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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AE67

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Indian Affairs regulation governing the Courts of Indian Offenses (otherwise known as CFR Courts) and the Law and Order Code. CFR Courts administer justice where Indian tribes retain exclusive jurisdiction over Indians but where tribal courts have not been established to exercise that jurisdiction. This final rule updates the list of Indian tribes for which Courts of Indian Offenses are established and for which the law and order provisions of the regulations apply. This final rule also clarifies jurisdictional limitations; adds offenses for drug abuse, abuse of psychotoxic substances, child abuse, prostitution, and family violence; and increases maximum penalties for various offenses.

DATES: This rule is effective on August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Joseph Little, Office of Justice Services, Bureau of Indian Affairs, 1001 Indian School Road, NW., Albuquerque, NM 87104. Telephone: (505) 563–3833.

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I. Background

This final rule amends 25 CFR part 11, the Bureau of Indian Affairs regulation governing the Courts of Indian Offenses (otherwise known as CFR Courts) and the Law and Order Code. CFR Courts administer justice where Indian tribes retain exclusive jurisdiction over Indians but where tribal courts have not been established to exercise that jurisdiction. Part 11 applies only to those tribes occupying the Indian country over which a Court of Indian Offense has jurisdiction. At any time, these tribes may adopt their own tribal court systems to replace the CFR courts by following the steps in 25 CFR 11.100(c) (which has not been affected by this final rule).

The final rule updates the list of CFR courts. The final rule also addresses the need for additional offenses, which has become apparent as drug abuse and family violence have increasingly plagued Indian country, and the need for increased maximum penalty amounts. The final rule also makes several editorial changes to comply with the Plain Language Initiative, for example, by changing headings to question form. The Bureau of Indian Affairs published proposed revisions to 25 CFR part 11 on December 19, 2007 (72 FR 71835).

II. Statutory Authority

The authority to issue this amendment is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9, and 25 U.S.C. 13 which authorize appropriations for ''Indian judges.'' This rule is published in the exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

III. Discussion of Comments Received on Proposed Rule

Three tribes submitted written statements during the 30-day comment period. One tribe submitted comments after expiration of the comment period; the Bureau entered these comments into the administrative record but, in accordance with Departmental policy, did not substantially rely on them in developing the final rule. Timely comments were submitted by: The Comanche Nation of Oklahoma; The Chickasaw Nation of Oklahoma; and the Gaming Commission of the Cheyenne and Arapaho Tribes of Oklahoma. The following discussion summarizes significant comments by these three tribes and the Bureau's responses.

A. Civil Jurisdiction

Several tribes objected to the changes in section 11.116 which they claimed created ambiguity concerning the courts' jurisdiction in civil matters. The first concern was the proposed rule's change from providing jurisdiction in cases in which ''the defendant is an Indian'' to cases in which ''the claimant is an Indian.'' The Bureau agrees that the current rule's language providing jurisdiction in those cases in which the defendant is an Indian should be retained. As such, section 11.116(a)(1) of the final rule reads: ''The defendant is an Indian.''

The second concern was the ambiguity as to jurisdiction over claims against non-Indian defendants and counter-defendants. In particular, one commenter stated that the proposed rule provision allowing jurisdiction only by stipulation of the parties unnecessarily diminished civil jurisdiction of the CFR Court. The Bureau agrees. Section 11.116 (a)(2) will be changed to read: ''Other claims, including counterclaims, provided that at least one party is an Indian.'' This language complies with Supreme Court rulings on tribal jurisdiction.

B. Appointment of Magistrates

Two tribes objected to changes in section 11.201(a) that call for ''consultation'' with the tribe or tribes before appointing a magistrate rather than seeking ''confirmation by a majority vote of the tribal governing body.'' The Bureau has considered this

comment and is tabling this change. The final rule therefore does not include the proposed change to ''consultation,'' but instead retains current regulatory language requiring confirmation.

C. Jury Panel

One tribe stated that changing section 11.414(c) to increase the jury panel from 8 to 12 residents may result in an undue hardship for courts serving rural or sparsely populated areas. The Bureau agrees. The Indian Civil Rights Act of 1968 (25 U.S.C. 1302) requires jury trials of not less than six (6) persons. The Bureau has determined that this is a reasonable standard for a court functioning in Indian country. Therefore, section 11.314 9(c) of the final rule reads, ''[a] jury must consist of not less than 6 residents of the vicinity in which the trial is held, selected from a list of eligible jurors * * *''

D. List of Courts of Indian Offenses

The Comanche Nation specifically objected to section 11.100 deleting ''(except Comanche Children's Court).'' The Bureau did not intend to interfere with the operation of the Comanche Children's Court, and has re-inserted that language into the final rule.

E. Thirty-Day Comment Period

One tribe asserted that the thirty-day comment period was not sufficient and should be extended. The Bureau considered this request for extension and determined that the thirty-day comment period was sufficient. In making this determination, the Bureau considered the limited number of changes proposed, the limited number of potentially affected tribes, and the potential effect on those tribes. The Bureau also considered the fact that it received only one objection to the length of the comment period, and that the tribe that objected to the length of the comment period nevertheless provided comments on the proposed changes contained in the proposed rule.

F. Compliance With Executive Order 13175

One tribe asserted that the proposed rule violated Executive Order 13175 because the rule affects tribes that use CFR Courts as their tribal courts. The Bureau examined whether the revisions would have substantial direct effects on one or more Indian tribes and determined that they would not. The Bureau focused on those tribes occupying the Indian country over which a Court of Indian Offense has jurisdiction, in examining whether the proposed changes would have substantial direct effects. The Bureau examined each regulatory change for its effects on these tribes and found that, generally, the regulatory changes were merely updates, which would not substantially affect caseloads, require additional outlays, or otherwise substantially and directly affect these tribes. The Bureau also examined the relationship between the Federal Government and these tribes and the distribution of power between the Federal Government and these tribes, and determined that there was no substantial direct effect. Finally, the proposed and final rules have no effect on the ability of tribes subject to part 11 (i.e., occupying the Indian country over which a Court of Indian Offense has jurisdiction) to enact and obtain Secretarial approval of enforceable ordinances.

IV. Procedural Requirements

A. Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The establishment of an average Court of Indian Offenses is estimated to cost less than $200,000 annually to operate. The cost associated with the operation of this court will be with the Bureau of Indian Affairs.

(b) This rule will not create inconsistencies with other agencies' actions. The Department of the Interior through the Bureau of Indian Affairs has the sole responsibility and authority to establish Courts of Indian Offenses on Indian reservations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The establishment of Court of Indian Offenses will not affect any program rights of any Indian tribe. Its primary function will be to administer justice for misdemeanor offenses within Indian country. The court's criminal jurisdiction will be limited to criminal offenses provided in 25 CFR part 11 and the Law and Order Code of Indian tribes as applicable.

(d) This rule will not raise novel legal or policy issues. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox,* 35 F. 575 (D. Ore. 1888).

B. Regulatory Flexibility Act

The Department of the Interior, Bureau of Indian Affairs, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The amendment to 25 CFR part 11.100(a) updates the list of Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area of Indian country. Accordingly, there will be no impact on any small entities.

C. 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 or more. The establishment of an average Court of Indian Offenses is estimated to cost less than $200,000 per court to operate annually. The cost associated with the operation of these courts will be with the Bureau of Indian Affairs.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This is a court established primarily for the administration of misdemeanor justice for Indians located within the boundaries of Indian country and will not have any cost or price impact on any other entities in the geographical region.

(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. These are courts established primarily for the administration of misdemeanor justice for Indians located within the boundaries of Indian country, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of U.S.-based

enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The establishment of a Court of Indian Offenses will not have jurisdiction to affect any rights of the small governments. Its primary function will be to administer justice for misdemeanor offenses within the boundaries of Indian country. Its jurisdiction will be limited to criminal offenses provided in 25 CFR part 11.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

E. Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implication. A takings implication assessment is not required. The amendments to 25 CFR part 11 will establish Courts of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area of Indian country.

F. Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States judiciary recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox,* 35 F. 575 (D. Ore. 1888).

G. Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States judiciary recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox*, 35 F. 575 (D. Ore. 1888). Part 11 also requires the establishment of an appeals court; hence, the judicial system defined in Executive Order 12988 will not normally be involved in this judicial process.

H. Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. The amendment to 25 CFR part 11 does not automatically apply to all federally recognized tribes; part 11 applies only when the establishment of the provisional Court of Indian Offenses is necessary until that tribe establishes a tribal court to provide for a law and order code and judicial system within the exterior boundaries of its Indian reservation. The Department of the Interior establishes a provisional court, to fulfill its trust responsibility towards tribal governments and complies with the unique government-to-government relationship that exists between the Federal Government and Indian tribes.

I. Paperwork Reduction Act

This amendment to the regulation does not require information collection under the Paperwork Reduction Act.

J. National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The establishment of a Court of Indian Offenses conveys personal jurisdiction over the criminal misdemeanor actions of Indians with the exterior boundaries of Indian country.

K. Information Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–544).

L. Effects on the Energy Supply (Executive Order 13211)

This rule does not have a significant effect on the nation's energy supply, distribution, or use as defined by Executive Order 13211.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

Dated: May 10, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

■ For the reasons set out in the preamble, the Bureau of Indian Affairs amends 25 CFR part 11 as set forth below.

PART 11—COURTS OF INDIAN OFFENSES AND LAW AND ORDER CODE

■ 1. The authority citation for 25 CFR part 11 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 463; 25 U.S.C. 2; R.S. 465; 25 U.S.C. 9; 42 Stat. 208; 25 U.S.C. 13; 38 Stat. 586; 25 U.S.C. 200.

■ 2. Revise the heading of part 11 to read as set forth above.

■ 3. Revise subpart A to read as follows:

Subpart A—Application; Jurisdiction

Sec.

