LEA, and State levels for reporting purposes and for determining "safe harbor" and at the LEA and State levels for determining AYP. Table 1 shows the proposed disaggregation requirements for determining AYP and for reporting AYP determinations.

TABLE 1.—GRADUATION RATE DISAGGREGATION REQUIREMENTS

	AFGR beginning school year 2008–2009		NGA no later than school year 2012–2013	
	Determining AYP	Reporting	Determining AYP	Reporting
School	No (except when determining "safe harbor").	Yes	Yes	Yes.
LEA	Yes	Yes	Yes	Yes.
State	Yes	Yes	Yes	Yes.

Reasons: There is an urgent need to improve America's high schools and ensure that all students graduate from high school ready for postsecondary instruction or the workforce. A uniform and accurate method of calculating graduation rates is needed to raise expectations and to hold schools, districts, and States accountable for increasing the number of students who graduate on time with a regular high school diploma. In addition, a uniform and accurate method of calculating high school graduation rates will improve our understanding of the scope and characteristics of those students dropping out of school or taking longer to graduate.

Numerous reports and statistics from the U.S. Department of Labor (DOL) indicate the growing importance of a high school diploma. In its publication, *America's Dynamic Workforce*, DOL reported that 90 percent of the fastest-growing jobs require some form of postsecondary education.³ There also are increasing gaps in the unemployment rate and earnings between college graduates and high school dropouts. In 2006, the unemployment rate for high school dropouts age 25 and older was over three times the rate for college graduates (6.8 percent compared to 2.0 percent, respectively) and over 1.5 times the rate of individuals who had only a high school diploma (6.8 percent compared to 4.3 percent, respectively). Moreover, what DOL refers to as the "education premium" is increasing—in 2006, college graduates with a bachelor's or higher degree had median weekly earnings nearly 2.5 times greater than the typical high school dropout. Furthermore, college graduates have experienced growth in real median weekly earnings since 1979, while high school dropouts have seen their real median weekly earnings decline by about 20 percent.⁴

These statistics demonstrate the critical importance of having a high school diploma. Unfortunately, only about half of African American and Hispanic students graduate from high school on time with a regular high school diploma.⁵ Additionally, 15 percent of high schools in the country are producing over half of our

dropouts—and yet nearly forty percent of these schools are making AYP because of inaccurate graduation rate calculations and a lack of accountability for all students.⁶

Because the current regulations allow States latitude in determining how graduation rates are measured, the accuracy of State-calculated graduation rates varies considerably. Many States use some form of a "completer rate" (multiplication of dropout rates in each academic year) as their graduation rate. This rate has been shown to overestimate significantly high school graduation rates. The National Center for Education Statistics (NCES) calculated the AFGR for all States and compared the State-reported graduation rates to the AFGR. This analysis, published in the National Assessment of Title I Interim Report, shows that in some cases there is nearly a 30-point difference between a State's reported graduation rate and its AFGR.⁷

The requirements States have established for determining whether a high school makes AYP with respect to its graduation rate also vary. One State, for example, has set its goal at 50 percent; another has set its goal at 95 percent. In addition, more than one-half of States accept any improvement or some established minimal improvement (e.g., 0.1 percent from the previous year) in their high school graduation rate to count as making AYP. In several States, a school can graduate less than half of its students, year after year, and still make AYP by graduating one more student with a regular high school diploma than it did in the previous year.

The proposed regulations would revise current regulations to require the use of a uniform and accurate method of calculating high school graduation rates and would require schools and districts to either meet a State-established goal that has been approved by the Secretary or demonstrate continuous and substantial improvement from the prior year toward meeting or exceeding that goal. These changes are intended to increase the transparency and accuracy of graduation rates and strengthen accountability for the achievement of high school students. Following is the rationale for each of these changes.

Definition of graduation rate. A uniform and accurate method of

calculating high school graduation rates is necessary in order to provide parents and the public with important information about the success of a school, district, and State in graduating students in the standard number of years and to ensure that AYP determinations are based on valid graduation rate calculations.

There is now a broad consensus about how to define the graduation rate. In August 2006, NCES released a report synthesizing the recommendations of a panel of experts on graduation rate calculations.⁸ The panel recommended that the standard graduation rate measure on-time completion of a regular diploma within four years and not include GED recipients or students without documentation of transferring to another educational program that terminates in the award of a regular high school diploma (e.g., documented through receipt of a transcript). Additionally, the NGA Task Force on High School Graduation Rate Data had as its lead recommendation that all States immediately adopt and begin taking steps to implement a standard four-year, adjusted cohort graduation rate, consistent with that proposed by the NCES panel (the "NGA rate"), which 50 governors agreed to adopt in 2005.⁹ The proposed regulations offer a uniform and accurate method of calculating graduation rates that reflects this broad consensus in the field.

To calculate the NGA rate, States need a system of documenting transfers as well as four years of data, or the equivalent of one full cohort. For States that do not yet have the ability to accurately track student transfers, NCES recommended using the AFGR as an *interim* measure. The AFGR estimates the effect of transfers into and out of a cohort of students and can be calculated with data currently available to States. It has been shown to be a reliable, accurate estimate of the high school graduation rate.

The proposed regulations would provide time for States to transition to using the new definition of graduation rate. This transition period would allow all States sufficient time to develop a system for documenting transfers for one full cohort and subsequently to calculate the NGA rate. By 2012–2013, however, all States would be required to

³ U.S. Department of Labor. (2007). *America's Dynamic Workforce*. Washington, DC: Author. Available at: <http://www.dol.gov/asp/media/reports/workforce2007/index.htm>.

⁴ *Id.*

⁵ Belfanz, R., Legters, N., T.C. & Weber, L.M. (2007). Are NCLB's Measures, Incentives, and Improvement Strategies the Right One's for the Nation's Low-Performing High Schools? *American Educational Research Journal*, 44(3), 559–593.

⁶ *Id.*

⁷ Stullich, S., Eisner, E., McCrary, J., & Roney, C. (2006). *National Assessment of Title I Interim Report to Congress: Volume I: Implementation of Title I*. Washington, DC: U.S. Department of Education, Institute of Education Sciences. Available at: <http://www.ed.gov/rschstat/eval/disady/titleinterimreport/voll.pdf>.

⁸ Seastrom, M., Chapman, C., Stillwell, R., McGrath, D., Peltola, P., Dinkes, R., & Xu, Z. (2006). *User's guide to Computing High School Graduation Rates*. Washington, DC: U.S. Department of Education, National Center for Education Statistics.

⁹ National Governors Association. (2006). *Graduation Counts: A Report of the National Governors Association Task Force on High School Graduation Rate Data*. Washington, DC: Author.

use the more rigorous definition of graduation rate in proposed § 200.19(a)(1).

Graduation rate goals and continuous and substantial improvement measures. While some States only allow for schools to make AYP if a State-established goal is met, most States allow any improvement from the previous year or some established minimal improvement (ranging from 0.1 percent to 2.0 percent) for a school to demonstrate it has met AYP; one State simply requires schools to maintain the prior year's rate. Furthermore, many States have established low graduation rate goals (e.g., 50 percent) that are considered the threshold for AYP determinations—a school or LEA must meet that threshold in order to be considered to have made AYP and no improvement above that threshold is required. These methods of determining whether a school or LEA meets the graduation rate component of AYP represent exceptionally low expectations and demonstrate the need for States to establish graduation rate goals that are more rigorous. Accordingly, § 200.19(d) would require a State to establish a graduation rate goal that it expects all high schools to eventually achieve and to establish requirements for demonstrating continuous and substantial improvement toward meeting or exceeding that goal, in order to make AYP. Given the ever-increasing importance of a high school diploma, allowing schools and LEAs with unacceptably low rates of graduation to make AYP by simply maintaining the same low rate or minimally increasing the number of graduates from the previous year does not provide for appropriate and meaningful accountability.

Disaggregation of graduation rates. When the current regulations were written in 2002, the Department believed that permitting States to use aggregate graduation rate data for the purpose of determining AYP while requiring disaggregation for reporting would be sufficient to ensure school accountability for the achievement of all groups of students and would avoid overburdening State accountability systems. Six years later, we now know that simply reporting disaggregated graduation rate data is not sufficient to ensure that graduation rates improve for all students. As previously highlighted, too many schools are graduating too few students and not being held accountable for improving their performance in this important area. Moreover, it is evident that there are significant disparities in high school outcomes. For example,

data provided by NCES show significant gaps in subgroup AFGR graduation rates. Data from the 2004–2005 school year show the average AFGR for white students is 80.4 percent, whereas the average AFGR for Hispanic, black, and Native American/Alaska Native students is 64.2 percent, 60.3 percent, and 67.2 percent, respectively.¹⁰ With these figures, it is clear that disaggregated graduation rate data should be used for purposes of determining whether a high school or LEA makes AYP. Similar to the importance of disaggregating assessment results to ensure that high performance by a particular group of students does not mask low performance by another group of students, schools need to be held accountable for the differences in high school graduation rates among various groups of students.

For these reasons, the proposed regulations would require, by the 2012–2013 school year, all States to include disaggregated graduation rates in State-, district-, and school-level AYP decisions. The Department, however, recognizes that, while disaggregated AFGR results are valid at the State and district levels, there is less confidence in the validity of disaggregated AFGR results at the school level. Therefore, beginning with the effective date of this regulation, States would be required to use disaggregated results for reporting and determining AYP at the State and district levels, but would only be required to use school-level disaggregated results for reporting purposes and determining AYP under the “safe harbor” provision. Beginning in 2012–2013, when all States would have to use the NGA graduation rate, disaggregated results would also be required in school-level AYP determinations.

Section 200.20—Making Adequate Yearly Progress

Statute: Section 1111(b)(2) of the ESEA sets out the requirements for calculating AYP, which is a measure of the percentage of students who are proficient in a school, LEA, and State. The AYP calculation method commonly referred to as a “status model” compares the achievement of one cohort of students against the test scores of the students in the previous year's class. Although Title I allows AYP to be determined using student progress with the “safe harbor” provision, the proficiency gains measured in that calculation do not look at individual

student growth—it is still a cohort comparison. Currently, nine States are participating in a “growth model” pilot and are permitted to report their accountability results using measures of individual student growth that have been approved by the Department. North Carolina and Tennessee first used measures of individual student growth for the 2005–2006 school year; Alaska, Arizona, Arkansas, Delaware, Florida, and Iowa reported growth scores for the first time for the 2006–2007 school year.¹¹

Current Regulations: Section 200.20 implements the statutory requirements for determining AYP.

Proposed Regulations: Proposed § 200.20(h) would establish the criteria that a State must meet in order for the Secretary to permit a State, under the waiver authority of section 9401 of the ESEA, to establish and implement policies for incorporating individual student academic progress into the State's definition of AYP. A State that desires to incorporate individual student academic growth into its definition of AYP would be required to—

- (a) Set annual growth targets that—
 - (1) Lead to all students, by school year 2013–2014, meeting or exceeding the State's proficient level of academic achievement on the State assessments under § 200.2;
 - (2) Are based on meeting the State's proficient level of academic achievement on the State's assessments under § 200.2 and are not based on individual student background characteristics; and
 - (3) Measure student achievement separately in mathematics and reading/language arts;
- (b) Ensure that all students who are tested using the State's assessments under § 200.2 are included in the State's assessment and accountability systems;
- (c) Hold all schools and LEAs accountable for the performance of all students and the student subgroups described in § 200.13(b)(7)(ii);
- (d) Be based on State assessments that—
 - (1) Produce comparable results from grade to grade and from year to year in mathematics and reading/language arts;
 - (2) Have been in use by the State for more than one year; and
 - (3) Have received full approval from the Secretary before the State determines AYP based on student academic growth;

¹⁰National Center for Education Statistics. (2008). Averaged Freshman Graduation Rates for Public School Students, 2004–05. Unpublished data.

¹¹Ohio has received conditional approval, but has not yet implemented its proposal due to delayed State legislative changes necessary for implementation.