11.100 Where are Courts of Indian Offenses established?
11.102 What is the purpose of this part?
11.104 When does this part apply?
11.106 Who is an Indian for purposes of this part?
11.108 How are tribal ordinances affected by this part?
11.110 How are tribal customs affected by this part?
11.112 [Reserved]
11.114 What is the criminal jurisdiction of the Court of Indian Offenses?
11.116 What is the civil jurisdiction of a Court of Indian Offenses?
11.118 What are the jurisdictional limitations of the Court of Indian Offenses?

Subpart A—Application; Jurisdiction

§ 11.100 Where are Courts of Indian Offenses established?

(a) Unless indicated otherwise in this title, these Courts of Indian Offenses are established and the regulations in this part apply to the Indian country (as defined in 18 U.S.C. 1151 and by Federal court precedent) occupied by the following tribes:

(1) Te-Moak Band of Western Shoshone Indians (Nevada);

(2) Ute Mountain Ute Tribe (Colorado);

(3) Tribes located in the former Oklahoma Territory (Oklahoma) that are listed in paragraph (b) of this section;

(4) Tribes located in the former Indian Territory (Oklahoma) that are listed in paragraph (c) of this section;

(5) Winnemucca Indian Tribe; and

(6) Santa Fe Indian School Property, including the Santa Fe Indian Health Hospital, and the Albuquerque Indian

School Property (land held in trust for the 19 Pueblos of New Mexico).

(b) This part applies to the following tribes located in the former Oklahoma Territory (Oklahoma):

(1) Apache Tribe of Oklahoma;

(2) Caddo Nation of Oklahoma;

(3) Comanche Nation (except Comanche Children's Court);

(4) Delaware Nation;

(5) Fort Sill Apache Tribe of Oklahoma;

(6) Kiowa Tribe of Oklahoma;

(7) Otoe-Missouria Tribe of Oklahoma; and

(8) Wichita and Affiliated Tribes of Oklahoma.

(c) This part applies to the following tribes located in the former Indian Territory (Oklahoma):

(1) Choctaw Nation;

(2) Seminole Nation;

(3) Eastern Shawnee Tribe;

(4) Miami Tribe;

(5) Modoc Tribe;

(6) Ottawa Tribe;

(7) Peoria Tribe;

(8) Quapaw Tribe; and

(9) Wyandotte Nation.

§ 11.102 What is the purpose of this part?

It is the purpose of the regulations in this part to provide adequate machinery for the administration of justice for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of State jurisdiction but where tribal courts have not been established to exercise that jurisdiction.

§ 11.104 When does this part apply?

(a) The regulations in this part continue to apply to each tribe listed in § 11.100 until either:

(1) BIA and the tribe enter into a contract or compact for the tribe to provide judicial services; or

(2) The tribe has put into effect a law-and-order code that establishes a court system and that meets the requirements of paragraph (b) of this section.

(b) When a tribe adopts a legal code and establishes a judicial system, the tribe must notify the Assistant Secretary—Indian Affairs or his or her designee. The law-and-order code must be adopted by the tribe in accordance with its constitution and by-laws or other governing documents.

§ 11.106 Who is an Indian for purposes of this part?

For the purposes of the enforcement of the regulations in this part, an Indian is defined as a person who is a member of an Indian tribe which is recognized by the Federal Government as eligible for services from the BIA, and any other individual who is an ''Indian'' for the purposes of 18 U.S.C. 1152–1153.

§ 11.108 How are tribal ordinances affected by this part?

The governing body of each tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction may enact ordinances which, when approved by the Assistant Secretary—Indian Affairs or his or her designee:

(a) Are enforceable in the Court of Indian Offenses having jurisdiction over the Indian country occupied by that tribe; and

(b) Supersede any conflicting regulation in this part.

§ 11.110 How are tribal customs affected by this part?

Each Court of Indian Offenses shall apply the customs of the tribe occupying the Indian country over which it has jurisdiction to the extent that they are consistent with the regulations of this part.

§ 11.112 [Reserved].

§ 11.114 What is the criminal jurisdiction of the Court of Indian Offenses?

(a) Except as otherwise provided in this title, each Court of Indian Offenses has jurisdiction over any action by an Indian (hereafter referred to as person) that is made a criminal offense under this part and that occurred within the Indian country subject to the court's jurisdiction.

(b) No person may be prosecuted, tried or punished for any offense unless the complaint is filed within 5 years after the offense is committed.

§ 11.116 What is the civil jurisdiction of a Court of Indian Offenses?

(a) Except as otherwise provided in this title, each Court of Indian Offenses has jurisdiction over any civil action arising within the territorial jurisdiction of the court in which:

(1) The defendant is an Indian; or

(2) Other claims, provided at least one party is an Indian.

(b) Any civil action commenced in a Court of Indian Offenses is barred unless the complaint is filed within 3 years after the right of action first accrues.

§ 11.118 What are the jurisdictional limitations of the Court of Indian Offenses?

(a) A Court of Indian Offenses may exercise over a Federal or State official only the same jurisdiction that it could exercise if it were a tribal court. The jurisdiction of Courts of Indian Offenses does not extend to Federal or State employees acting within the scope of their employment.

(b) A Court of Indian Offenses may not adjudicate an election dispute, take jurisdiction over a suit against a tribe, or adjudicate any internal tribal government dispute, unless the relevant tribal governing body passes a resolution, ordinance, or referendum granting the court jurisdiction.

(c) In deciding who is a tribal official, BIA will give deference to a decision of the Court of Indian Offenses, acting as a tribal forum by resolution or ordinance of a tribal governing body under paragraph (b) of this section.

(d) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

Subpart B—Courts of Indian Offenses; Personnel; Administration

■ 3A. In § 11.200, revise the section heading and paragraph (c) to read as follows:

§ 11.200 What is the composition of the Court of Indian Offenses?

* * * * *

(c) Appeals must be heard by a panel of magistrates who were not involved at the tribal/trial level.

* * * * *

■ 4. In § 11.201, revise the section heading to read as follows:

§ 11.201 How are magistrates for the Court of Indian Offenses appointed?

* * * * *

■ 5. In § 11.202, revise the section heading to read as follows:

§ 11.202 How is a magistrate of the Court of Indian Offenses removed?

* * * * *

■ 6. In § 11.203, revise the section heading to read as follows:

§ 11.203 How are the clerks of the Court of Indian Offenses appointed and what are their duties?

* * * * *

■ 7. In § 11.205, revise the section heading to read as follows:

§ 11.205 Are there standards for the appearance of attorneys and lay counselors?

* * * * *

■ 8. In § 11.206, revise the section heading to read as follows:

§ 11.206 Is the Court of Indian Offenses a court of record?

* * * * *

■ 9. In § 11.207, revise the section heading to read as follows:

§ 11.207 What are the responsibilities of Bureau of Indian Affairs employees?

* * * * *

■ 10. In § 11.208, revise the section heading to read as follows:

§ 11.208 May Individual Indian Money accounts be used for payment of judgments?

* * * * *

■ 11. In § 11.209, revise the section heading to read as follows:

§ 11.209 How does the Court of Indian Offenses dispose of fines?

* * * * *

Subpart C—Criminal Procedure

■ 12. In § 11.314, redesignate paragraphs (c) through (e) as paragraphs (d) through (f), revise paragraphs (a) and (b), and add a new paragraph (c), to read as follows:

§ 11.314 Jury trials.

(a) A defendant has a right, upon demand, to a jury trial in any criminal case:

(1) That is punishable by a maximum sentence of one year incarceration; or

(2) In which the prosecutor informs the court before the case comes to trial that a jail sentence will be sought.

(b) If the prosecutor informs the court that no sentence of incarceration will be sought, the court may not impose a sentence of incarceration for the offense.

(c) A jury must consist of not less than six residents of the vicinity in which trial is held, selected from a list of eligible jurors prepared each year by the court.

(1) An eligible juror must:

(i) Be at least 18 years of age;

(ii) Not have been convicted of a felony; and

(iii) Be otherwise qualified according to standards established by the Court of Indian Offenses under its general rulemaking authority.

(2) Any party may challenge without cause a maximum of three members of the jury panel chosen under this section.

* * * * *

■ 13. In § 11.315, revise paragraph (a) to read as follows:

§ 11.315 Sentencing.

(a) Any person who has been convicted in a Court of Indian Offenses of a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period up to the maximum permitted by the section defining the offense, but in no case for longer than one year; and

(2) A fine in an amount up to the maximum permitted by the section defining the offense, but in no case greater than $5,000.

* * * * *

Subpart D—Criminal Offenses

■ 14. Revise § 11.450 to read as follows:

§ 11.450 Maximum fines and sentences of imprisonment.

A person convicted of an offense under the regulations in this part may be sentenced as follows:

Type of offense	Maximum allowable sentence
(a) Misdemeanor	Up to 1 year in prison, or a fine of up to $5,000, or both.
(b) Petty misdemeanor	Up to 6 months in prison, or a fine of up to $2,500, or both.
(c) Violation	Up to 3 months in prison, or a fine of up to $1,000, or both.

■ 15. Add new §§ 11.451 through 11.454 to read as follows:

§ 11.451 Abuse of psychotoxic chemical solvents.

(a) It is unlawful to:

(1) Intentionally smell or inhale the fumes of any psychotoxic chemical solvent or possess, purchase, or attempt to possess or purchase any psychotoxic chemical solvent, for the purpose of causing intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system; or

(2) Sell, give away, dispense, or distribute, or offer to sell, give away, dispense, or distribute, any psychotoxic chemical solvent knowing or believing that the purchaser or another person intends to use the solvent in violation of this section.

(b) This section does not apply to inhalation of anesthesia for medical or dental purposes.

(c) As used in this section, ''psychotoxic chemical solvent'' means any glue, gasoline, paint, hair spray, Lysol, or other substance containing one or more of the following chemical compounds:

(1) Acetone and acetate;

(2) Benzene;

(3) Butyl-alcohol;

(4) Methyl ethyl;

(6) Peptone;

(7) Pentachlorophenol;

(8) Petroleum ether; or

(9) Any other chemical substance the inhalation of whose fumes or vapors can cause intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system.

(d) The statement listing the contents of a substance packaged in a container by the manufacturer or producer thereof is rebuttable proof of the contents of the substance without further expert testimony if it reasonably appears that the substance in the container is the same substance placed therein by the manufacturer or producer.

(e) Abuse of psychotoxic chemical solvents, as defined in this section, is punishable as a petty misdemeanor, and the court may order any person using psychotoxic chemical solvents as described in paragraph (a) of this section to be committed to a facility for treatment for up to 6 months.

(f) Psychotoxic chemical solvents kept or used in violation of this section are declared contraband. Upon proof of a violation, these solvents must be forfeited to the Federal government by order of the court, following public notice and an opportunity for any person claiming an interest in the solvents to be heard.

§ 11.452 Possession of a controlled substance.

(a) It is unlawful for a person to knowingly or intentionally possess any controlled substance listed in 21 CFR Part 1308, as amended, unless:

(1) The Controlled Substances Act or Drug Enforcement Agency regulations specifically authorizes possession of the substance;

(2) The substance or preparation is excluded or exempted by 21 CFR 1308.21 through 1308.35, as amended; or

(3) The provisions of 42 U.S.C. 1996a (regarding traditional Indian religious use of peyote) apply.

(b) Violations of paragraph (a) of this section are punishable as a misdemeanor.

(c) Any controlled substance involved in violation of this section is declared to be contraband. Upon proof of a violation of this section, the controlled substance must be forfeited to the Federal Government by order of the court, after public notice and an opportunity for any person claiming an interest in the substance to be heard.

(d) Any personal property used to transport, conceal, manufacture, cultivate, or distribute a controlled substance in violation of this section is subject to forfeiture to the Federal Government by order of the court upon proof of this use, following public notice and opportunity for any person claiming an interest in the property to be heard.

§ 11.453 Prostitution or solicitation.

A person who commits prostitution or solicitation or who knowingly keeps, maintains, rents, or leases, any house, room, tent, or other place for the purpose of prostitution is guilty of a misdemeanor.

§ 11.454 Domestic violence.

(a) A person who commits domestic violence by inflicting physical harm, bodily injury, or sexual assault, or inflicting the fear of imminent physical harm, bodily injury, or sexual assault on a family member, is guilty of a misdemeanor.

(b) For purposes of this section, a family member is any of the following:

(1) A spouse;

(2) A former spouse;

(3) A person related by blood;

(4) A person related by existing or prior marriage;

(5) A person who resides or resided with the defendant;

(6) A person with whom the defendant has a child in common; or

(7) A person with whom the defendant is or was in a dating or intimate relationship.

■ 16. Revise § 11.500 to read as follows.

§ 11.500 Law applicable to civil actions.

(a) In all civil cases, the Magistrate of a Court of Indian Offenses shall have discretion to apply:

(1) Any laws of the United States that may be applicable;

(2) Any authorized regulations contained in the Code of Federal Regulations; and

(3) Any laws or customs of the tribe occupying the area of Indian country over which the court has jurisdiction that are not prohibited by Federal laws.

(b) The delineation in paragraph (a) of this section does not establish a hierarchy relative to the applicability of specific law in specific cases.

(c) Where any doubt arises as to the customs of the tribe, the court may request the advice of counselors familiar with those customs.

(d) Any matters that are not covered by the laws or customs of the tribe, or by applicable Federal laws and regulations, may be decided by the Court of Indian Offenses according to the laws of the State in which the matter in dispute lies.

■ 17. Add a new subpart L to read as follows:

Subpart L—Child Protection and Domestic Violence Procedures

Sec.
11.1200 Definitions.
11.1202 How to petition for an order of protection.
11.1204 Obtaining an emergency order of protection.
11.1206 Obtaining a regular (non-emergency) order of protection.
11.1208 Service of the protection order.
11.1210 Duration and renewal of a regular protection order.
11.1212 Consequences of disobedience or interference.
11.1214 Relationship of this part to other remedies.

Subpart L—Child Protection and Domestic Violence Procedures

§ 11.1200 Definitions.

For purposes of this subpart:

Domestic violence means to inflict physical harm, bodily injury, or sexual assault, or the fear of imminent physical harm, bodily injury, or sexual assault on a family member.

Family member means any of the following:

(1) A spouse;

(2) A former spouse;

(3) A person related by blood;

(4) A person related by existing or prior marriage;

(5) A person who resides or resided with the defendant;

(6) A person with whom the defendant has a child in common; or

(7) A person with whom the defendant is or was in a dating or intimate relationship.

Parent means persons who have a child in common, regardless of whether they have been married or have lived together at any time.

§ 11.1202 How to petition for an order of protection.

A victim of domestic violence, or the parent, guardian of a victim, or a concerned adult may petition the court under this subpart for an order of protection.

(a) The petition must be made under oath or accompanied by a sworn affidavit setting out specific facts describing the act of domestic violence.

(b) The petitioner is not required to file for annulment, separation, or divorce in order to obtain an order of protection. However, the petition should state whether any legal action is pending between the petitioner and the respondent.

(c) The Court may develop simplified petition forms with instructions for completion and make them available to petitioners not represented by counsel. Law enforcement agencies may keep the forms on hand and make them available upon request to victims of domestic violence.

§ 11.1204 Obtaining an emergency order of protection.

(a) When a victim files a petition for an order of protection under § 11.202(a), the court may immediately grant an ex parte emergency order of protection if the petition clearly shows that an act of domestic violence has occurred. The order must meet the content requirements of § 11.206 (a) and (b).

(b) If the court does not immediately grant an emergency order of protection under paragraph (a) of this section, the court must either:

(1) Within 72 hours after the victim files a petition, serve notice to appear upon both parties and hold a hearing on the petition for order of protection; or

(2) If a notice of hearing cannot be served within 72 hours, issue an emergency order of protection.

(c) If the court issues an ex parte emergency order of protection under paragraph (a) of this section, it must within 10 days hold a hearing on the question of continuing the order. If notice of hearing cannot be served within 10 days:

(1) The emergency order of protection is automatically extended for 10 days; and

(2) If after the 10-day extension, notice to appear cannot be served, the emergency order of protection expires.

(d) If the court issues an ex parte emergency order of protection under paragraph (b)(2) of this section, it must cause the order to be served on the person alleged to have committed a family violence act and seek to hold a hearing as soon as possible. If a hearing cannot be held within 10 days, the petitioner may ask the court to renew the emergency protection order.

§ 11.1206 Obtaining a regular (non-emergency) order of protection.

Following a hearing and finding that an act of domestic violence occurred, the court may issue an order of protection. The order must meet the requirements of paragraph (a) of this section and may meet the requirements of paragraph (b) of this section. Either party may request a review hearing to amend or vacate the order of protection.

(a) The order of protection must do all of the following:

(1) Specifically describe in clear language the behavior the court has ordered he or she do or refrain from doing;

(2) Give notice that violation of any provision of the order of protection constitutes contempt of court and may result in a fine or imprisonment, or both; and

(3) Indicate whether the order of protection supersedes or alters prior orders pertaining to matters between the parties.

(b) The order of protection may do any of the following:

(1) Order the person who committed the act of domestic violence to refrain from acts or threats of violence against the petitioner or any other family member;

(2) Order that the person who committed the act of domestic violence be removed from the home of the petitioner;

(3) Grant sole possession of the residence or household to the petitioner during the period the order of protection is effective, or order the person who has committed an act of domestic violence to provide temporary suitable alternative housing for the petitioner and other family members to whom the respondent owes a legal obligation of support;

(4) Award temporary custody of any children involved when appropriate and provide for visitation rights, child support, and temporary support for the petitioner on a basis which gives primary consideration to the safety of the petitioner and other household members;

(5) Order the person who is found to have committed an act of domestic violence not to initiate contact with the petitioner;

(6) Restrain the parties from transferring, concealing, encumbering, or otherwise disposing of one another's property or the joint property of the parties except in the usual course of business or for the necessities of life, and order the parties to account to the court for all such transferring, encumbrances, and expenditures made after the order is served or communicated; and

(7) Order other injunctive relief as the court deems necessary for the protection of the petitioner, including orders to law enforcement agencies as provided by this subpart.

§ 11.1208 Service of the protection order.

When an order of protection is granted under this subpart:

(a) The petitioner must file it with the clerk of the court;

(b) The clerk of the court must send a copy to a law enforcement agency with jurisdiction over the area in which the court is located;

(c) The order must be personally served upon the respondent, unless the respondent or his or her attorney was present at the time the order was issued; and

(d) If the court finds the petitioner unable to pay court costs, the order will be served without cost to the petitioner.

§ 11.1210 Duration and renewal of a regular protection order.

An order of protection granted by the court:

(a) Is effective for a fixed period of time, which is up to a maximum of 6 months; and

(b) May be extended for good cause upon motion of the petitioner for an additional period of up to 6 months each time a petition is presented. A petitioner may request as many extensions as necessary provided that the court determines that good cause exists.

§ 11.1212 Consequences of disobedience or interference.

Any willful disobedience or interference with any court order constitutes contempt of court which may result in a fine or imprisonment, or both, in accordance with this part.

§ 11.1214 Relationship of this subpart to other remedies.

The remedies provided in this subpart are in addition to the other civil or criminal remedies available to the petitioner.