(e) Track student progress through a State-developed data system;

(f) Include, as separate factors in determining whether schools are making AYP for a particular year—

(1) The rate of student participation in assessments; and

(2) Other academic indicators as described in § 200.19; and

(g) Describe how the proposed annual growth targets fit into a State's accountability system in a manner that ensures that the system is coherent and that incorporating individual student academic growth into a State's definition of AYP does not dilute accountability.

With the additions proposed in these regulations, a State could permit its LEAs and schools to make AYP by meeting (1) the State's proficiency targets, (2) growth targets, or (3) the "safe harbor" provision.

A State's proposal to incorporate student academic growth in the State's definition of AYP will be peer reviewed under section 1111(e)(2) of the ESEA.

Reasons: There is general consensus among teachers, administrators, researchers, and advocates that States should be permitted to include measures of individual student academic progress (that is, to use what is often described as a "growth model") when determining whether a school or district is making AYP. When NCLB was signed into law in 2002, few States had the data capacity to calculate individual student academic progress. With all States now testing annually in grades 3 through 8 and once in high school coupled with improved data systems in many States, States have a greater capacity to measure individual student academic progress. The Department believes that allowing States to include accurate measures of individual student academic progress in AYP calculations will still hold schools accountable for the achievement of all students to State academic achievement standards, while providing schools and teachers with useful information on how their students are progressing towards grade-level proficiency, which can ultimately lead to better instruction. Under these proposed regulations and section 9401 of the ESEA, therefore, schools and LEAs in States that incorporate individual student academic growth into their definition of AYP would be held accountable for improving individual students' achievement from one school year to the next. We encourage States that decide to incorporate individual student growth into their accountability systems to include in their data systems a teacher identifier to help track student

achievement and teacher performance by class assignment. While not a condition of incorporating individual student academic growth into a State's definition of AYP, inclusion of a teacher identifier will create a much richer set of data to guide school improvement efforts.

Section 200.22—National Technical Advisory Council

Statute: Section 1111(e) of the ESEA requires the Secretary to establish a peer review process to assist in the review of State Plans.

Current Regulations: There are no current regulations related to this statutory requirement.

Proposed Regulations: The proposed regulations in § 200.22 would require the establishment of a National Technical Advisory Council (National TAC) to advise the Secretary on key technical issues related to State standards, assessments, and accountability systems that are part of State plans. The National TAC would not replace the peer review panels the Department uses to evaluate State standards, assessments, and accountability systems. Rather, the National TAC would consider complex issues that affect all States, as well as issues that would benefit from discussions with experts in the field. For example, the National TAC could help create guidelines for how States should determine an appropriate minimum subgroup size, taking into consideration other elements of States' AYP definitions, as we have proposed in § 200.7.

Under the proposed regulations, the Secretary would solicit nominations from the public for experts in the fields of assessment design and implementation, and the field of accountability to serve on the National TAC. The proposed regulations provide that, from these nominations, the Secretary would select 10 to 15 National TAC members. The National TAC could meet as a whole or in subcommittees.

Reasons: The Department currently uses experts in the fields of assessment and accountability to review State standards, assessments, and accountability systems. During the course of reviewing State Plans, these experts, as well as States, have raised a number of complex issues (e.g., the appropriate use of confidence intervals and indexes, and the alignment of alternate assessments with alternate academic achievement standards). Advice from a National TAC consisting of experts with knowledge in the fields of educational standards, assessments, accountability systems, statistics, and

psychometrics would help the Department address these complex and technical issues. Just as States have established State technical advisory committees to advise them on the development and implementation of their State standards, assessments, and accountability systems, the Department believes that regular access to a group of experts would benefit the Department, States, and, ultimately, students in ensuring that State standards and assessments are of the highest technical quality and that State accountability systems hold schools and districts accountable for the achievement of all students.

Sections 200.32 and 200.50(d)(1)—Identification of Schools and LEAs for Improvement

Statute and Current Regulations: Section 1116(b)(1)(A) of the ESEA and § 200.32(a)(1) require an LEA to identify a school for improvement if it does not make AYP, "as defined * * * under section 1111(b)(2)," for two consecutive years. Section 1116(c)(3) of the ESEA and § 200.50(d)(1) contain a similar requirement for identifying LEAs for improvement.

Under section 1111(b)(2)(I) of the ESEA and § 200.20, a school or LEA makes AYP if: (1) All students and each subgroup of students under § 200.13(b)(7)(ii) meet or exceed the State's separate annual measurable objectives (AMOs) for reading/language arts and math, (2) the school or LEA meets or exceeds the State's other academic indicators, and (3) not less than 95 percent of all students and those in each subgroup identified in § 200.13(b)(7)(ii) take the State's assessments. A school or LEA may also make AYP through the "safe harbor" provisions described previously in this notice.

Under current policy, the Department permits the identification of schools and LEAs for improvement if the school or LEA did not make AYP because it did not meet the AMO in the same subject or academic indicator for two consecutive years. So, for example, if a school did not make AYP because it did not meet the AMO for math for two consecutive years, the school would be identified for improvement. On the other hand, if a school, in the first year, did not make AYP because it did not meet the AMO in math but met the AMO in reading/language arts, and then, in the second year, did not make AYP because it did not meet the AMO in reading/language arts but met the AMO in math, that school would not be identified for improvement.

The Department, however, does not permit an LEA or a State to limit the identification of schools and LEAs for improvement to only those schools and LEAs that did not make AYP because the same subgroup did not meet the AMO in the same subject or meet the same other academic indicator for two consecutive years. So, for example, if a school, in the first year, did not make AYP because the students with disabilities subgroup did not meet the AMO in math, and then, in the second year, the school did not make AYP because the LEP students subgroup did not meet the AMO in math, the LEA must identify that school for improvement. In this example, identification for improvement is based on not meeting the AMO in the same subject, math, not on whether the same subgroup did not meet the AMO.

Proposed Regulations: We are proposing to codify the Department's current policy in §§ 200.32 and 200.50(d). Proposed § 200.32 would provide that, in identifying a school for improvement, an LEA may base identification on whether the school did not make AYP because it did not meet the AMO in the same subject or meet the same other academic indicator for two consecutive years. The LEA may not, however, limit such identification to those schools that did not make AYP only because they did not meet the AMO in the same subject or meet the same other academic indicator for the same subgroup under § 200.13(b)(7)(ii) for two consecutive years. Comparable changes with respect to the identification of LEAs for improvement would be made in proposed § 200.50(d)(1).

Reasons: We are proposing to codify our current policy in order to establish clear parameters for LEAs and States to use when identifying schools and LEAs for improvement. We believe the current policy and proposed regulatory changes are consistent with section 1111(b)(2)'s emphasis on proficiency in separate subjects and requiring separate participation rates for math and reading/language arts assessments for purposes of determining AYP, as well as the absence of any similar authority for emphasizing subgroups.

Section 1111(b)(2)(E) of the ESEA clearly acknowledges that student achievement in reading and math in a State may start at very different points and, when they do, different trajectories need to be established for each subject toward the goal of 100 percent proficiency by 2013–2014. Similarly, section 1111(b)(2)(G) of the ESEA requires a State to set different AMOs in math and reading. Participation rates,

likewise, must be calculated separately because a student could participate in one, both, or neither of the State's mathematics and reading/language arts assessments. Accordingly, it follows that a State may take into consideration in identifying a school or LEA for improvement the fact that the school or LEA did not meet its AMO in the same subject (including the participation rate for that subject) or meet the same other academic indicator for two consecutive years.

There is no similar basis for identifying for improvement a school or LEA only when the same subgroup did not meet the AMO in the same subject or the same other academic indicator for two consecutive years. Although section 1111(b)(2) of the ESEA requires a State to establish separate AMOs for each subject, it requires a State to apply those AMOs to each subgroup in determining whether a school or LEA makes AYP. In addition, section 1111(b)(2)(I)(i) of the ESEA provides that, for a school or LEA to make AYP, "all students" and each subgroup must meet or exceed the AMOs. Based on these provisions, the ESEA does not authorize limiting the identification of a school or LEA for improvement to instances when the school or LEA did not make AYP for two consecutive years only because the same subgroup did not meet the AMO for the same subject or the same other academic indicator. Identifying a school or LEA in this manner would be inconsistent with the ESEA's accountability provisions, which require that each subgroup meet the State's AMOs in each subject each year.

Section 200.37—Notice of Identification for Improvement, Corrective Action, or Restructuring

Statute: Section 1116(b)(1)(A) of the ESEA requires LEAs to identify for improvement any Title I school that fails to make AYP for two consecutive years. The identification must occur before the beginning of the school year following the school's failure to make AYP (section 1116(b)(1)(B)). Section 1116(b)(6) of the ESEA requires an LEA to promptly notify parents of students enrolled in a school identified for improvement, corrective action, or restructuring and to provide them with information regarding what it means to be identified for improvement, corrective action, or restructuring, including an explanation of the parents' option to transfer their child to another public school or the option to obtain SES for the student. Section 1116(b)(1)(E) requires LEAs to provide students enrolled in a school identified for improvement, corrective action, or

restructuring with the option to transfer to another school not later than the first day of the school year following such identification. Section 1116(e)(2)(A) requires LEAs with schools in the second year of improvement, in corrective action, or in restructuring to provide, at a minimum, annual notice to parents of the availability of SES, the identity of approved SES providers of those services that are within the LEA or whose services are reasonably available in neighboring LEAs, and a brief description of the services, qualifications, and demonstrated effectiveness of each of those providers.

Current Regulations: Section 200.37(b)(4) and (b)(5) implement the statutory requirements for LEAs to provide notice to parents of public school choice and SES options, respectively.

Proposed Regulations: Proposed § 200.37(b)(4)(iv) would require that LEAs provide to parents an explanation of the available school choices sufficiently in advance of, but no later than 14 calendar days before, the start of the school year, so that parents have adequate time to exercise their choice option before the school year begins.

Proposed § 200.37(b)(5)(ii)(C) would require that the annual notice of the availability of SES explain the benefits of receiving SES, in addition to the identity of approved providers of those services available within the LEA and a brief description of the services, qualifications and demonstrated effectiveness of the providers, as provided in current regulations. Proposed § 200.37(b)(5)(iii) would require this notice to be clear and concise and clearly distinguishable from the other information sent to parents under § 200.37.

Reasons: The importance of notifying parents of their public school choice options in advance of the start of the school year is documented by findings from the National Assessment of Title I (NATI) report (2007). In a survey of LEAs described in this report, those that notified parents about their public school choice options before the first day of school had higher participation rates in public school choice than LEAs that notified parents on or after the first day of school. Yet, only 29 percent of the LEAs that were required to offer public school choice notified parents before the beginning of the school year. Twenty-one percent notified parents at the start of the school year, and 49 percent notified parents after the start of the school year.¹²

¹² Stullrich, S., Eisner, E., & McCrary, J. (2007). *National Assessment of Title I: Final Report*.

We know that transferring one's child to another school is an important decision for a parent to make and therefore, it is critical that LEAs provide parents as much advance notice as possible so that they have time to make informed decisions. We also know from the NATI report that parents are more likely to take advantage of their choice options if they are notified in advance of the school year. However, early parent notification may be constrained by several factors, including the time it takes for States to receive students' scores on the State's annual assessment and the time needed to determine whether a school has made AYP based on the students' test scores and the other components of the State's AYP definition (e.g., definition of full academic year, indexes, "safe harbor"). Further, the Department understands that it is in the best interest of students to have as much time in the school year as possible to learn the content before taking the State's annual assessment.

The Department recognizes that the importance of giving parents the time they need to make decisions regarding their choice option must be balanced by these practical realities of making AYP determinations. Notifying parents as far in advance as possible, but no later than 14 days before the start of the school year, strikes a reasonable balance among these various timing and practical considerations. We also believe that by allowing more time for parents to consider their choice options, there will be greater interest and participation in public school choice.