[FR Doc. E8–15599 Filed 7–10–08; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP–1141–F]

RIN 1120–AB39

Intensive Confinement Center Program

AGENCY: Federal Bureau of Prisons.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons (Bureau) removes current rules on the intensive confinement center program (ICC). The ICC is a specialized program for non-violent offenders combining features of a military boot camp with traditional Bureau correctional values. The Bureau will no longer be offering the ICC program (also known as Shock Incarceration or Boot Camp) to inmates as a program option. This decision was made as part of an overall strategy to eliminate programs that do not reduce recidivism.

DATES: This rule is effective on August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: Through this rulemaking, the Bureau seeks to be clear to inmates and the public regarding the termination of the ICC program. A proposed rule on this subject was published in the **Federal Register** on November 2, 2006 (71 FR 64504). We received three comments. The issues raised by the commenters are addressed below.

One commenter, a former inmate, recounted his positive experience in an ICC program in a Bureau facility, and suggested that such positive experiences should be sufficient to continue the ICC program.

Although this inmate is to be commended for taking full advantage of the opportunities offered through the ICC program, we note that it is unfortunate that his experience was not repeated often enough to justify the extra costs implicated in the ICC program. As we stated in the preamble to the proposed rule, despite anecdotal successes, research has found no significant difference in recidivism rates between inmates who complete boot camp programs and similar offenders who serve their sentences in traditional institutions.

Moreover, the costs associated with maintaining the federal boot camp programs exceed the costs of operating ordinary minimum security camps, as a result of (1) the staff resources necessary to maintain the intensive core programming that make up the ''shock incarceration'' or ''intensive confinement'' experience, and (2) the high costs of housing offenders for extended periods of time in Community Corrections Centers, where the per capita costs are higher than those of housing offenders in minimum security camps.

While there are some cost savings due to the early release of offenders who successfully complete the program, these savings are minimal compared to the additional costs of operating the program, which create a net increased cost to the agency of more than $1 million per year.

The remaining two commenters expressed the idea that ''Congress clearly intends for the BOP to run a shock incarceration program; BOP merely has the discretion to decide which inmates it places therein. No logical reading of section 4046 implies that the discretionary 'may' in

subsection (a) refers to giving BOP discretion as to offering the shock incarceration program.''

Several courts that have ruled on this issue since the discontinuance of the ICC program have found that 18 U.S.C. 4046 does *not* require the Bureau to operate a shock incarceration program—it merely *authorizes* the Bureau to grant certain benefits to those covered by the statute. *Palomino* v. *Federal Bureau of Prisons,* 408 F. Supp.2d 282 (S.D. Tex. 2005); *Roman* v. *LaManna,* C/A 8:05–2806–MBS, 2006 WL 2370319 (D.S.C. Aug. 15, 2006); *Serrato* v. *Clark,* C 05–03416 CRB, 2005 WL 3481442 (N.D. Cal. Dec. 19, 2005); *U.S.* v. *McLean,* CR 03–30066–AA, 2005 WL 2371990 (D. Ore. Sept. 27, 2005). Indeed, the Bureau has always had the authority to operate a program like the ICC, but prior to passage of 4046 could not have offered the sentence reduction incentive.

The commenters also remarked that Congress appropriated funds for the operation of the ICC program. However, regarding appropriations, Congress has *never* specifically appropriated funds for the ICC program, i.e., there was and is no line item appropriation. The ICC was merely considered as one of a variety of programs in the Bureau's overall budget needs.

For the aforementioned reasons, we now finalize the removal of the regulations in Subpart D of 28 CFR part 524.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: this rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 524

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 524 as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

■ 1. The authority citation for part 524 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510.

Subpart D—[Removed]

■ 2. Subpart D—Intensive Confinement Center Program, consisting of §§ 524.30 through 524.33, is removed and reserved.

[FR Doc. E8–15784 Filed 7–10–08; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

[BOP Docket No. BOP 1132–F]

RIN 1120–AB33

Inmate Work and Performance Pay Program: Reduction in Pay for Drug- and Alcohol-Related Disciplinary Offenses

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) amends regulations on inmate work and performance pay to require that inmates receiving performance pay who are found through the disciplinary process (found in 28 CFR part 541) to have committed a level 100 or 200 series drug-or alcohol-related prohibited act will automatically have their performance pay reduced to maintenance pay level and will be removed from any assigned work detail outside the secure perimeter of the institution.

DATES: This rule is effective August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau amends regulations on inmate work and performance pay to require that inmates receiving performance pay who are found through the disciplinary process (found in 28 CFR part 541) to have committed a level 100 or 200 series drug-or alcohol-related prohibited act will automatically have their performance pay reduced to maintenance pay level and will be removed from any assigned work detail outside the secure perimeter of the institution.

We published this as a proposed rule on November 2, 2006 (71 FR 64505). We received three comments, which we address below.

The first commenter questioned whether ''imposing a financial penalty on the prisoner saddled with recognized disabilities like drug addiction and alcoholism * * * will have the benefit of strengthening ongoing efforts to target

an [sic] eliminate the introduction of drugs or alcohol into Bureau institutions.''

This commenter is suggesting that the Bureau ease repercussions of committing a prohibited act related to drugs or alcohol. As the Bureau stated in its preamble to the proposed regulation, the additional financial penalty will serve to deter recurrence of drug- and alcohol-related prohibited acts. Increasing the potential repercussions of committing new prohibited acts will discourage inmates from committing them.

The first commenter also stated that ''prisoners suffering from drug addiction and/or alcoholism, absent effective and continuing treatment availability, will find themselves forced into unauthorized and criminal behaviors in order to feed their untreated disabilities.'' One of the Bureau's many goals is to encourage a sense of accountability among inmates. This regulation will help to encourage inmate responsibility by actively deterring the commission of drug- and alcohol-related prohibited acts. Further, the Bureau offers several drug/alcohol treatment programs for qualifying inmates, which should also help to relieve ''untreated disabilities'' of such inmates.

The first commenter also suggested that, instead of the proposed rule, a ''better course appears to be requiring prisoners found to have committed a 100 or 200 series drug or alcohol related prohibited act to attend and successfully complete a drug abuse education course provided by 28 CFR 550.54.'' However, under current § 550.54(b), inmates enrolled in a drug abuse education course who fail to meet the requirements of the course may be held at the lowest pay grade. Further, inmates in a residential drug abuse treatment program may be expelled, immediately and without warning, if found by a DHO to have used or possessed alcohol or drugs, or committed a 100 level prohibited act, under current 28 CFR 550.56(d).

The second commenter asked whether the rule would apply retroactively. The answer to this question is that it will not apply retroactively to affect inmates who committed drug- and alcohol-related prohibited acts prior to the effective date of the regulation. After the effective date of the regulation, any inmate who commits a qualifying offense will have their pay reduced according to the regulation.

The second commenter also asked whether the reduction in pay consequence would be indefinite. Under the Bureau's policy guidance to staff, which will be issued simultaneously with this final rule, sanctions for performance pay recipients will remain in effect for one year from the date the inmate was found to have committed the prohibited act. We have altered the regulation to add this time limit.

The third commenter suggested that the rule apply not only to performance pay inmates but also to those inmates receiving UNICOR pay. Although the Bureau agrees with the commenter, this regulation relates only to inmates receiving performance pay, and as such, will continue to read as proposed. However, the Bureau is currently revising its policy guidance on UNICOR pay to clarify that UNICOR inmates found through the disciplinary process to have committed a level 100 or 200 series drug-or alcohol-related prohibited act will automatically have their pay reduced to a level 4 pay-grade, which is the equivalent of maintenance pay for performance pay inmates.

Further, the third commenter was concerned that the proposed rule did not ''place a timetable on the reduction in the inmate's pay grade * * * [the reduction in pay] could be indefinite.'' We agree and have added the following language: ''This reduction to maintenance pay level will ordinarily remain in effect for one year, unless otherwise authorized by the Warden.''

For the foregoing reasons, we now finalize, with minor changes, the proposed rule published on November 2, 2006 (71 FR 64505).

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of strengthening ongoing efforts to target and eliminate the use and/or introduction of drugs or alcohol into Bureau institutions. There will be no new costs associated with this rulemaking.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 545

Prisoners.

Harley G. Lappin,
Director, Bureau of Prisons.

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 545 as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

■ 1. Amend the authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. In § 545.25, add paragraph (e) to read as follows:

§ 545.25 Eligibility for performance pay.

* * * * *

(e) Inmates receiving performance pay who are found through the disciplinary process (part 541 of this subchapter) to have committed a level 100 or 200 series drug- or alcohol-related prohibited act will automatically have their performance pay reduced to maintenance pay level and will be removed from any assigned work detail outside the secure perimeter of the institution. This reduction to maintenance pay level, and removal from assigned work detail outside the secure perimeter of the institution, will ordinarily remain in effect for one year, unless otherwise authorized by the Warden.

[FR Doc. E8–15855 Filed 7–10–08; 8:45 am]

BILLING CODE 4410–05–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1615

RIN 3046–AA82

Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Equal Employment Opportunity Commission and Accessibility of Commission Electronic and Information Technology

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) is publishing this final rule to amend its regulation to establish that all complaints under section 508 of the Rehabilitation Act of 1973, as amended (section 508), whether filed by members of the public or EEOC employees, will be processed under the procedures for section 504 public complaints. This final rule also updates the terminology used to describe how EEOC enforces section 504 of the Rehabilitation Act with respect to its own programs or activities. Finally, the final rule updates or eliminates certain sections of this regulation that are no longer relevant.

DATES: Effective August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff or Kerry E. Leibig, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission at (202) 663–4638 (voice), (202) 663–7026 (TTY) (This is not a toll-free telephone number.) This document is also available in the following formats: Large print, Braille, audio tape, and electronic file on computer disk. Requests for this document in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY) or to the Publications Information Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: Section 508 of the Rehabilitation Act provides that each federal agency must ensure that the electronic and information technology it develops, procures, maintains, or uses is accessible to individuals with disabilities who are Federal employees or applicants, or members of the public seeking information or services from the agency. Section 508 authorizes individuals to file administrative complaints and civil actions limited to the alleged failure to procure accessible technology. In a Notice of Proposed Rulemaking (NPRM), the EEOC proposed amendments to its regulations at 29 CFR part 1615 to address the requirements of section 508 and to update terminology and eliminate certain sections that are no longer relevant. *See* 73 Fed. Reg. 9065 (Feb. 19, 2008). The Commission received no public comments in response to the NPRM and therefore has made no changes to the final rule.