The NATI report also found that, in 2004–2005, 94 percent of LEAs reported sending parents written notification materials regarding SES options; however in a survey of eligible parents in eight urban school districts, only 53 percent of parents with a child eligible for SES said they had been notified.¹³ Additionally, the NATI report found that the quality of LEAs' parent notification letters varied considerably. Specifically, the NATI report looked at 20 parent letters about SES and found that some were easy to read and described SES options in a positive manner, while others were confusing and incomplete, and discouraged the use of SES.¹⁴ The proposed regulations regarding the SES notice would help ensure that LEAs promptly communicate to parents information on SES, and that parents are aware of their

SES options and the benefits of those services.

Section 200.39—Responsibilities Resulting From Identification for School Improvement

Statute: Section 1116(b) of the ESEA states that an LEA must identify for school improvement any elementary or secondary school that fails, for two consecutive years, to make AYP. Specifically, LEAs with Title I schools identified for improvement are responsible for providing public school choice to eligible students (section 1116(b)(1)(E)), consulting with identified schools as they develop a school improvement plan (section 1116(b)(3)), and ensuring the provision of technical assistance as the school develops and implements the school improvement plan (section 1116(b)(4)). For Title I schools in their second year of improvement, the LEA must continue with these actions and, in addition, make SES available to eligible students.

Current Regulations: Section 200.39 implements the statutory requirements regarding LEAs' responsibilities for Title I schools identified for improvement.

Proposed Regulations: Proposed § 200.39(c) would require LEAs to provide the public with information regarding the LEA's implementation of the public school choice and SES requirements, as soon as this information becomes available. LEAs would be required to prominently display the following information on the LEA's Web site:

- Beginning with data from the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in public school choice.
- Beginning with data from the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in SES.
- For the current school year, a list of SES providers approved by the State to serve the LEA and the locations where services are provided.
- For the current school year, a list of available schools that are offered to students eligible to participate in public school choice.

Reasons: We believe that making information regarding an LEA's implementation of the public school choice and SES requirements available and transparent to the public would hold LEAs accountable for implementing these requirements and lead to greater student participation. In addition, information on the SES

providers approved to serve students in the LEA and the available schools that are offered to students eligible to participate in public school choice would help parents make informed choices for their children. An LEA's Web site is one way for LEAs to make information on public school choice and SES widely available because these sites can be easily updated with the latest information and are a medium that can be accessed anytime and anywhere by individuals and entities. For parents without access to the Internet, LEAs and community organizations would be encouraged to make this information available to parents through other avenues.

Section 200.43—Restructuring

Statute: Under section 1116(a)(7) of the ESEA, if any school served by an LEA does not make AYP by the end of the second full school year after having been identified for improvement, the LEA must identify the school for corrective action and take one of several specific corrective actions. These may include replacing school staff and instituting a new curriculum. If, after one full school year of corrective action, a school continues not to make AYP, the LEA must identify the school for restructuring and implement a restructuring plan under section 1116(b)(8)(A) of the ESEA. In addition to implementing a restructuring plan, the LEA must continue to provide SES and public school choice to eligible students.

Section 1116(b)(8)(B) of the ESEA sets forth the requirements for implementing restructuring plans and requires that, not later than the beginning of the school year following the year in which an LEA implements restructuring, the LEA must implement one of the following alternative governance arrangements for the school consistent with State law:

- (i) Reopen the school as a public charter school;
- (ii) Replace all or most of the school staff (which may include the principal) who are relevant to the failure to make AYP;
- (iii) Enter into a contract with an entity, such as a private management company with a demonstrated record of effectiveness, to operate the public school;
- (iv) Turn the operation of the school over to the SEA, if permitted under State law and agreed to by the State; or
- (v) Any other major restructuring of the school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staffing and governance, to improve

Volume I: Implementation. Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

¹³ *Id.*

¹⁴ *Id.*

student academic achievement in the school, and that has substantial promise of enabling the school to make AYP.

Current Regulations: Section 200.43 of the current regulations, for the most part, restates the statutory language. The regulations also clarify that a school must continue to implement its restructuring plan until it has made AYP for two consecutive years.

Proposed Regulations: The proposed regulations would make several clarifying changes. First, we propose to move the parenthetical in current § 200.43(a)(1) that provides examples of fundamental reforms to proposed § 200.43(b)(3)(v) to better track the statutory language in section 1116(b)(8)(B)(v) of the ESEA. Second, proposed § 200.43(a)(4) would clarify that interventions implemented as part of a school's restructuring plan must be significantly more rigorous and comprehensive than those interventions implemented under the school's corrective action plan as required under § 200.42. Third, proposed § 200.43(a)(5) would require that an LEA implement interventions that address the reasons for the school's being in restructuring in order to enable the school to exit restructuring as soon as possible. Fourth, the proposed regulations would revise § 200.43(b)(3)(ii) to clarify that, in replacing all or most of the school staff, an LEA may also replace the principal; however, replacing the principal alone would not be sufficient to constitute restructuring. Finally, in addition to the proposed change to track more closely the language in section 1116(b)(8)(B)(v) of the ESEA, proposed § 200.45(b)(3)(v) would clarify again that, in making significant changes in the school's staff, an LEA may not replace only the principal.

Reasons: Based on available data, the Department is concerned that the restructuring requirements in § 200.43 are not being implemented effectively, and in some cases not at all. Preliminary analyses of Department data from 36 States indicate that only approximately 18 percent of schools that were identified for restructuring in either the 2004–2005 or 2005–2006 school year have exited restructuring status.¹⁵ In addition, a recent study from the Government Accountability Office (GAO) found that 40 percent of schools in restructuring did not implement any of the five restructuring options.¹⁶

The Department needs to address these issues because a large number of schools could potentially enter restructuring in the next few years. For the 2006–2007 school year, 2,330 schools were identified for corrective action, 937 schools were identified for restructuring after not meeting AYP for five years, and 1,242 schools began implementing their restructuring plans after not meeting AYP for six years. It is important to make these proposed regulatory changes at this time in order to strengthen the restructuring requirements and thereby help schools to exit restructuring as soon as possible.

Although rigorous research is limited on what restructuring interventions are most effective and under what conditions, correlational and descriptive studies indicate that more than one reform should be implemented in a school, rather than relying on one “silver bullet” to address the significant academic needs of a school that has not made AYP for six or more years. For example, a study of restructuring in Michigan conducted by the Center on Education Policy (CEP) found, in general, that multiple reform efforts tailored to the needs of the schools were more likely to result in the schools' making AYP and exiting restructuring.¹⁷

To strengthen the requirements for schools in restructuring, we are proposing to clarify, consistent with the statute, that the actions taken by a school identified for restructuring must (1) be significantly more rigorous and comprehensive than those the school implemented as corrective actions and (2) address the reasons for the school's being identified for restructuring. Schools that have been identified for restructuring are in that status because they have continually not made AYP, notwithstanding the reforms undertaken when the school was in improvement or corrective action. Simply continuing the same actions that were unsuccessful in moving the school out of improvement or corrective action is unlikely to be sufficient to move the school out of restructuring. Restructuring requires actions that are more comprehensive and rigorous than those the school took when the school was in improvement or corrective action status.

Consistent with the need for more comprehensive and rigorous actions when a school is in restructuring, we also are proposing to clarify that, when a State, as part of its restructuring plan, chooses to make significant changes in

the school's staff, these changes may include, but may not be limited to, replacing the principal. While we believe that it is important to place the right leader in a chronically underperforming school, as permitted in current § 200.43, simply replacing the principal without any other changes is inconsistent with the statute and likely insufficient to move a school out of restructuring.

Just as we would not expect that continuing the same actions that were instituted when a school was in improvement or corrective action would move the school out of restructuring, we also would not expect a school to be able to make sufficient gains to exit restructuring if the interventions do not address the specific reasons that the school continues not to make AYP. For example, if a school is in restructuring because either the “all students” group or subgroups that comprise a large percentage of its students have not made AYP for six years, a restructuring plan that addresses only a subset of the students would not be likely to move a school out of restructuring; rather, the restructuring plan would need to be broader in scope and address the needs of the majority of students.

Section 200.44—Public School Choice

Statute: Section 1116(b)(1)(E) requires LEAs to provide students enrolled in a school identified for improvement, corrective action, or restructuring with the option to transfer to another school not later than the first day of the school year following such identification.

Current Regulations: Section 200.44 provides that if an LEA identifies a school for improvement, corrective action, or restructuring, the LEA must provide all students attending the school with the option to transfer to another public school served by the LEA. An LEA must offer this option to parents not later than the first day of the school year following the year in which the LEA administered the assessment that resulted in its identification of the school for improvement, corrective action, or restructuring.

Proposed Regulations: Proposed § 200.44(a)(2)(ii) would reference proposed § 200.37(b)(4) to make clear that an LEA must notify parents about the option to transfer their child to another school and the available public school choices sufficiently in advance of, but no later than 14 calendar days before, the start of the school year so that parents have adequate time to exercise their choice option before the school year begins.

Reasons: Reiterating in the public school choice section of the regulations

¹⁵ U.S. Department of Education. (2008). *EDFacts*. Unpublished raw data.

¹⁶ U.S. Government Accountability Office. (2007). *No Child Left Behind Act: Education Should Clarify Guidance and Address Potential Compliance Issues for Schools in Corrective Action and Restructuring Status* (GAO-07-1035). Washington, DC: Author.

¹⁷ Scott, C. (2007). *What Now? Lessons from Michigan About Restructuring Schools and Next Steps Under NCLB*. Washington, DC: Center for Education Policy.

that notice to parents of the availability of public school choice must occur in a timely manner, consistent with proposed § 200.37(b)(4)(iv), would help ensure that LEAs understand that they must notify parents about their public school choice options sufficiently in advance of the start of the school year so that parents have sufficient time to consider their options and make an informed decision.

Section 200.47—SEA Responsibilities for Supplemental Educational Services

Statute: Section 1116(e)(1) of the ESEA requires LEAs to arrange for the provision of SES to eligible students from a provider with a demonstrated record of effectiveness. A provider is defined in section 1116(e)(12)(B) as a non-profit entity, for-profit entity, or LEA that (1) has a demonstrated record of effectiveness in increasing student academic achievement; (2) is capable of providing SES that are consistent with the instructional program of the LEA and the academic standards described in section 1111 of the ESEA; and (3) is financially sound. Section 1116(e)(3)(A) of the ESEA requires an LEA to develop, with the parents of a child participating in SES and the provider, an agreement that includes a statement of specific achievement goals for the student, a description of how the student's progress will be measured, and a timetable for improving achievement. Section 1116(e)(3)(C) also requires that this agreement be terminated if the provider is unable to meet the goals and timetables specified in the agreement.

Section 1116(e)(4)(B) of the ESEA requires States to develop and apply, in the selection of providers, objective criteria that are based on a demonstrated record of effectiveness in increasing the academic proficiency of students in subjects relevant to meeting the State's academic content and student achievement standards. Section 1116(e)(4)(D) requires States to develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by approved providers and for withdrawing approval from providers that fail, for two consecutive years, to contribute to increasing the academic proficiency of students served. Section 1116(e)(5)(B) requires providers to ensure that their instructional program is consistent with the instruction provided and content used by the LEA and State, and that it is aligned with State student academic achievement standards.

Current Regulations: Section 200.47 repeats the statutory requirements regarding the State's responsibility to

approve SES providers with a demonstrated record of effectiveness, and to develop and apply objective criteria to monitor and withdraw approval of providers. Section 200.47 also requires that, to be approved by an SEA, the provider must agree to ensure that the instruction the provider gives and the content the provider uses are consistent with the instruction provided and the content used by the LEA and the SEA, and are aligned with State student academic achievement standards.

Proposed Regulations: We propose several changes to the regulations regarding SEA responsibilities for SES.

Monitoring LEA implementation. Proposed § 200.47(a)(4)(iii) would require a State to develop, implement, and publicly report on standards and techniques for monitoring LEAs' implementation of the SES requirements in the ESEA.

Approving SES providers. Proposed § 200.47(b)(2)(ii) would clarify that, to be approved as an SES provider, an entity must provide the State with evidence that the instruction it would provide and the content it would use are aligned with the State's academic content and student academic achievement standards and are research-based. Proposed § 200.47(b)(3) would require that, as a condition of approval, a State must consider, at a minimum, (1) information from the provider on whether the provider has been removed from any State's approved provider list; (2) parent recommendations or results from parent surveys, if any, regarding the success of the provider's instructional program in increasing student achievement; and (3) evaluation results, if any, demonstrating that the instructional program has improved student achievement.

Monitoring approved providers. Proposed § 200.47(c) would specify the evidence that a State must consider when monitoring the quality and effectiveness of the services offered by an approved provider in order to inform the renewal or withdrawal of approval of a provider. Specifically, § 200.47(c) would require a State to examine, at a minimum, evidence that the provider's instructional program (1) is consistent with the instruction provided and the content used by the LEA and SEA; (2) addresses students' individual needs as described in students' SES plans; (3) has contributed to increasing students' academic proficiency (as required by section 1116(e)(4)(D)); and (4) is aligned with State academic content and student academic achievement standards. In addition, States would also be required to consider, if any,

parent recommendations, results from parent surveys, or results from other evaluations demonstrating the success of the provider's instructional program in improving student achievement.

Reasons: We believe that providing information to the public about how SEAs monitor the implementation of SES requirements by their LEAs, and enhancing the criteria that SEAs must use to approve and monitor SES providers, would strengthen the implementation of SES by SEAs and LEAs and ultimately contribute to increased student achievement. Following is the rationale for each of these changes.

Monitoring LEA implementation. While SEAs are required under the current regulations to monitor LEAs and their implementation of the SES requirements, the proposed regulations would require SEAs to publicly report on the standards and techniques for how they monitor their LEAs' implementation of the SES requirements. We believe that requiring States to develop, implement, and publicly report on the criteria they use to monitor LEAs' implementation of SES will help ensure that SEAs set rigorous and clear expectations for their LEAs.

Approving SES providers. We have learned in discussions with States that there is uncertainty regarding the evidence that States may require providers to submit as part of their application to be an approved SES provider. We believe that specifying the minimum evidence that SEAs must consider in approving providers will help ensure that students receive high quality SES services and reinforce with States that they have the authority and the responsibility to approve only entities that will contribute to increased student academic achievement.

Monitoring approved providers. To ensure that State-approved providers deliver high quality SES services, it is important that States monitor the provision of SES. We believe that the monitoring criteria in proposed § 200.47(c)(1) would reinforce with States that they have the authority and the responsibility to monitor providers in order to make informed decisions about whether SES providers should remain on a State's approved provider list. We believe that specifying the minimum evidence that SEAs must consider in approving providers will help ensure that students receive high quality SES services and reinforce with States that they have the authority and the responsibility to approve only entities that will contribute to increased student academic achievement.

Section 200.48—Funding for Choice-Related Transportation and Supplemental Educational Services (SES)

Statute and Current Regulations:

Section 1116(b)(10) of the ESEA and § 200.48(a)(2) require LEAs to spend an amount equal to 20 percent of their Title I, Part A allocations, unless a lesser amount is needed, to comply with all requests for SES and to provide transportation, or pay for the transportation costs, for students exercising the public school choice option under the ESEA. An LEA may use Title I funds to pay for the costs to implement SES and public school choice, including outreach to parents; however, under § 200.48(a)(2)(iii)(B), the LEA may not count these costs toward meeting its 20 percent obligation.

Proposed Regulations: Proposed § 200.48(a)(2)(iii)(C) would allow an LEA to count costs for providing outreach and assistance to parents regarding public school choice and SES toward meeting its 20 percent obligation. The amount that could be counted toward these costs would be capped at an amount equal to 0.2 percent of the LEA's Title I, Part A, subpart 2 allocation. An LEA would still be able to spend more than that amount on parental outreach activities; the proposed regulations would only cap what could be counted toward meeting the 20 percent obligation.

Proposed § 200.48(d) would require an LEA, before reallocating unused funds from choice-related transportation and SES to other purposes, to demonstrate to the SEA that it had met specific criteria established in proposed § 200.48(d)(1). Specifically, the LEA would have to demonstrate success in the following:

(a) Partnering with community-based organizations or other groups to reach out to eligible students and their families about SES and public school choice opportunities.

(b) Ensuring that eligible students and their parents have had a genuine opportunity to sign up to transfer to another public school or receive SES, including by:

- Providing timely, accurate notice as required in §§ 200.36 and 200.37 of the availability of public school choice and SES.

- Ensuring that sign-up forms for SES are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination, such as the Internet, other media, and communications through public

agencies serving eligible students and their families.

- Allowing eligible students to sign up for SES throughout the school year.

(c) Ensuring that eligible SES providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities.

If an LEA does not meet these criteria, the proposed regulations would require the LEA to spend the amount remaining from its 20 percent obligation in the following school year for choice-related transportation, SES, or parent outreach (subject to the 0.2 percent cap in § 200.48(a)(2)(iii)(C)). The requirement to spend these unused funds would be in addition to the requirement to spend an amount equal to 20 percent of its Title I, Part A allocation in the following school year.

Reasons: There is evidence indicating that SES participation improves student achievement. A recent study by the RAND Corporation, supported by the Department, found that, in five out of the seven large urban districts in which there were sufficient numbers of students to analyze the effects, students participating in SES showed statistically significant positive effects in both reading and mathematics achievement.¹⁸ However, currently, only 14.5 percent of eligible students take advantage of SES nationwide.¹⁹

In order to increase participation in SES and public school choice, the Department believes that LEAs need to devote sufficient time and resources to effectively notify parents of available public school choice and SES options. Currently, LEAs are not permitted to count costs for these activities toward meeting their 20 percent obligation for choice-related transportation and SES. The proposed regulations would permit LEAs to count a limited amount of funds for parent outreach and assistance in order to help ensure that LEAs provide parents with the information they need to make the best, most informed decisions for their children.

The proposed regulations also would require LEAs, before reallocating funds for other purposes, to demonstrate to the SEA success in meeting several requirements. Our rationale for each of these requirements follows.

¹⁸ U.S. Department of Education. (2007). *State and Local Implementation of the No Child Left Behind Act, Volume I—Title I School Choice, Supplemental Educational Services, and Student Achievement*. Washington, DC: Author.

¹⁹ U.S. Department of Education. *Consolidated State Performance Report, 2006–2007*. Unpublished raw data.

Partnering with community-based organizations. In a survey of LEAs' strategies for communicating with parents about their SES options, only 16 percent of LEAs reported that they worked with a local community partner to reach parents regarding their SES options, and only 10 percent did so to communicate with parents about public school choice options.²⁰ We learned during visits to LEAs across the country as part of a 2007 outreach tour on SES and public school choice that information from a variety of sources is needed to reach parents and make them fully aware of their SES and public school choice options. LEAs that we met with reported that partnering with community organizations was an effective way of making parents aware of SES and public school choice options for their children.²¹

Providing timely, accurate notice. As noted in our discussion of the proposed changes to § 200.37, the NATI report provides evidence that notifying parents of their public school choice options in a timely manner helps to increase study participation in public school choice. The NATI report also found that in 2004–2005 the quality and clarity of LEAs' parent notification letters regarding SES and public school choice varied considerably with many omitting key information. For example, fewer than half of the 20 public school choice letters that were sampled identified the schools that parents could choose for their children, and fewer than half of the 21 SES letters sampled identified the eligible SES providers.²² We believe that requiring LEAs to provide parents with timely and accurate notice of their SES and public school choice options is essential to ensuring that parents have the information they need to make informed decisions about their child's education.

Sign-up forms and signing up throughout the school year. The Department believes that parents of students eligible to receive SES should have opportunities to request SES for

²⁰ Stullich, S., Eisner, E., & McCrary, J. (2007). *National Assessment of Title I: Final Report, Volume I: Implementation*. Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

²¹ U.S. Department of Education, Office of Innovation and Improvement, *Giving Parents Options: Strategies for Informing Parents and Implementing Public School Choice and Supplemental Educational Services Under No Child Left Behind*, Washington, DC, 2007.

²² Stullich, S., Eisner, E., & McCrary, J. (2007). *National Assessment of Title I: Final Report, Volume I: Implementation*. Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

their children throughout the school year. A short sign-up period at the beginning of the school year may exclude many students from participation, including, for example, children whose parents learn later in the school year that their child is struggling and needs additional support. Moreover, it is important that parents can easily access the forms to sign-up for services. We know from our discussions with States and SES providers that participation in SES is lower when access to sign-up forms is limited, for example, by requiring parents to attend a meeting or to travel to a district or school office to obtain the form. We believe that distributing sign-up forms directly to eligible students and their parents and allowing eligible students to sign up to receive SES services throughout the school year will make it easier for students and parents to take advantage of SES services.

Access to school facilities. The statute does not require LEAs to pay or provide transportation for students to and from SES programs; therefore, if SES providers cannot operate on school grounds, families may have to arrange transportation for their children to the site where SES services are provided. Although the Department has promoted a policy of access to school facilities through non-regulatory guidance and technical assistance for several years, many LEAs around the country continue to deny providers access to their buildings. Giving providers access to school facilities is an important way of ensuring that families can participate in, and students can attend, SES programs.

We believe that these proposed changes will encourage LEAs to improve opportunities for parents to take advantage of their options and result in more students participating in public school choice and SES, ultimately leading to increased student achievement.

Section 200.56—Definition of “highly qualified teacher”

Statutes and regulations: Under section 9101(23) of the ESEA and § 200.56, a highly qualified teacher in any public elementary or secondary school must hold at least a bachelor's degree and either have (1) obtained full State teacher certification or (2) passed the State teacher licensing examination and hold a license to teach in that State. The ESEA also includes additional requirements for a highly qualified teacher depending on which grade level the teacher teaches and whether the teacher is new to the profession. Under section 1119(a)(1) of the ESEA,

beginning with the first day of the 2002–2003 school year, each LEA receiving assistance under Title I, Part A is responsible for applying these requirements to any public school teacher teaching in a core academic subject supported by Part A funds who is hired after that date. The LEA also must have a plan to ensure that all public school teachers teaching in core academic subjects in the LEA meet these requirements by the end of the 2005–2006 school year.

Under section 602(10)(A) of the IDEA and 34 CFR 300.18, a highly qualified special education teacher must obtain full State certification as a special education teacher or pass the State special education teacher licensing exam and hold a license to teach in the State as a special education teacher. The IDEA also includes requirements for special education teachers who teach core academic subjects exclusively to children who are assessed against alternate academic achievement standards. Section 602(10)(C) of the IDEA and 34 CFR 300.18(c) require special education teachers teaching core academic subjects exclusively to alternate achievement standards to meet the NCLB requirements for elementary school teachers *and* have subject matter knowledge appropriate to the level of instruction being provided and needed to teach to those standards effectively. Special education teachers teaching multiple subjects and who are new to the profession have additional flexibility. Section 602(10)(D)(iii) of the IDEA and 34 CFR 300.18(d) permit a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, to have two years to demonstrate competence on the other core area subjects the teacher teaches, which may include a single high objective uniform State standard of evaluation (HOUSSE).

Proposed Regulations: Proposed § 200.56(d) would add a cross-reference to the definition of *highly qualified special education teachers* in 34 CFR 300.18 of the IDEA regulations.

Reasons: Special education teachers provide individualized and specialized instruction to improve the academic achievement of students with disabilities. The current Title I regulations do not define the requirements for highly qualified special education teachers who do not teach core academic subjects. The cross-reference aligns the Title I regulations with the IDEA regulations; the current requirements for highly qualified general or special education teachers would not change.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is “significant” and therefore subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an “economically significant” rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary has determined that this regulatory action is significant under section 3(f)(4) of the Executive order.

1. Potential Costs and Benefits

The proposed costs have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Department has assessed the costs and benefits of this regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Department has determined that the benefits of the proposed regulations exceed the costs. The Department also has determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the programs.