Regulatory Procedures

Executive Order 12866

In promulgating this rulemaking, the Commission has adhered to the regulatory philosophy and applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. As indicated in the Semi-Annual Regulatory Agenda for Fall 2007, this regulation is not a significant regulation within the meaning of the Executive Order.

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. Sec. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not have a significant economic impact on a substantial number of small entities, because it applies exclusively to a federal agency and individuals accessing the services of a Federal agency. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This regulation contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 29 CFR Part 1615

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

■ For the reasons set forth in the preamble, the EEOC amends 29 CFR part 1615 as follows:

PART 1615—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND IN ACCESSIBILITY OF COMMISSION ELECTRONIC AND INFORMATION TECHNOLOGY

■ 1. Revise the authority citation for 29 CFR part 1615 to read as follows:

Authority: 29 U.S.C. 794 and 29 U.S.C. 794d(f)(2).

■ 2. Part 1615 is amended as follows:

■ A. By revising the heading to read as set forth above.

■ B. By removing the term ''handicap'' wherever it appears and adding, in its place, the term ''disability''.

■ C. By removing the term ''handicaps'' wherever it appears and adding, in its place, the term ''disabilities''.

■ D. By removing the term ''nonhandicapped persons'' wherever it appears and adding, in its place, the term ''individuals without disabilities''.

■ E. By removing the term ''Chairman'' wherever it appears and adding, in its place, the term ''Chair''.

■ F. By removing the term ''EEO Director'' wherever it appears and adding, in its place, the term ''Director of OEO''.

■ 3. Section 1615.101 is amended by redesignating the current paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 1615.101 Purpose.

* * * * *

(b) The purpose of this part is also to effectuate section 508 of the Rehabilitation Act, which requires that when Federal departments and agencies develop, procure, maintain, or use electronic and information technology, they shall ensure accessibility by individuals with disabilities who are Federal employees or applicants, or members of the public.

■ 4. Section 1615.102 is revised to read as follows:

§ 1615.102 Application.

This part applies to all programs or activities conducted by the Commission and to its development, procurement, maintenance, and use of electronic and information technology.

■ 5. Section 1615.103 is amended as follows:

■ A. The definition of ''Complete complaint'' is revised.

■ B. A definition of ''Electronic and information technology'' is added.

■ C. The definition heading ''Individual with handicaps'' is removed and ''Individual with a disability'' is added in its place.

■ D. The definition ''Qualified individual with a handicap'' is removed.

■ E. A definition of ''Qualified individual with a disability'' is added.

■ F. A definition of ''Section 508'' is added.

The revisions and additions read as follows:

§ 1615.103 Definitions.

* * * * *

Complete complaint means a written statement that contains the complainant's name and address and describes the Commission's actions in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504 or section 508. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Electronic and Information technology. Includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term electronic and information technology includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, World Wide Web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

* * * * *

Qualified individual with a disability means:

(1) With respect to any Commission program or activity (except employment), an individual with a disability who, with or without modifications or aids required by this part, meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(2) With respect to employment, a qualified individual with a disability as defined in 29 CFR 1630.2(m), which is made applicable to this part by § 1615.140.

* * * * *

Section 508 means section 508 of the Rehabilitation Act of 1973, Pub. L. 93–112, Title V, § 508, as added Pub. L. 99–506, Title VI, § 603(a), Oct. 21, 1986, 100 Stat. 1830, and amended Pub. L. 100–630, Title II, § 206(f), Nov. 7, 1988, 102 Stat. 3312; Pub. L. 102–569, Title V, § 509(a), Oct. 29, 1992, 106 Stat. 4430; Pub. L. 105–220, Title IV, § 408(b), Aug. 7, 1998, 112 Stat. 1203.

§ 1615.110 [Removed]

■ 6. Section 1615.110 is removed and reserved.

■ 7. Section 1615.135 is added to read as follows:

§ 1615.135 Electronic and information technology requirements.

(a) Development, procurement, maintenance, or use of electronic and information technology.—When developing, procuring, maintaining, or using electronic and information technology, the Commission shall ensure, unless an undue burden would be imposed on it, that the electronic and information technology allows, regardless of the type of medium of the technology—

(1) Individuals with disabilities who are Commission employees to have access to and use of information and data that is comparable to the access to and use of the information and data by Commission employees who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the Commission to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

(b) Alternative means of access when undue burden is imposed.—When development, procurement, maintenance, or use of electronic and information technology that meets the standards published by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 would impose an undue burden, the Commission shall provide individuals with disabilities covered by this section with the information and data involved by an alternative means of access that allows the individual to use the information and data.

■ 8. Section 1615.140 is revised to read as follows:

§ 1615.140 Employment.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by this Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities. As noted in 29 CFR 1614.203(b), the standards used to determine whether section 501 of the Rehabilitation Act has been violated in a complaint alleging non-affirmative action employment discrimination under part 1614 shall be the standards applied under Title I and Title V (sections 501 through 504 and 510) of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101, 12111, 12201) as such sections relate to employment. These standards are set forth in the Commission's ADA regulations at 29 CFR part 1630. If a section 501 complaint is filed against the Commission in the part 1614 process and it is found to include a separate section 508 claim, the part 1614 process will be used to process the section 501 claim. The section 508 claim will be processed separately in accordance with the procedures set forth at § 1615.170.

§ 1615.150 [Amended]

■ 9. Section 1615.150(c) and (d) are removed.

■ 10. Section 1615.170 is amended as follows:

■ A. Revise paragraphs (a), (b), and (c).

■ B. Revise the first sentences of paragraphs (d)(1) and (d)(2).

■ C. Revise the third and fourth sentences of paragraph (i).

■ D. Revise paragraph (j).

■ E. Revise the first sentence of paragraph (k).

■ F. Add a new paragraph (n).

The revisions and additions read as follows:

§ 1615.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the Commission in violation of section 504. This section also applies to all complaints alleging a violation of the agency's responsibility to procure electronic and information technology under section 508 whether filed by members of the public or EEOC employees or applicants.

(b) The Commission shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by EEOC in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). With regard to employee claims concerning agency procurements made in violation of section 508, the procedures set out in paragraphs (d) through (m) of this section shall be used.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Office of Equal Opportunity (Director of OEO).

(d) * * *

(1) * * * Any person who believes that he or she has been subjected to discrimination prohibited by this part or that the agency's procurement of electronic and information technology has violated section 508, or authorized representative of such person, may file a complaint with the Director of OEO. * * *

(2) * * * Complaints shall be filed with the Director of OEO within one hundred and eighty calendar days of the alleged acts of discrimination. * * *

* * * * *

(i) * * * An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Chair at EEOC headquarters. It should be clearly marked ''Appeal of Section 504 decision'' or ''Appeal of Section 508 decision'' and should contain specific objections explaining why the person believes the initial decision was factually or legally wrong. * * *

(j) Timely appeals shall be decided by the Chair of the Commission unless the Commission determines that an appeal raises a policy issue which should be addressed by the full Commission.

(1) The Chair will draft a decision within 30 days of receipt of an appeal and circulate it to the Commission.

(2) If a Commissioner believes an appeal raises a policy issue that should be addressed by the full Commission, he or she shall so inform the Chair by notice in writing within ten calendar days of the circulation of the draft decision on appeal.

(3) If the Chair does not receive such written notice, the decision on appeal shall be issued.

(4) If the Chair receives written notice as described in subparagraph (2), the Commission shall resolve the appeal through a vote.

(k) The Commission shall notify the complainant of the results of the appeal within ninety calendar days of the receipt of the appeal from the complainant. * * *

* * * * *

(n) Civil actions. The remedies, procedures, and rights set forth in sections 505(a)(2) and 505(b) of the Rehabilitation Act, 29 U.S.C. 794a(a)(2) and 794a(b) shall be the remedies, procedures, and rights available to any individual with a disability filing a complaint under this section.

Dated: July 2, 2008.

Naomi C. Earp,

Chair.

[FR Doc. E8–15764 Filed 7–10–08; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Nos. USCG–2008–0372 and USCG–2008–0301]

RIN 1625–AA00 and RIN 1625–AA87

Safety Zones; Northeast Gateway Deepwater Port, Atlantic Ocean, MA and Security Zone; Liquefied Natural Gas Carriers, Massachusetts Bay, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the duration of two temporary safety zones of 500 meter radii around the primary components, two independent submerged turret-loading buoys, of Excelerate Energy's Northeast Gateway Deepwater Port, Atlantic Ocean, and its accompanying systems, as well as extending the duration of the temporary security zone around Liquefied Natural Gas Carrier (LNGC) vessels approaching, engaging, regasifying, disengaging, mooring, or otherwise conducting operations at the deepwater port facility in Massachusetts Bay. The purpose of these temporary safety zones is to protect vessels and mariners from the potential safety hazards associated with deepwater port facilities. All vessels, with the exception of deepwater port support vessels, are prohibited from entering into or moving within either of the safety zones. The security zone is necessary to protect LNGC vessels calling on the deepwater port from security threats or other subversive acts.