Summary of Costs and Benefits

The Department believes that the majority of the proposed regulatory changes will not impose significant costs on States, LEAs, or other entities that participate in programs funded

under Part A of Title I. For example, the entire cost of the National TAC would be borne by the Department and would be financed through funds appropriated by the Congress for the Department's operations. As additional examples, the proposed regulations on multiple measures of student achievement, identification of schools and LEAs for improvement, and restructuring should provide useful clarification to the States without imposing any new costs on them. Similarly, the proposed regulations would require LEAs to notify parents of eligible students of the option to transfer their child to another school, sufficiently in advance of, but no later than 14 calendar days before, the start of the school year to give those parents adequate time to exercise their public school choice option; this regulation would not increase LEA costs because it would affect merely the timing of the parental notification.

As another example, States and LEAs should be able to implement at minimal cost the requirement to include NAEP data on State and LEA report cards. The State NAEP results are available on the NCES Web site and through other sources, and obtaining those data should not pose a significant burden. Neither should including the data on the report cards, as the NAEP results would be a minor addition to the data already so included.

The regulations would clarify that State definitions of AYP must include a minimum subgroup size that is based on sound statistical methodology, that yields statistically reliable information for each purpose for which disaggregated data are used, and that ensures that, to the maximum extent practicable, all student subgroups are included, particularly at the school level, in accountability determinations. All States would be required to revise their Accountability Workbooks and explain how their minimum subgroup sizes meet these criteria and to provide certain other information on their minimum subgroup sizes and AYP definitions. Within six months of the effective date of the final regulation, States would be required to submit to the Department, for technical assistance and peer review, a revised Accountability Workbook that reflects these new requirements.

The Department has previously reviewed each State's minimum subgroup size and believes that some already meet the proposed criteria. Some States, however, may need to revise their minimum subgroup sizes and other components of the State's AYP definition based on the new

requirements and on feedback from the new peer review.

The costs to States of submitting a revised Accountability Workbook for technical assistance and peer review should be fairly low, as these Accountability Workbooks would, in large part, incorporate policies and amendments that the States have already included in their Workbooks in past years. The Department estimates that each State would, on average, require 112 hours of staff time to complete this effort, including 80 hours for development and analysis of a proposed minimum subgroup size policy (within an overall definition of AYP) and an additional 32 hours for actual preparation of the Workbook. We further estimate that SEAs' cost for that activity will be \$30 an hour. For the 50 States, the District of Columbia, and Puerto Rico, the estimated cost of revising and submitting their Workbooks would thus be \$174,720. The Department further estimates that 25 States may need to do additional work on their Accountability Workbooks as a result of feedback from the peer review. The Department estimates that this work will require an additional 40 hours of staff time per State, adding an additional \$30,000, for a total estimated cost of \$204,720 to implement these proposed requirements.

The Department believes that the costs of implementing this new policy should be minimal. The Department further believes that the benefits of this change, in terms of greater accountability that would result from the use of minimum subgroup sizes that meet the proposed criteria, would greatly outweigh the minimal costs of compliance.

The proposed regulation to allow States to use measures of individual student academic growth in school and LEA AYP determinations would provide States with greater flexibility without burdening them with significant additional costs. Although, in order to receive permission to incorporate individual student academic growth into its AYP definition, a State would have had to have implemented a longitudinal data system that tracks student progress from grade to grade, it is highly unlikely that any State would develop and implement such a data system only (or even primarily) in order to use measures of individual student growth for calculating AYP; this is the case because the benefits of having a longitudinal student data system in place are much greater than just having the ability to support the use of individual student academic growth in

calculating AYP. States have found such systems to be valuable in numerous ways, including in tracking the educational progress of students as they progress through grades and across schools and school systems; more accurately determining whether students graduate from high school; calculating accurate student dropout rates; holding schools and LEAs accountable for results; targeting assistance to those schools and LEAs most in need; determining whether the content their secondary schools offer is well aligned with college-preparedness requirements; identifying strengths and weaknesses in teacher preparedness; and measuring the educational performance of the State as a whole. For these reasons, many States had developed longitudinal student data systems, or were in the planning stages of such development, even before the Department announced the Growth Model Pilot in 2005. Therefore, the Department believes it would be inappropriate to assign the costs States incur in designing and implementing longitudinal data systems as a cost of this change in the regulations.

The proposed regulations would require States to adopt a uniform cohort definition of graduation rate no later than school year 2012–2013. States that do not currently have the capacity to track student transfers would be required to use an interim rate, the Averaged Freshman Graduation Rate (AFGR). The regulations also would require the use of disaggregated graduation rate data for AYP purposes beginning in the 2008–2009 school year for States and LEAs and in the 2012–2013 school year for school-level accountability determinations. In addition, the proposed regulations would require a State to include in its AYP definition (a) a graduation rate goal that the State expects all high schools to meet (e.g., 90 percent), and (b) how LEAs demonstrate continuous and substantial improvement from the prior year toward meeting or exceeding the goal. To make AYP, the school or LEA must meet or exceed the graduation rate goal or demonstrate continuous and substantial improvement.

As discussed earlier (in the explanation of the proposed changes to § 200.19), the Department, based on work completed by NCES and the NGA, believes that States can incorporate the AFGR into their AYP definitions using currently available data. The Department, thus, believes these adjustments can be completed at minimal cost. In order to meet the proposed 2012–2013 deadline for implementation of a uniform cohort

graduation rate, States will need to have in place a data system that can track cohorts over four years, including the ability to track (and include in graduation rate calculations) students who drop out of school or leave in order to transfer to another school. States also will need to collect four years of student data through those systems in order to implement the new rate by the proposed deadline. However, it is important to note that, while a data system that tracks individual student data could be used to collect data for this rate, such a system would not be required in order to implement the proposed graduation rate requirements. In addition, the data needed to calculate the AFGR are already available to all schools, LEAs, and States, as reported in the Common Core of Data produced by NCES.

The proposed regulations would not impose new costs on a State unless it does not yet have the data system capability to start collecting the four years of data needed to implement the uniform cohort graduation rate. We believe that the proposed regulations would not impose significant costs on States that they were not likely to assume in the absence of the regulations. In 2005, all 50 States agreed to the National Governors Association's Graduation Counts: A Compact on State High School Graduation Data, which calls for each State to develop a longitudinal graduation rate. In addition, data reported by the States to the Data Quality Campaign indicate that all States except for two will have in place a data system that can track individual students by the end of the 2007–2008 school year.²³ Moreover, one of the two States that does not yet have such a system already uses an alternative method to calculate a cohort graduation rate that would meet the proposed regulatory requirements, and both States report that they will have such a data system by 2009–2010. These States should be able to collect the four years of required data by 2012–2013. Again, all of this reflects activities that the States initiated in the absence of the proposed regulation.

Therefore, as with the regulation on including individual student academic growth in AYP definitions, it would not be appropriate to assume that the cost of developing these data systems would be attributable, in whole or even in large part, to the need to comply with the proposed regulation on the graduation rate. Moreover, the Federal government

supports States' development of longitudinal student data systems through the Department's Statewide Longitudinal Data Systems program. For the fiscal years 2005 (when the program began) through 2008, the Congress has appropriated more than \$122 million for this program and, through fiscal year 2007, 27 States have received these grants.

We believe the benefits of the proposed changes regarding graduation rate clearly outweigh the fairly minimal net costs previously discussed. A uniform and accurate method of calculating graduation rates is needed to raise expectations and to hold schools, districts, and States accountable for increasing the number of students who graduate on time with a regular high school diploma, as well as to provide parents and the public with more accurate information. By requiring all States to use a more rigorous and accurate graduation rate calculation, the Department can ensure greater accountability and transparency on this important indicator. In addition, we need to have a uniform and accurate method of calculating high school graduation rates to improve our understanding of the scope and characteristics of those students dropping out of school or taking longer to graduate.

The final set of proposed regulations in this package relates to the implementation of public school choice and SES. The proposed language in § 200.37(b)(5)(ii)(C), (b)(5)(iii)(A), and (b)(5)(iii)(B) would require that the notice to parents of students eligible for SES: (a) Explain the benefits of SES, (b) be clear and concise, and (c) be clearly distinguishable from the other information sent to parents under § 200.37. Following, we estimate the costs of meeting this requirement. We note here that LEAs could assign costs related to meeting this requirement to the amount equal to 0.2 percent of their Title I, Part A allocations that the proposed regulations would permit LEAs to use for outreach and assistance to parents on public school choice and SES.

Data from the ESEA Consolidated State Performance Report indicate that approximately 2,000 LEAs nationally have at least one school in year two of school improvement (or in a later stage of the Title I accountability timeline). These are the schools with students eligible for SES that would technically be covered by this new requirement. However, some of these LEAs are not able to offer SES and thus are not affected by the proposed notice requirement. For example, rural and

other small or isolated districts often do not have any approved SES providers serving their area. For this reason, our analysis assumes that 80 percent of the estimated 2,000 LEAs with at least one school in year two of improvement or later, or 1,600 districts, will be subject to the notice requirement annually. We estimate that these 1,600 LEAs will each require an average of 12 hours of staff time to prepare the notice to parents so that it is clearly distinguishable from the other information sent to parents and that the cost for this time will average \$25 per hour. Under this assumption, the cost for the preparation of this notice will be \$480,000.

Further, in the 2006–2007 school year, in the States for which the Department has data, approximately 3.6 million students were eligible for SES.²⁴ Assuming that approximately 3.6 million students continue to be eligible each year, we project that the parents of one half of these students would receive the SES information by mail, in a separate mailing, and one-half through notices that students bring home from school, in a mailing that includes other information already required to be provided to parents (in § 200.37), or by other means that impose very small costs on LEAs. For the one-half who would receive the notices by mail, the cost (assuming continuation of current postage rates) would be \$738,000, bringing the total cost for the implementation of the proposed SES notice requirement to \$1,218,000.

The proposed regulations in § 200.39 would require LEAs to post on their Web sites information on their implementation of the public school choice and SES requirements, including information on the number of students who were eligible for and who participated in the public school choice and SES options, information on approved SES providers operating in the district, and a list of schools available to students who wish to take advantage of the public school choice option. Based on data from the ESEA Consolidated State Performance Report, approximately 3,000 LEAs have a school in year one of improvement or later and thus are technically required to offer either public school choice, or both public school choice and SES, to their eligible students. However, as with the SES notice requirement, some of those LEAs would not be affected because they are unable to offer public school choice and SES due to a lack of choice options (for instance, rural and other

²³ Data Quality Campaign, 2007 State Data Collection Survey Results: State Specific Responses to Element 1. (2007). Austin, TX: Author. Available at: http://www.dataqualitycampaign.org/files/element1_survey_responses.pdf.

²⁴ U.S. Department of Education. (2007). *Consolidated State Performance Report, 2006–07*. Unpublished raw data.

small districts frequently have only one school at a particular grade span) or the absence of an approved SES provider serving their area. We estimate that 80 percent of the 3,000 LEAs with a school in year one of improvement or later, or 2,400 districts, would need to post the new information on their Web site. We further estimate that these districts would require an average of 25 hours of staff time to prepare the data for the Web, at a cost of \$25 per hour, for an estimated national cost of \$1,500,000 to meet the new requirement to post public school choice and SES information on LEA web sites. Therefore, the total estimated cost for implementation of the new SES and Web site notice requirements is \$2,718,000.

The benefits would be that parents and others would have more and better information on the public school choices and SES programs available to eligible children and, thus, parents might be more likely to take advantage of those options (with attendant benefits for those children) and that LEA implementation of the choice and SES requirements would be more transparent. We also note that LEAs could assign costs related to meeting this requirement to the amount equal to 0.2 percent of their Title I, Part A allocations under proposed § 200.48(a)(2)(iii)(C).

The proposed regulations in § 200.47 would clarify the SEA's responsibilities for SES, by stating that those responsibilities include developing, implementing, and publicly reporting on the SEA's standards and techniques for monitoring LEAs' implementation of SES. The Department believes that States already have such standards and techniques in place and that the burden of publicly reporting on them, such as by posting information about them on the SEA's Web site, would be very minimal. The benefit of the proposed regulations would be greater transparency of how SEAs monitor LEAs implementation of SES.

The proposed regulations in § 200.47 would also clarify that, in order to be approved as an SES provider, an entity must provide the State with evidence that the instruction it would provide and the content it would use are aligned with the State's academic content and student academic achievement standards and are research based. In addition, a State would also be required to consider, at a minimum, (1) whether the entity has been removed from any State's approved provider list; (2) parent recommendations or results from parent surveys, if any, regarding the success of the entity's instructional program in increasing student achievement; and (3)

evaluation results, if any, demonstrating that the instructional program has improved student achievement. The Department believes that these requirements will result in improvements in States' SES provider approval procedures resulting in high-quality SES and improved student achievement, and that the cost of compliance will be very minimal.

The proposed regulations in § 200.47 also would specify the evidence that States must consider when monitoring the quality and effectiveness of the services offered by an approved provider in order to inform decisions on renewal or withdrawal of approval of the provider. The current statute and regulations already require States to approve SES providers with a demonstrated record of effectiveness, and to develop and apply objective criteria for monitoring and withdrawal of approval of providers. The proposed regulations may add minimal costs to States if they need to revise their applications or monitoring protocol in order to comply with the requirements, or if a revised application or protocol results in more labor-intensive application review or monitoring. The proposed regulations would only add costs to SES providers if they are not already providing this information to States in their applications for approval and renewal. The minimal costs to States and SES providers would be outweighed by the benefits of having a clear outline of the evidence that States must consider both before providers begin serving students in the State and as their programs are monitored and being considered for renewal or termination.

The proposed regulations on funding for public school choice and SES in § 200.48 would allow LEAs to count costs for parent outreach and assistance toward the requirement to spend the equivalent of 20 percent of the LEA's Title I, Part A allocation on choice-related transportation and SES. This change would permit an LEA to allocate up to 0.2 percent of its Title I, Part A allocation (1.0 percent of the 20 percent obligation) in that manner. Allowing LEAs to count a limited amount of funds for parent outreach and assistance will help ensure that parents have the information they need to make the best decisions for their children. This change would not impose costs on LEAs, as they would, at their discretion, support the parental outreach and assistance activities by redirecting funds from other activities.

The proposed amendments to § 200.48 also would require LEAs, before reallocating funds from choice-

related transportation and SES to other purposes, to provide satisfactory evidence to the SEA that they have demonstrated success in:

(1) Partnering with community-based organizations and other groups in order to inform eligible students and their families about their opportunities for public school choice and SES;

(2) Ensuring that eligible students and their families have had a genuine opportunity to transfer to schools or to receive SES. The proposed language would clarify that providing such an opportunity includes (a) providing timely and accurate notice to those students and their families, as required under §§ 200.36 and 200.37; and (b) ensuring that sign-up forms for SES are distributed directly to all eligible students and are made widely available and accessible; and (c) allowing eligible students to sign up to receive SES throughout the school year; and

(3) Ensuring that approved SES providers are given access to school facilities through a fair, open, and objective process.

The Department believes that most of the costs that LEAs would incur in meeting these requirements would be minimal. The most tangible costs would be for developing a clearly distinguishable notification (on eligibility and the benefits of SES) to parents of eligible students (which has been accounted for in the cost estimate for § 200.37) and in documenting to the SEA that it has met the various outreach and access requirements in proposed § 200.48. We estimate these additional SEA documentation costs related to § 200.48 as follows.

As noted earlier, we project that 2,400 LEAs annually will be required to offer public school choice, or both choice and SES, to their eligible students. Further, based on data for 378 LEAs reported to the Department's *EDFacts* data system, we estimate that 10 percent of those LEAs (240) will use the full 20 percent equivalent for choice-related transportation and SES and, thus, will not be affected by the regulations.²⁵ Further, based on the *EDFacts* data, we estimate that an additional 15 percent of the LEAs (360) will not initially meet the 20 percent requirement but will spend the remaining funds for choice-related transportation and SES in the following year, rather than applying to

²⁵ The *EDFacts* data from 2005–2006 indicate that 8.2 percent of LEAs used the equivalent of at least 20 percent of their Title I allocation to fund SES. Unfortunately, the data do not include expenditures for choice-related transportation. We assume that the inclusion of expenditures for choice-related transportation would bring the total to approximately 10 percent.

the SEA for permission to use those funds for other purposes.²⁶

The remaining 1,800 LEAs, under our assumptions, would need to submit evidence to their SEAs that they have demonstrated success in the indicated areas. We estimate that the annual cost of this effort will be \$720,000, based on an assumption that each LEA would require 16 hours to prepare a submission documenting its efforts in this area and that LEAs' costs for this effort would be \$25 per hour.

The Department also has estimated the costs that SEAs will incur in considering the submissions prepared by LEAs. We have estimated that the total annual cost would be approximately \$27,000, based on an assumption that, as described previously, 1,800 LEAs will submit them, that SEAs will require 30 minutes to review and act on each submission, and that SEAs' costs for that activity will be \$30 per hour. The total estimated annual cost for LEAs and SEAs related to the reallocation requirements of proposed § 200.48 would be \$747,000.

Overall, the total estimated cost of implementing the proposed regulations on public school choice and SES would be \$3,465,000.

Although our cost estimates for the proposed public school choice and SES regulations are necessarily speculative (because of the limited availability of relevant data), the estimated costs are low even if some of the assumptions are changed significantly. For example, if the number of hours required at each stage of implementing the new public school choice and SES regulations were doubled, the total annual cost would increase only to \$6,192,000. These costs, even when combined with the estimated \$204,720 attributable to implementation of the proposed regulations on minimum subgroup size and submission of revised Accountability Workbooks, are an extremely small amount within the context of the \$13.9 billion Title I program.

The Department believes that promulgation of the regulations on public school choice and SES will result

in significant benefits, in terms of more students receiving choice and SES under Title I and students and their families receiving better information about their options. A recent study by the RAND Corporation, supported by the Department, found that, in five out of the seven large urban districts in which there were sufficient numbers of students to analyze the effects, the students participating in SES showed statistically significant positive effects in both reading and mathematics achievement.²⁷ Moreover, for those students using SES for multiple years, the analysis suggests that the positive effects might accumulate over time. If SES can continue to improve student achievement and close the achievement gap, students, schools, and LEAs will benefit. In sum, the Department believes that the benefits students will receive, if more LEAs provide eligible students with a genuine opportunity to take advantage of the public school choice and SES options, will well exceed the small costs LEAs and SEAs would assume in implementing these regulations. Moreover, LEAs and SEAs will be able to use Federal funds provided through Title I, Part A to meet the aforementioned administrative expenses.

The major benefit of these proposed regulations, taken in their totality, is a Title I, Part A program in which clearer accountability and implementation requirements (particularly in the areas of high school graduation, public school choice, and SES) would be coupled with greater flexibility in implementation (particularly in the use of measures of individual student academic growth in calculating AYP). These proposed regulations would thus add to the contributions that NCLB has made to the creation of a system in which schools, LEAs, and States expect to educate all children to high standards and are held accountable for doing so. The proposed regulations would support the attainment of increases in student achievement that build on the improvements that the Nation has seen in the last several years. The benefits to the United States, both economic and non-economic, of having a more educated citizenry have been plentiful and will continue to be so as the reforms implemented as a result of NCLB (and as supported through the proposed regulations) continue to take hold.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interfere with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$ " and a numbered heading; for example, § 200.13 Adequate yearly progress in general.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The small entities that the proposed regulations will affect are small LEAs receiving funds under Title I. These proposed regulations would not have a significant economic impact because the regulations impose minimal requirements beyond those that would otherwise be required under the Act, with most of those requirements falling on SEAs. Further, the small LEAs should be able to meet the costs of compliance with these regulations using Federal funds provided through Title I.

Paperwork Reduction Act of 1995

These proposed regulations contain information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of the specific information collection requirements is given below with an

²⁶ This estimate is based on the assumption that LEAs that spend close to the 20 percent will find it more efficient to spend the remaining funds the following year than to apply to the SEA for approval to use those funds for other purposes. The *EDFacts* data from 2005–2006 indicate that 11.6 percent of LEAs used the equivalent of at least 16 percent (but less than 20 percent) of their Title I allocations for SES. Again, the data do not include expenditures for choice-related transportation; we assume that if those expenditures were included, approximately 15 percent of LEAs will elect to spend the remaining funds of their obligation in the succeeding year.

²⁷ U.S. Department of Education. (2007). *State and Local Implementation of the No Child Left Behind Act, Volume I—Title I School Choice, Supplemental Educational Services, and Student Achievement*, Washington, DC: Author.

estimate of the annual recordkeeping burden for these requirements. (Two of the requirements do not add additional burden to what has already been approved.) Included in the estimate is the time for collecting and tracking data, maintaining records, calculations, and reporting.

The proposed regulations include information collection requirements associated with the following provisions that will add additional burden:

§ 200.7(a)(2)(i); § 200.11(c); § 200.19(a)(1); § 200.19(a)(1)(i); § 200.19(a)(1)(i)(C)(2); § 200.19(a)(1)(ii)(A); § 200.19(d)(1);

§ 200.19(e)(1); § 200.19(e)(2); § 200.20(h); § 200.37(b)(5); § 200.39(c); § 200.47(a)(4)(iii); and § 200.48(d).

Interested persons are requested to send comments regarding the information collections to the U.S. Department of Education (ED) within 60 days after publication of these proposed regulations. This comment period does not affect the deadline for public comments associated with these proposed regulations.

Collections of information: State Educational Agency Local Educational Agency, and School Data Collection and

Reporting under ESEA, Title I, Part A (OMB Number 1810–0581) and Consolidated State Application (OMB Number 1810–0576).

Burden hours and cost estimates for the proposed regulations pertaining to “State Educational Agency, Local Educational Agency, and School Data Collection and Reporting under ESEA, Title I, Part A (OMB Number 1810–0581)” are presented in the following tables on the next two pages. The first table presents the estimated burden for SEAs and the second table the estimated burden for LEAs.

TITLE I.—REGULATIONS (COLLECTION 1810–0581) PROPOSED REGULATIONS BURDEN HOURS/COST FOR SEAS

Citation	Description	Number of respondents	Average number of hours per respondent	Total hours	Total cost (total hours × \$30.00)
§ 200.11(c)	Adding NAEP data to SEA report cards and developing tool for parents to compare NAEP and State assessment data.	52	5	260	\$7,800
§ 200.19(a)(1)	By SY 2012–2013 begin calculating graduation rate as the number of students graduating in the standard number of years divided by the number of students in that class’s adjusted cohort.	47	240	11,280	338,400
§ 200.19(a)(1)(ii)(A)	Through SY 2011–2012 option to calculate graduation rate using the Averaged Freshman Graduation Rate (AFGR).	47	40	1,880	56,400
§ 200.19(e)(1)	By SY 2012–2013 calculate the graduation rate in accordance with § 200.19(a)(1) in the aggregate and disaggregate for reporting under section 1111(h) of ESEA and determining AYP under § 200.20.	47	120	5,640	169,200
§ 200.19(e)(2)	Through SY 2011–2012 at the LEA and State levels calculate the graduation rate in accordance with § 200.19(a)(1) or § 200.19(a)(1)(ii) for reporting under section 1111(h) of ESEA and determining AYP under § 200.20; and at the school level in the aggregate for determining AYP under § 200.20(b)(2) but in the aggregate and disaggregate for determining AYP under § 200.20(b)(2) and reporting under section 1111(h) of ESEA.	47	120	5,640	169,200
§ 200.47(a)(4)(iii)	Develop, implement, and publicly report on standards and techniques for monitoring LEAs’ implementation of the SES requirements.	52	40	2,080	62,400
§ 200.48(d)	Reviewing LEAs’ submissions on demonstrating success in the indicated areas.	52	21.634	1,125	33,750
Total	N/A	52	N/A	27,905	837,150

Information collection activities are also associated with other proposed revisions to § 200.47(a)(4) at the SEA level. These particular revisions, however, would not pose an additional

burden to SEAs because they simply specify how SEAs are to carry out this part of the regulation and related regulations, but should not require additional time beyond the hours

already estimated for § 200.47(a) in the currently approved 1810–0581 collection.