DATES: This rule extends the current temporary regulations, which have been in effect since May 7, 2008 (USCG–2008–0372) (73 FR 28039), and May 16, 2008 (USCG–2008–0301) (73 FR 31612), through July 17, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0372 and USCG–2008–0301 respectively, are available online at *www.regulations.gov*. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard, Sector Boston, 427 Commercial Street, Boston, MA 02109, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Chief Petty Officer Eldridge McFadden, Waterways Management Division, U.S. Coast Guard Sector Boston, at 617–223–5160. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The deepwater port facilities discussed

elsewhere in this rule were recently completed and present potential safety hazards to vessels, especially fishing vessels, operating in the vicinity of submerged structures associated with the deepwater port facility. A more robust regulatory scheme to ensure the safety and security of vessels operating in the area, has been developed via separate rulemaking, and is available for review and comment at the Web site *http://www.regulations.gov* using a search term of USCG–2007–0087. That final rulemaking was published in the June 17, 2008, **Federal Register** (73 FR 34191) and will go into effect on July 17, 2008. This rule extends the existing temporary safety zones around the deepwater port infrastructure, as well as the temporary security zone around vessels scheduled to arrive in port, currently set to expire on July 12, 2008, until July 17, 2008, the effective date of the larger rulemaking. This extension is necessary to protect vessels from the hazards posed by the presence of the currently uncharted, submerged deepwater infrastructure. Failing to delay the effective day of this extension pending completion of notice and comment rulemaking is contrary to the public interest to the extent it could expose vessels currently operating in the area to the known, but otherwise uncharted submerged hazards. In addition, it would leave the Coast Guard without the regulatory enforcement tool that a security zone provides for vessels scheduled to call on the deepwater port in the near future.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On May 14, 2007, the Maritime Administration (MARAD), in accordance with the Deepwater Port Act of 1974, as amended, issued a license to Excelerate Energy to own, construct, and operate a natural gas deepwater port, ''Northeast Gateway.'' Northeast Gateway Deepwater Port (NEGDWP) is located in the Atlantic Ocean, approximately 13 nautical miles south-southeast of the City of Gloucester, Massachusetts, in Federal waters. The NEGDWP will accommodate the mooring, connecting, and offloading of two liquefied natural gas carriers (LNGCs) at one time. The NEGDWP operator plans to offload LNGC by degasifying the LNG on board the vessels. The regasified natural gas is then transferred through two submerged turret-loading buoys, via a flexible riser leading to a seabed pipeline that ties into the Algonquin Gas Transmission Pipeline for transfer to shore.

Excelerate recently completed installation of the STL buoys and associated sub-surface infrastructure, which includes, among other things, a significant sub-surface sea anchor and mooring system.

In December 2007, the Coast Guard established a safety zone around the submerged turret loading buoys while regulations were developed to protect the buoys as well as passing vessels. See 73 FR 1274. That temporary safety subsequently expired and was re-established by the Coast Guard on May 15, 2008. See 73 FR 28039. That temporary safety zone is set to expire on July 12, 2008. On June 3, 2008, the Coast Guard published a rule establishing a security zone around vessels engaging in operations in the Northeast Gateway Deepwater Port. See 73 FR 31612. The final rule discussed in docket number USCG–2007–0087 was ultimately published in the **Federal Register** on June 17, 2008. See 73 FR 34191. Accordingly, it will become effective on July 17. The temporary zones created by this rule ensure that there is no gap in authority to ensure safety around the submerged deepwater port infrastructure or around any vessels calling on the port until the final rule's effective date of July 17.

Discussion of Rule

The Coast Guard is re-establishing two temporary safety zones 500 meters around the Northeast Gateway Deepwater Port (NEGDWP) STL buoys as described above to protect vessels from submerged hazards and potential security threats or other subversive attacks. All vessels, other than LNGCs and associated support vessels, are prohibited from entering into or moving within the safety zones. The Coast Guard is also re-establishing a temporary security zone encompassing all waters within a 500-meter radius of any LNGC, which is carrying LNG while it is approaching, engaging, regasifying, disengaging, mooring, or otherwise conducting operations at the NEGDWP.

This rule extends the effective date of the safety zones established in 73 FR 28039 and the effective date of the security zone established in 73 FR 31612 through July 17, 2008.

Regulatory Evaluation

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

This regulation may have some impact on the public in excluding vessels from the areas of these zones. This impact, however, is outweighed by the safety and security risks mitigated by the enactment of these zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor within 500 meters of the STL buoys for the deepwater port. The impact on small entities is expected to be minimal because vessels wishing to transit the Atlantic Ocean in the vicinity of the deepwater port may do so, provided they remain more than 500 meters from the buoys and any LNGC vessels calling on the deepwater port. Vessels wishing to fish in the area may do so in nearby and adjoining areas when otherwise permitted by applicable fisheries regulations.

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), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant Merridith Morrison, Assistant Chief, Waterways Management Division, Coast Guard Sector Boston, at 617–223–3028.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). 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 rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

Words of Issuance and Regulatory Text

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Amend § 165.T01–0372 to add paragraph (d) to read as follows:

§ 165.T01–0372 Safety and Security Zones: Northeast Gateway, Deepwater Port, Atlantic Ocean, Boston , MA.

* * * * *

(d) *Effective Date.* This section is effective from July 3, 2008 until July 17, 2008.

■ 3. Amend § 165.T01–0301 to revise paragraph (b) to read as follows:

§ 165.T01–0301 Security Zone: Liquefied Natural Gas Carrier Transit and Anchorage Operations, Massachusetts Bay, MA.

* * * * *

(b) *Effective Date.* This section is effective from July 3, 2008 until July 17, 2008.

* * * * *

Dated: July 3, 2008.

Gail P. Kulisch,

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

[FR Doc. E8–15947 Filed 7–10–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2005–0155; FRL–8691–2]

RIN 2060–AO52

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; withdrawal; revision.

SUMMARY: EPA published a direct final rule and parallel proposal on April 1, 2008, to amend revisions to the national perchloroethylene air emission standards for dry cleaning facilities which EPA promulgated on July 27, 2006. Because we received adverse comment during the comment period on the direct final rule and parallel proposal, we are withdrawing the direct final rule and taking final action on the proposed rule to reflect our response to the comments.

DATES: This final rule revision is effective July 11, 2008; the withdrawal of the direct final rule published on April 1, 2008, at 73 FR 17252 is effective July 11, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0155. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available (*e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. EPA–HQ–OAR–2005–0155, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Johnson, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (E143–03), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5124, electronic mail address *Johnson.warren@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 1, 2008, EPA published a direct final rule and parallel proposal for ''National Perchloroethylene Air Emission Standards for Dry Cleaning'' (73 FR 17252). We stated in the direct final rule and parallel proposal that if we received adverse comments by May 16, 2008, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We received adverse comments on this direct final rule and are withdrawing it. As stated in the direct final rule and parallel proposal, we will not institute a second comment period on this action.

Concurrent with the direct final rule, we published a separate notice of proposed rulemaking, to provide for the contingency of adverse comments on the direct final rule (73 FR 17292). We are now issuing a final rule based on the notice of proposed rulemaking and on comments received.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 9, 2008. Under CAA section 307(d)(7)(B), only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under CAA section 307(b)(2), any requirements established by the final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides a mechanism for EPA to convene a proceeding for reconsideration, ''if the person raising the objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the rule.'' Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344–A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

I. What action is EPA taking?

In today's final rule, EPA is adopting the regulatory revisions to 40 CFR 63.320(d) and (e); 63.323(a)(1), (a)(1)(ii), (b) and (c); and 63.324(d)(5) and (6), including some modifications from what we proposed to address the comments received. We received no adverse comments on the proposed revisions to 40 CFR 63.323(a)(1)'s introductory text, 63.323(a)(1)(ii), or 63.324(d)(5)–(6), and these revisions are being adopted exactly as proposed. Similarly, we received no adverse comments on our proposed amendment to § 63.320(d) adding cross-references to §§ 63.322(o)(3) and 63.322(o)(5)(i), or on our proposed amendment to § 63.320(e) adding a cross-reference to § 63.322(o)(3); consequently, those additions are also being adopted.

However, one commenter, the State of Delaware, submitted a comment on the April 1, 2008 direct final rule and parallel proposal objecting to the removal from § 63.320(d) and (e) of cross-references to § 63.322(o)(4), claiming that the removal of these cross-references would have exempted existing dry-to-dry machine systems from certain requirements intended to prevent the new installation of any perchloroethylene (perc) machine in a building with a residence. Specifically that removal of these cross-references would allow owners and operators of dry cleaning systems installed after December 21, 2005 to relocate old, high-emitting dry-to-dry machine systems into residential buildings and significantly increase the residents' exposure to perc. Delaware recommended that our amendments to § 63.320(d) and (e) be revised to clarify that existing dry-to-dry machine systems ''remain subject to'' the requirements of § 63.322(o)(4).

We agree with the State of Delaware that our clarification would have had the unintended impact of revising requirements in the July 27, 2006 final rule. As we explained in the April 1, 2008 direct final rule (73 FR 17254), we believed that the cross-reference in

§ 63.320(d) and (e) to the new source requirements of § 63.322(o)(4) was inadvertent, and we were concerned that some might interpret it to subject small existing sources already located in residential buildings to an immediate prohibition of perc emissions or an early retirement of perc-emitting machines. Rather, under our rules, such small existing systems are subject to the same December 21, 2020, phase-out date that applies to all other existing co-residential systems that are not eligible for the partial exemptions of § 63.320(d) or (e). (73 FR 17254.)

However, Delaware's comments pointed out to us that § 63.322(o)(4) applies not only to mint-new machine systems that are constructed, re-constructed and installed in residential buildings, but also by its terms prohibits ''relocation of a used machine'' (i.e., new installation of an existing machine). Therefore, we agree with Delaware that it is inappropriate to remove the cross-references for § 63.320(d) and (e). This final rule will continue to include cross-references to § 63.322(o)(4), in order to avoid suggesting that any existing perc-emitting machines, no matter what size, may be newly installed in residential buildings. As we stated in the July 27, 2006, final rule, the requirement to eliminate perc emissions from dry cleaning systems installed after December 21, 2005, ''applies to any newly installed dry cleaning system that is located in a building with a residence, regardless of whether the dry cleaning system is a newly fabricated system or one that is relocated from another facility.'' (71 FR at 42728.)