TITLE I.—REGULATIONS (COLLECTION 1810–0581) PROPOSED REGULATIONS BURDEN HOURS/COST FOR LEAS

Citation	Description	Number of respondents	Average number of hours per respondent	Total hours	Total cost (total hours × \$25.00)
§ 200.19(a)(1)(i)	Documentation that a student has enrolled in a program of study in another school, LEA, or other educational program that culminates in the award of a regular high school diploma.	13,987	50	699,350	\$17,483,750
§ 200.37(b)(5)	Providing notice to parents that their children are eligible for SES and describing the benefits of SES.	3,000	12	36,000	900,000
§ 200.39(c)	Provide information on public school choice and SES.	2,400	25	60,000	1,500,000
§ 200.48(d)	Demonstrating success in the indicated areas ...	2,250	16	36,000	900,000
Total		13,987	N/A	831,350	20,783,750

Information collection activities are also associated with modified § 200.37(b)(4)(iv) and the new regulation in § 200.44(a)(2)(ii). The information collection activities associated with these changes would not pose an

additional burden to LEAs; they simply cross reference an existing regulation (§ 200.37) for which sufficient hours are already accounted for in the currently approved 1810–0581 collection.

SEA burden hours and cost estimates for the proposed regulations pertaining to “Consolidated State Application (OMB Number 1810–0576)” are presented in the following table.

TABLE 3.—CONSOLIDATED STATE APPLICATION (COLLECTION 1810–0576)

Citation	Description	Number of respondents	Average number of hours per respondent	Total hours	Total cost (total hours × \$30.00)
§ 200.7(a)(2)(i)	Determining minimum subgroup size and revising Accountability Workbook.	52	112	5,824	\$174,720
§ 200.19(a)(1)(i)(C)(2)	Option for State to propose an alternate definition of “standard number of years” for limited categories of students.	52	40	2,080	62,400
§ 200.19(d)(1)	Requirement for State to obtain approval of its definition of “continuous and substantial improvement” to determine whether high schools make AYP.	52	40	2,080	62,400
§ 200.20(h)	Request waiver under section 9401 of ESEA to incorporate academic growth into State's AYP definition.	52	240	12,480	374,400
Total		52	N/A	22,464	673,920

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to OIRA_DOCKET@omb.eop.gov or by fax to (202) 395–6974. Commenters need only submit comments via one submission medium. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;

- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

- Enhancing the quality, usefulness, and clarity of the information we collect; and

- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to

ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Requests for copies of the submission for OMB review may be accessed from <http://edicsweb.ed.gov> by selecting the “Browse Pending Collections” link. When you access the information collection, click on “Download Attachments” to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ Building, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address ICDocketMgr@ed.gov or faxed to (202) 401–0920.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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(Catalog of Federal Domestic Assistance Number: 84.010 Improving Programs Operated by Local Educational Agencies)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family-centered education, Grant programs—education, Indians—education, Infants and children, Institutions of higher education, Juvenile delinquency, Local educational agencies, Migrant labor, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies.

Dated: April 17, 2008.

Margaret Spellings,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

2. Section 200.2 is amended by revising paragraph (b)(7) to read as follows:

§ 200.2 State responsibilities for assessment.

* * * * *

(b) * * *

(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content, as defined by the State. These measures may include—

(i) Single or multiple question formats that range in cognitive complexity within a single assessment; and

(ii) Multiple assessments within a subject area.

* * * * *

3. Section 200.7 is amended by:

A. Revising paragraph (a)(2)(i).

B. Redesignating paragraph (a)(2)(ii) as (a)(2)(iv).

C. Adding new paragraphs (a)(2)(ii) and (a)(2)(iii).

The revision and additions read as follows:

§ 200.7 Disaggregation of data.

(a) * * *

(2)(i) Based on sound statistical methodology, each State must determine the minimum number of students sufficient to—

(A) Yield statistically reliable information for each purpose for which disaggregated data are used; and

(B) Ensure that, to the maximum extent practicable, all student subgroups in § 200.13(b)(7)(ii) are included, particularly at the school level, for purposes of making accountability determinations.

(ii) Each State must revise its Consolidated State Application Accountability Workbook under section 1111 of the Act to include—

(A) An explanation of how the State's minimum subgroup size meets the requirements of paragraph (a)(2)(i) of this section;

(B) An explanation of how other components of the State's definition of adequate yearly progress (AYP), in addition to the State's minimum subgroup size, interact to affect the statistical reliability of the data and to ensure the maximum inclusion of all students and student subgroups in § 200.13(b)(7)(ii); and

(C) Information regarding the number and percentage of students and student subgroups in § 200.13(b)(7)(ii) excluded from school-level accountability determinations.

(iii) No later than six months following the effective date of this regulation, each State must submit a revised Consolidated State Application Accountability Workbook in accordance with paragraph (a)(2)(ii) to the

Department for technical assistance and peer review under the process established by the Secretary under section 1111(e)(2) of the Act.

* * * * *

4. Section 200.11 is amended by adding a new paragraph (c) to read as follows:

§ 200.11 Participation in NAEP.

* * * * *

(c) *Report cards.* Each State and LEA must report on its annual State or LEA report card, respectively, the most recent available academic achievement results in each grade assessed, in the aggregate and disaggregated, on the State's NAEP reading and mathematics assessments under paragraph (a) of this section.

* * * * *

5. Section 200.19 is amended by:

A. Revising paragraph (a)(1).

B. Revising paragraph (d).

C. Redesignating paragraph (e) as paragraph (f).

D. Adding a new paragraph (e).

The revisions and addition read as follows:

§ 200.19 Other academic indicators.

(a) * * *

(1) *High schools.* The graduation rate for public high schools, defined as follows:

(i) Beginning no later than the 2012–2013 school year, a State must calculate the graduation rate as the number of students who graduate in the standard number of years with a regular high school diploma divided by the number of students who form the adjusted cohort for that graduating class.

(A)(1) Consistent with paragraph (a)(1)(i)(C) of this section, the term “adjusted cohort” means the students who entered grade 9 together and any students who transferred into or entered the cohort in grades 9 through 12 minus any students removed from the cohort.

(2) To remove a student from the cohort, a school or LEA must confirm that the student has either transferred or is deceased. To confirm that a student has transferred, the school or LEA must have official documentation that the student has enrolled in a program of study in another school, LEA, or other educational program that culminates in the award of a regular high school diploma.

(3) A student who is retained in grade, enrolled in a General Educational Development (GED) program, or leaves school for any other reason may not be counted as a transfer for the purpose of calculating the graduation rate and must remain in the adjusted cohort.

(B) The term “regular high school diploma” means the standard high school diploma that is awarded to students in the State and that is fully aligned with the State’s academic content standards or a higher diploma and does not include a GED, certificate of attendance, or any alternative award.

(C)(1) The term “standard number of years” means four years unless a high school begins after ninth grade, in which case the standard number of years is the number of grades in the school.

(2) A State may propose, for approval by the Secretary, an alternate definition of “standard number of years” that would apply to limited categories of students who, under certain conditions, may take longer to graduate.

(ii)(A) A State that does not have in effect a Statewide data system necessary to calculate the graduation rate as defined in paragraph (a)(1)(i) of this section must use the Averaged Freshman Graduation Rate (AFGR) on a transitional basis. The AFGR is the number of high school students who graduate in the standard number of years with a regular high school diploma, as defined in this section, divided by the number of students in the incoming freshman class four years earlier (assuming that the standard number of years is four under paragraph (a)(1)(i)(C) of this section), which is estimated by averaging the enrollment of that freshman class with the enrollment of that class in eighth grade the prior year and in tenth grade the subsequent year (or the average of the enrollment for the ninth and tenth grades if a school or LEA does not have an eighth grade).

(B) A State may not use the AFGR to calculate graduation rate after school year 2011–2012.

* * * * *

(d)(1) A State must—

(i) Set a graduation rate goal that represents the rate the State expects all high schools to meet;

(ii) Define how schools and LEAs demonstrate continuous and substantial improvement from the prior year toward meeting or exceeding the graduation rate goal; and

(iii) Submit to the Secretary for approval the graduation rate goal and the definition of continuous and substantial improvement.

(2) Beginning in the 2008–2009 school year, in order to make AYP, a high school or LEA must—

(i) Meet or exceed the graduation rate goal set by the State under paragraph (d)(1)(i) of this section; or

(ii) Demonstrate continuous and substantial improvement from the prior

year, as defined by the State under paragraph (d)(1)(ii) of this section.

(3) A State may, but is not required to, increase the goals of its academic indicators other than graduation rate.

(e)(1) No later than the 2012–2013 school year, a State must calculate the graduation rate in paragraph (a)(1)(i) of this section at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup in § 200.13(b)(7)(ii) (economically disadvantaged students; students from major racial and ethnic groups; students with disabilities as defined in section 9101(5) of the Act; and students with limited English proficiency as defined in section 9101(25) of the Act) for reporting under section 1111(h) of the Act (annual report cards) and for determining AYP under § 200.20.

(2) Prior to school year 2012–2013, a State must calculate the graduation rate in paragraph (a)(1)(i) or (a)(1)(ii) of this section—

(i) At the LEA and State levels, in the aggregate and disaggregated in accordance with paragraph (e)(1) of this section; and

(ii) At the school level—

(A) In the aggregate for determining AYP under § 200.20(a)(1)(ii); but

(B) In the aggregate and disaggregated by each subgroup in § 200.13(b)(7)(ii) (economically disadvantaged students; students from major racial and ethnic groups; students with disabilities as defined in section 9101(5) of the Act; and students with limited English proficiency as defined in section 9101(25) of the Act) for purposes of determining AYP under § 200.20(b)(2) (“safe harbor”), for reporting under section 1111(h) of the Act (annual report cards), and as required under section 1111(b)(2)(C)(vii) of the Act (additional other academic indicators in a State’s definition of AYP).

(3) With respect to its other academic indicators, other than graduation rate, a State—

(i) Must disaggregate those indicators by each subgroup described in § 200.13(b)(7)(ii) (economically disadvantaged students; students from major racial and ethnic groups; students with disabilities as defined in section 9101(5) of the Act; and students with limited English proficiency as defined in section 9101(25) of the Act) for purposes of determining AYP under § 200.20(b)(2) (“safe harbor”), for reporting under section 1111(h) of the Act (annual report cards), and as required under section 1111(b)(2)(C)(vii) of the Act (additional other academic indicators in a State’s definition of AYP); but

(ii) Need not disaggregate those indicators for determining AYP under § 200.20(a)(1)(ii) (meeting the State’s annual measurable objectives).

* * * * *

6. Section 200.20 is amended by:

A. Adding a new paragraph (h).

B. Revising the authority citation.

The addition and revision read as follows:

§ 200.20 Making adequate yearly progress.

* * * * *

(h) *Student academic growth.* (1) A State may request authority under section 9401 of the Act to incorporate student academic growth in the State’s definition of AYP under this section.

(2) A State’s policy for incorporating student academic growth in the State’s definition of AYP must—

(i) Set annual growth targets that—

(A) Will lead to all students, by school year 2013–2014, meeting or exceeding the State’s proficient level of academic achievement on the State assessments under § 200.2;

(B) Are based on meeting the State’s proficient level of academic achievement on the State assessments under § 200.2 and are not based on individual student background characteristics; and

(C) Measure student achievement separately in mathematics and reading/language arts;

(ii) Ensure that all students enrolled in the grades tested under § 200.2 are included in the State’s assessment and accountability systems;

(iii) Hold all schools and LEAs accountable for the performance of all students and the student subgroups described in § 200.13(b)(7)(ii);

(iv) Be based on State assessments that—

(A) Produce comparable results from grade to grade and from year to year in mathematics and reading/language arts;

(B) Have been in use by the State for more than one year; and

(C) Have received full approval from the Secretary before the State determines AYP based on student academic growth;

(v) Track student progress through the State data system;

(vi) Include, as separate factors in determining whether schools are making AYP for a particular year—

(A) The rate of student participation in assessments under § 200.2; and

(B) Other academic indicators as described in § 200.19; and

(vii) Describe how the State’s annual growth targets fit into the State’s accountability system in a manner that ensures that the system is coherent and that incorporating student academic

growth into the State's definition of AYP does not dilute accountability.

(3) A State's proposal to incorporate student academic growth in the State's definition of AYP will be peer reviewed under the process established by the Secretary under section 1111(e)(2) of the Act.

(Authority: 20 U.S.C. 6311(b)(2), (b)(3)(C)(xi); 7861)

7. Section 200.22 is added to read as follows:

§ 200.22 National Technical Advisory Council.

(a) To provide advice to the Department on technical issues related to the design and implementation of standards, assessments, and accountability systems, the Secretary shall establish a National Technical Advisory Council (hereafter referred to as the "National TAC"), which shall be governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92-463, as amended; 5 U.S.C. App.).

(b)(1) The members of the National TAC must include persons who have knowledge of and expertise in the design and implementation of educational standards, assessments, and accountability systems, including experts with technical knowledge related to statistics and psychometrics.

(2) The National TAC shall be composed of 10 to 15 members who may meet as a whole or in committees, as the Secretary may determine.

(3) The Secretary shall, through a notice published in the **Federal Register**—

(i) Solicit nominations from the public for members of the National TAC; and

(ii) Publish the list of members, once selected.

(4) The Secretary shall screen nominees for membership on the National TAC for potential conflicts of interest to prevent, to the extent possible, such conflicts, or the appearance thereof, in the National TAC's performance of its responsibilities under this section.

(c) The Secretary shall use the National TAC to provide its expert opinions on matters that arise during the State Plan review process.

(d) The Secretary shall prescribe and publish the rules of procedure for the National TAC.

(Authority: 20 U.S.C. 6311(e))

8. Section 200.32 is amended by:

A. Redesignating paragraph (a)(1) as paragraph (a)(1)(i).

B. Adding a new paragraph (a)(1)(ii).
The addition reads as follows:

§ 200.32 Identification for school improvement.

(a)(1)(i) * * *

(ii) In identifying schools for improvement, an LEA—

(A) May base identification on whether a school did not make AYP because it did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for two consecutive years; but

(B) May not limit identification to those schools that did not make AYP only because they did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for the same subgroup under § 200.13(b)(7)(ii) for two consecutive years.

* * * * *

9. Section 200.37 is amended by:

A. Adding new paragraph (b)(4)(iv).

B. Adding new paragraph (b)(5)(ii)(C).

C. Adding new paragraph (b)(5)(iii).

The additions read as follows:

§ 200.37 Notice of identification for improvement, corrective action, or restructuring.

* * * * *

(b) * * *

(4) * * *

(iv) The explanation of the available school choices must be made sufficiently in advance of, but no later than 14 calendar days before, the start of the school year so that parents have adequate time to exercise their choice option before the school year begins.

(5) * * *

(ii) * * *

(C) An explanation of the benefits of receiving supplemental educational services.

(iii) The annual notice of the availability of supplemental educational services must be—

(A) Clear and concise; and

(B) Clearly distinguishable from the other information sent to parents under this section.

* * * * *

10. Section 200.39 is amended by adding a new paragraph (c) to read as follows:

§ 200.39 Responsibilities resulting from identification for school improvement.

* * * * *

(c) The LEA must prominently display on its Web site, as soon as it becomes available, the following information regarding the LEA's implementation of the public school choice and supplemental educational services requirements of the Act and this part:

(1) Beginning with data from the 2007–2008 school year and for each

subsequent school year, the number of students who were eligible for and the number of students who participated in public school choice.

(2) Beginning with data from the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in supplemental educational services.

(3) For the current school year, a list of supplemental educational services providers approved by the State to serve the LEA and the locations where services are provided.

(4) For the current school year, a list of available schools to which students eligible to participate in public school choice may transfer.

* * * * *

11. Section 200.43 is amended by:

A. Revising paragraph (a)(1).

B. In paragraph (a)(2), removing the word "and" at the end of the paragraph.

C. In paragraph (a)(3), removing the punctuation "." and adding in its place the punctuation ";" at the end of the paragraph.

D. Adding new paragraphs (a)(4) and (a)(5).

E. Revising paragraph (b)(3)(ii).

F. Revising paragraph (b)(3)(v).

The additions and revisions read as follows:

§ 200.43 Restructuring.

(a) * * *

(1) Makes fundamental reforms to improve student academic achievement in the school;

* * * * *

(4) Is significantly more rigorous and comprehensive than the corrective action that the LEA implemented in the school under § 200.42; and

(5) Addresses the reasons why the school was identified for restructuring in order to enable the school to exit restructuring as soon as possible.

(b) * * *

(3) * * *

(ii) Replace all or most of the school staff (which may include, but may not be limited to, replacing the principal) who are relevant to the school's failure to make AYP.

* * * * *

(v) Any other major restructuring of a school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staff (which may include, but may not be limited to, replacing the principal) and governance, in order to improve student academic achievement in the school and that has substantial promise of enabling the school to make AYP.

* * * * *

12. Section 200.44 is amended by revising paragraph (a)(2) to read as follows:

§ 200.44 Public school choice.

(a) * * *

(2) The LEA must—

(i) Offer this option not later than the first day of the school year following the school year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring; and

(ii) Provide timely notice consistent with § 200.37(b)(4).

* * * * *

13. Section 200.47 is amended by:

A. Revising the introductory text in paragraph (a)(4).

B. In paragraph (a)(4)(i), removing the word “and” at the end of the paragraph.

C. In paragraph (a)(4)(ii), removing the punctuation “.” and adding in its place the words “; and” at the end of the paragraph.

D. Adding a new paragraph (a)(4)(iii).

E. Revising paragraph (b)(2)(ii)(B).

F. Redesignating paragraph (b)(2)(ii)(C) as paragraph (b)(2)(ii)(D).

G. Adding a new paragraph (b)(2)(ii)(C).

H. Redesignating paragraph (b)(3) as paragraph (b)(4).

I. Adding a new paragraph (b)(3).

J. Adding a new paragraph (c).

The revisions and additions read as follows:

§ 200.47 SEA responsibilities for supplemental educational services.

(a) * * *

(4) Consistent with paragraph (c) of this section, develop, implement, and publicly report on standards and techniques for—

* * * * *

(iii) Monitoring LEAs' implementation of the supplemental educational services requirements of the Act and this part.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) Are aligned with State academic content and student academic achievement standards;

(C) Are research-based; and

* * * * *

(3) In approving a provider, the SEA must consider, at a minimum—

(i) Information from the provider on whether the provider has been removed from any State's approved provider list;

(ii) Parent recommendations or results from parent surveys, if any, regarding the success of the provider's

instructional program in increasing student achievement; and

(iii) Evaluation results, if any, demonstrating that the instructional program has improved student achievement.

* * * * *

(c) *Standards for monitoring approved providers.* To monitor the quality and effectiveness of services offered by an approved provider in order to inform the renewal or the withdrawal of approval of the provider—

(1) An SEA must examine, at a minimum, evidence that the provider's instructional program—

(i) Is consistent with the instruction provided and the content used by the LEA and the SEA;

(ii) Addresses students' individual needs as described in students' supplemental educational services plans under § 200.46(b)(2)(i);

(iii) Has contributed to increasing students' academic proficiency; and

(iv) Is aligned with the State's academic content and student academic achievement standards; and

(2) The SEA must also consider information, if any, regarding—

(i) Parent recommendations or results from parent surveys regarding the success of the provider's instructional program in increasing student achievement; and

(ii) Evaluation results demonstrating that the instructional program has improved student achievement.

* * * * *

14. Section 200.48 is amended by:

A. Adding a new paragraph (a)(2)(iii)(C).

B. Adding a new paragraph (d).

The additions read as follows:

§ 200.48 Funding for choice-related transportation and supplemental educational services.

(a) * * *

(2) * * *

(iii) * * *

(C) The LEA may count in the amount the LEA is required to spend under paragraph (a) of this section its costs for outreach and assistance to parents concerning their choice to transfer their child or to request supplemental educational services, up to an amount equal to 0.2 percent of its allocation under subpart 2 of part A of Title I of the ESEA.

* * * * *

(d) *Unexpended funds for choice-related transportation and supplemental educational services.* (1) If an LEA does not fully meet the requirements in paragraph (a)(2) of this

section in a given school year, the LEA must spend the unexpended amount in the subsequent school year on choice-related transportation costs, supplemental educational services, or parent outreach and assistance (consistent with paragraph (a)(2)(iii)(C)) unless the SEA approves the LEA's request to spend a lesser amount based on the SEA's determination that the LEA has demonstrated success in—

(i) Partnering with community-based organizations or other groups to help inform eligible students and their families of the opportunities to transfer or to receive supplemental educational services;

(ii) Ensuring that eligible students and their parents had a genuine opportunity to sign up to transfer or to obtain supplemental educational services, including by—

(A) Providing timely, accurate notice as required in §§ 200.36 and 200.37;

(B) Ensuring that sign-up forms for supplemental educational services are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination, such as the Internet, other media, and communications through public agencies serving eligible students and their families; and

(C) Allowing eligible students to sign up to receive supplemental educational services throughout the school year; and

(iii) Ensuring that eligible supplemental educational services providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities.

(2) The LEA must spend the unexpended funds under paragraph (d)(1) of this section in addition to the funds it is required to spend under paragraph (a)(2) of this section in the subsequent school year.

* * * * *

15. Section 200.50 is amended by:

A. Redesignating paragraph (d)(1) as paragraph (d)(1)(i).

B. Adding a new paragraph (d)(1)(ii).

The addition reads as follows:

§ 200.50 SEA review of LEA progress.

* * * * *

(d) * * *

(1)(i) * * *

(ii) In identifying LEAs for improvement, an SEA—

(A) May base identification on whether an LEA did not make AYP because it did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for two consecutive years; but

(B) May not limit identification to those LEAs that did not make AYP only because they did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for the same subgroup under § 200.13(b)(7)(ii) for two consecutive years.

* * * * *

16. Section 200.56 is amended by:
A. Revising the introductory text.

- B. Adding a new paragraph (d).
C. Revising the authority citation.
The revisions and addition read as follows:

§ 200.56 Definition of “highly qualified teacher.”

Except as provided in paragraph (d), to be a “highly qualified teacher,” a teacher described in § 200.55 must meet the requirements in paragraph (a) and

either paragraph (b) or (c) of this section.

* * * * *

(d) To be a “highly qualified special education teacher,” a teacher must meet the requirements in 34 CFR 300.18.

(Authority: 20 U.S.C. 1401(10); 7801(23))
[FR Doc. E8–8700 Filed 4–22–08; 8:45 am]

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Federal Register

**Wednesday,
April 23, 2008**

Part III

The President

**Executive Order 13463—Amending
Executive Orders 13389 and 13390**

Presidential Documents

Title 3—

Executive Order 13463 of April 18, 2008

The President

Amending Executive Orders 13389 and 13390

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121–5206), it is hereby ordered as follows:

Section 1. Executive Order 13389 of November 1, 2005, as amended, is further amended:

(a) in subsection 2(a), by striking “Economic Policy” and inserting in lieu thereof “Homeland Security and Counterterrorism”; and

(b) in section 5, by striking “3 years from the date of this order” and inserting in lieu thereof “February 28, 2009”.

Sec. 2. Subsection 5(b) of Executive Order 13390 of November 1, 2005, is amended:

(a) by striking the comma after “applicable law” and inserting “and”; and

(b) striking “3 years from the date of this order” and inserting in lieu thereof “February 28, 2009”.



THE WHITE HOUSE,
April 18, 2008.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It

may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

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H.R. 5813/P.L. 110-200

To amend Public Law 110-196 to provide for a temporary extension of programs authorized by the Farm Security and Rural Investment Act of 2002 beyond April 18, 2008. (Apr. 18, 2008; 122 Stat. 695)

S. 550/P.L. 110-201

To preserve existing judgeships on the Superior Court of the District of Columbia. (Apr. 18, 2008; 122 Stat. 696)

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