Two commenters submitted objections that relate to our proposal to amend § 63.323(b) and (c) by deleting the July 27, 2006, rule's cross-references to § 63.322(o)(2). These amendments addressed the rule's inadvertently promulgated requirement that new area sources conduct specific types of monitoring when carbon adsorbers are used. The first commenter, a private citizen, asserted that some type of performance standard is needed for new ''4th generation'' dry cleaning machines, and implied that the result of EPA's proposed amendments is that there would not be one. The State of Delaware submitted similar, but more detailed, comments on this proposed amendment, arguing that by proposing to eliminate monitoring requirements associated with secondary carbon adsorbers located at new area sources, neither owners/operators nor State regulatory agencies will have information necessary to demonstrate that control devices are effective and that dry cleaning machines are being operated consistent with good air pollution control practices. Delaware claimed that eliminating monitoring requirements for these new area sources would increase perc emissions and consequently raise cancer risks, and that the monitoring requirements adopted in the July 27, 2006 rule impose minimal financial burden on dry cleaners. Delaware recommended that EPA therefore not eliminate the cross-reference to § 63.322(o)(2), or, if EPA does eliminate it, to replace it with an alternative means to demonstrate compliant operations, such as requiring desorption or carbon replacement in accordance with manufacturers' instructions or at least weekly (whichever is more stringent), or incorporating a monitoring strategy similar to that found in rules applicable for wetting agents and foam blankets that moves toward progressively less frequent monitoring until breakthrough occurs.

As we explained in the direct final rule, the July 27, 2006, rule's application of the § 63.323(b) and (c) monitoring requirements for new area sources subject to § 63.322(o)(2) was due to our failure to correct cross-references in the final rule when the proposed requirements for new area sources moved from § 63.322(o)(3) into § 63.322(o)(2). (73 FR 17253–54.) It was not our intention to impose these obligations on new area sources, nor had we proposed to impose them. (73 FR 17253–54.) We continue to believe that, as a result, the July 27, 2006, rule's promulgation of those requirements, merely by the erroneous cross-references to § 63.322(o)(2) in § 63.323(b) and (c), is not justified, and that the cross-references must be removed for that reason.

Furthermore, we disagree with the assertions that removing the cross-reference to § 63.322(o)(2) from § 63.323(b) and (c) results in there being no performance standard for machines subject to the new area source requirements. By its terms, § 63.322(o)(2) requires such area sources to route the air-perc gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser and to pass the stream from inside the machine drum through a non-vented carbon adsorber or equivalent control device immediately before the door of the machine is opened. The carbon adsorber must be desorbed in accordance with manufacturers' instructions. We continue to believe that this is sufficient to ensure that new area source owners and operators conduct the work practices required by the rule in § 63.322(o)(2). Therefore, today's final rule adopts the proposed amendments to § 63.323(b) and (c) that remove the cross-references to § 63.322(o)(2).

One other commenter raised issues that were not the subject of the April 1, 2008, direct final rule. Specifically, the St. Louis County Air Pollution Control Program, while not intending to adversely affect the rulemaking, asked (along with the Missouri Department of Natural Resources) for an additional clarification that the temperature difference monitoring requirements found in § 63.323(a)(2), which were addressed neither by the July 27, 2006, final rule nor by the April 1, 2008, direct final rule, were intended to apply only to transfer units.

While neither the April 1, 2008, direct final rule nor the July 2006 rule revisions to the 1993 rule addressed section 63.323(a)(2), we did erroneously reference § 63.323(a)(2)(ii) in the preamble to the April 1, 2008, direct final rule in stating: ''In addition, due to the July 27, 2006, revisions to 40 CFR 63.323(a), one could interpret that using the monitoring method in 40 CFR 63.323(a)(2)(ii) is only an option when the dry cleaning machine is not equipped with refrigeration system pressure gauges.'' (73 FR at 17254.) Therefore, we would like to clarify for the St. Louis County Air Pollution Control Program that the reference to 40 CFR 63.323(a)(2)(ii) should have been a reference to 40 CFR 63.323(a)(1)(ii) which was the subject of the direct final rulemaking.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This final action does not impose any new information collection burden. Certain technical and editorial corrections that EPA is making to the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities imposes no new burdens. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 63, subpart M under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0234. 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 this final rule on small entities, 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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Since the amendments in this final rule are simply making technical corrections and clarifications to the existing rule requirements, this final rule will not impose any new requirements on 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 by State, local, and tribal governments, in the aggregate, or by 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 EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. 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.

In addition, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not apply to small governments. Therefore, this final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order (EO) 13132 (64 FR 43255, August 10, 1999) requires the 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 EO to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The amendments 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 this final rule.

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

Executive Order (EO) 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in EO 13175. This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in EO 13175. Thus, EO 13175 does not apply to this rule.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This final rule is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Energy Effects

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

No new standard requirements are specified in this final rule. Therefore, the EPA is not adopting any voluntary consensus standards in the final rule.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. 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 this final 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 11, 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: July 7, 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 M—[Amended]

■ 2. Section 63.320 is amended by revising paragraphs (d) and (e) to read as follows:

§ 63.320 Applicability.

* * * * *

(d) Each existing dry-to-dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry-to-dry machines, and each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991, and September 22, 1993, as well as each existing dry-to-dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry-to-dry machine(s) is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), (m), (o)(1), (o)(3), (o)(4) and (o)(5)(i); 63.323(d); and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total PCE consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to § 63.323(d).

(e) Each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991, and September 22, 1993, located in a dry cleaning facility that includes only transfer machine system(s), is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), (m), (o)(1), (o)(3) and (o)(4); 63.323(d); and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the PCE consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year. Consumption is determined according to § 63.323(d).

* * * * *

■ 3. Section 63.323 is amended as follows:

■ a. By revising paragraphs (a)(1) introductory text and (a)(1)(ii).

■ b. By revising paragraph (b) introductory text.

■ c. By revising paragraph (c) introductory text.

§ 63.323 Test methods and monitoring.

(a) * * *

(1) The owner or operator shall monitor on a weekly basis the parameters in either paragraph (a)(1)(i) or (ii) of this section.

* * * * *

(ii) The temperature of the air-perchloroethylene gas-vapor stream on the outlet side of the refrigerated condenser on a dry-to-dry machine, dryer, or reclaimer with a temperature sensor to determine if it is equal to or less than 7.2 °C (45 °F) before the end of the cool-down or drying cycle while the gas-vapor stream is flowing through the condenser. The temperature sensor shall be used according to the manufacturer's instructions and shall be designed to measure a temperature of 7.2 °C (45 °F) to an accuracy of ±1.1 °C (±2 °F).

* * * * *

(b) When a carbon adsorber is used to comply with § 63.322(a)(2) or exhaust is passed through a carbon adsorber immediately upon machine door opening to comply with § 63.322(b)(3), the owner or operator shall measure the concentration of PCE in the exhaust of the carbon adsorber weekly with a colorimetric detector tube or PCE gas analyzer. The measurement shall be taken while the dry cleaning machine is venting to that carbon adsorber at the end of the last dry cleaning cycle prior to desorption of that carbon adsorber or removal of the activated carbon to determine that the PCE concentration in the exhaust is equal to or less than 100 parts per million by volume. The owner or operator shall:

* * * * *

(c) If the air-PCE gas vapor stream is passed through a carbon adsorber prior to machine door opening to comply with § 63.322(b)(3), the owner or operator of an affected facility shall measure the concentration of PCE in the dry cleaning machine drum at the end of the dry cleaning cycle weekly with a colorimetric detector tube or PCE gas analyzer to determine that the PCE concentration is equal to or less than 300 parts per million by volume. The owner or operator shall:

* * * * *

■ 4. Section 63.324 is amended by revising paragraphs (d)(5) and (d)(6) to read as follows:

§ 63.324 Reporting and recordkeeping requirements.

* * * * *

(d) * * *

(5) The date and monitoring results (temperature sensor or pressure gauge) as specified in § 63.323 if a refrigerated condenser is used to comply with § 63.322(a), (b), or (o); and

(6) The date and monitoring results, as specified in § 63.323, if a carbon adsorber is used to comply with § 63.322(a)(2), or (b)(3).

* * * * *

[FR Doc. E8–15872 Filed 7–10–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 262

[Docket No. FRA 2005–23774, Notice No. 2]

RIN 2130–AB74

Implementation of Program for Capital Grants for Rail Line Relocation and Improvement Projects

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Section 9002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005) amends chapter 201 of Title 49 of the United States Code by adding section 20154. Section 20154 authorizes—but does not appropriate—$350,000,000 per year for each of the fiscal years (FY) 2006 through 2009 for the purpose of funding a grant program to provide financial assistance for local rail line relocation and improvement projects. Section 20154 directs the Secretary of Transportation (Secretary) to issue regulations implementing this grant program, and the Secretary has delegated this responsibility to FRA. This final rule establishes a regulation intended to carry out that statutory mandate. As of the publication of this final rule, Congress did not appropriate any funding for the program for FY 2006 or FY 2007 but did appropriate $20,040,200 for fiscal year 2008.

DATES: August 11, 2008.

ADDRESSES: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W–12–140, West Building Ground Floor at the DOT's new headquarters at 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

On January 17, 2007, FRA published a notice of proposed rulemaking (NPRM) proposing to add part 262 to Title 49, Code of Federal Regulations. Part 262 would carry out the statutory mandate of section 9002 of SAFETEA–LU which amends chapter 201 of Title 49 of the United States Code by adding a new section 20154. Section 20154 authorizes—but does not appropriate—$350,000,000 per year for each of the fiscal years (FY) 2006 through 2009 for the purpose of funding a grant program to provide financial assistance for local rail line relocation and improvement projects. The statute requires the Secretary to implement the grant program through regulations. The Secretary has delegated this responsibility to FRA. The language and provisions of Part 262 as reflected in the NPRM and this final rule closely track the language set out in section 20154.

B. Program Purpose

As noted in the background section of the NPRM, state and local governments are looking for ways to eliminate the problems created by the presence of railroad infrastructure in many communities, infrastructure that at one time was critical to the development of the community but which now presents problems as well as benefits. Problems that have been identified range from community separation to blocked grade crossings to limits on economic development. Many times, the solution is to relocate or raise track vertically or move the track to an area that is better suited for it. In addition to relocation projects, many communities are eager to improve existing rail infrastructure in an effort to mitigate the perceived negative effects of rail traffic on safety in general, motor vehicle traffic flow, economic development, or the overall quality of life of the community.

II. SAFETEA–LU

On August 10, 2005, President George W. Bush signed SAFETEA–LU, (Pub. L. 109–59) into law. Section 9002 of SAFETEA–LU amended chapter 201 of Title 49 of the United States Code by adding a new § 20154, which establishes the basic elements of a funding program for capital grants for local rail line relocation and improvement projects. Subsection (b) of the new § 20154 mandates that the Secretary issue ''temporary regulations'' to implement the capital grants program and then issue final regulations by October 1, 2006. This final rule carries out that statutory mandate.

In order to be eligible for a grant for a relocation or improvement construction project, the project must mitigate the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, including noise mitigation, or economic development, or involve a lateral or vertical relocation of any portion of the rail line, presumably to reduce the number of grade crossings and/or serve to mitigate noise, visual issues, or other externality that negatively impacts a community. A more detailed explanation of the rule text is provided below in the Section-by-Section Analysis.

In section 20154, Congress authorized, but did not appropriate, $350 million per year for each fiscal year 2006 through 2009. At least half of the funds awarded under this program shall be provided as grant awards of not more than $20 million each. A State or other eligible entity will be required to pay at least 10 percent of the shared costs of the project, whether in the form of a contribution of real property or tangible personal property, contribution of employee services, or previous costs spent on the project before the application was filed. The State or FRA may also seek financial contributions from private entities benefiting from the rail line relocation or improvement project.

In section 20154, Congress directed FRA to issue ''temporary regulations'' by April 1, 2006. As noted in the NPRM, under the Administrative Procedure Act and Executive Orders governing rulemaking, FRA could comply with Congress's deadline only by issuing a direct final rule or an interim final rule by April 1, 2006. However, the FRA

cannot use either a direct final rule or an interim final rule because the legal requirements for using those instruments cannot be satisfied. The case law is clear that a statutory deadline does not suffice to justify dispensing with notice and comment prior to issuing a rule on grounds that notice and comment are ''impracticable, unnecessary, or contrary to the public interest'' under section 553(b)(3)(B) of the Administrative Procedure Act. Because as of the date of the NPRM no funding had been appropriated for the program and no projects could be funded at that time, FRA concluded that the purposes of SAFETEA–LU could best be achieved by proceeding with an NPRM in lieu of an interim final rule. Proceeding this way also satisfies the requirements of the Administrative Procedure Act and allows for greater public participation in the rulemaking process.

C. Discussion of Comments

FRA received approximately 28 written comments in response to the NPRM, including comments from state and local governments, the railroad industry and trade organizations, as well as members of the general public. Specifically, comments were received from the following organizations and individuals: Missouri Department of Transportation, Charlotte (NC) Area Transit System, South Dakota Department of Transportation, City of Marceline, MO, Sacramento (CA) Regional Transit District Capitol Corridor Joint Powers Authority (CA), Gateway Rural Improvement Pilot Association, Inc. (VT), International Air Rail Organization, City of Sacramento (CA), City of Greenville (NC), States for Passenger Rail Coalition, North Carolina Department of Transportation, County of Sacramento Department of Transportation, American Public Transportation Association, Board of Sumner County Commissioners (Wellington, KS), The New York Sate Department of Transportation, National Capital Planning Commission, North Carolina Railroad Company, Spokane Regional Transportation Council (WA), Caldwell Police Department (KS), City of Caldwell (KS), Idaho Transportation Department, Sacramento Area Council of Governments (CA), Kansas Department of Transportation, Troy Dierking.

The following discussion provides an overview of the written comments received in response to the NPRM. More detailed discussions of the specific comments and how FRA has chosen to address those comments in the final rule can be found in the relevant Section-by-Section portion of this preamble.

All of the comments submitted were in favor of the capital grants program. Many of the commenters had specific projects that they were interested in obtaining funding for under this program. A few commenters expressed concerns that the definition of allowable/reimbursable costs was too narrowly drawn and needed to include reimbursement for environmental assessments that may need to be performed or have already been performed prior to the application for grant funds. Several of the commenters observed that environmental costs constitute the great majority of the project costs, particularly in the early stages. Several other commenters wanted to add specific items as allowable/reimbursable costs. Others wanted specific assurances that a particular project fit within the parameters and eligibility criteria set out in the NPRM.

A few commenters had concerns regarding the potential distribution of any grant monies, wanting to ensure that rural areas were not overlooked in the application and selection process. Some commenters wanted changes or adjustments to the definitions section.

Finally, a few commenters requested that FRA hold a public hearing on the NPRM. Given the lack of substantial controversy raised in any of the comments and the effort and expense involved in holding a public hearing, FRA concluded that a public hearing was not necessary or justifiable. None of the requests for a hearing indicated how a hearing would assist in evaluating the NPRM. In addition, some of the hearing requests appeared more focused on increasing the visibility of the capital grants for rail line relocation and improvement program rather than addressing specific issues with the NPRM.

III. Section-by-Section Analysis and Response to Comments

SAFETEA–LU contains very specific language regarding implementation of the rail line relocation and improvement program. In several sections, the language in this final regulation is reprinted directly from 49 CFR 20154. Given such an unambiguous statutory mandate, FRA has made only a few additions in this final regulation to include language that was not in the statute. For those sections, there is a further discussion of FRA's intent. This Section-by-Section Analysis does not discuss Congressional intent or address the costs or benefits of the program as a whole or any potential relocation project. Decisions regarding the advisability of the program were made by the Congress in enacting section 20154.

Section 262.1 Purpose

This section, which has not changed from that which was proposed in the NPRM, merely states that the purpose of this final rule is to carry out the Congressional mandate in § 9002 of SAFETEA–LU by promulgating regulations which implement the grant financial assistance program for local rail relocation and improvement projects set forth in new § 20154 of Title 49 of the United States Code. No comments were received on this section.

Section 262.3 Definitions

One commenter (New York DOT) suggested adding a definition for the term ''project'' and specifically mentioned a highway bridge over rail tracks as a potentially eligible activity. The commenter expressed concern that such a bridge could constitute a grade separation and add to the safety and efficiency of rail service but might be excluded because the rail line would not be physically touched. While FRA makes no comment herein upon the eligibility or ineligibility of specific projects proposed by commenters, the agency believes that the current definition of ''project'' under subsection 262.3 clearly reflects the mandate of Congress to use the capital grant funds for local rail line relocation or improvement projects. The current definitions of the terms ''project'' and ''improvement'' along with the eligibility standards detailed in subsection 262.7 provide an adequate identification of eligible projects. The agency also notes that the term ''improvement'' encompasses rail infrastructure and not just railroad lines.

One commenter (Missouri DOT) wants to add language reading ''any combination thereof'' to the definition of ''Non-Federal share.'' Missouri DOT indicated that the current definition is too restrictive because the definition ends with ''by a State or other non-Federal entity'' when a particular project might receive financial support from a variety of sources. FRA agrees that adding this language is appropriate because non-Federal share funding is contemplated to come from a variety of sources and be supplied through a variety of channels. The definition has been revised to reflect this change.

Missouri DOT also wants to specifically add to the definition of ''construction'' the costs of consultants who are designing a project. FRA notes that the definition of construction,

which includes architectural and engineering costs under item number six of the definition, contains no requirement that these be incurred solely by in-house personnel. Thus, consultant costs should be eligible if they are a part of a project that meets all of the criteria under subsections 262.7 and 262.9.

Missouri DOT also recommends that the reasonable costs of closures should be included within the definition of existing rail crossings. FRA does not fully understand the intent of this comment but notes that the definitions of ''construction'' and ''improvement'' are broad enough to support consideration of reasonable costs of closing existing rail crossings.

One commenter (City of Marceline, MO) wants to add to the costs included in the definition of ''construction'' the costs associated with construction inspection management. The statute which mandates these regulations gives the Secretary discretion to determine eligible costs and while FRA has made clear that the costs listed in the definition under subsection 262.3 are not limited to those specifically mentioned, ''construction inspection management'' costs that are germane to the particular project certainly seem to qualify. The definition of ''construction'' also includes references to both supervising and inspecting as components of building a project. However, FRA does not believe it is necessary to add this particular item to the definitions section of the rule text.

The City of Marceline, MO also wants FRA to place greater emphasis on three areas in the definition of ''quality of life:'' (1) Impact on emergency services; (2) accessibility to the disabled as required under the Americans with Disabilities Act; and (3) school access. FRA notes that the statutory definition of ''Quality of Life'' in subsection 20154(h)(2) includes ''first responders' emergency response time.'' This specific portion of the comment appears to be addressing a broader view of ''quality of life'' by expanding the definition to include ''impact on emergency services.'' Accordingly, FRA has added this proposed language into the rule text.

The second proposed addition suggested by this commenter, while not elaborated upon, is an excellent addition to the definition of ''quality of life.'' Poorly located, hard-to-reach (or difficult to get around) rail lines that have little or no access to disabled passengers/commuters/citizens certainly can impact quality of life. FRA will incorporate this suggestion with a slight modification to include section 504 of the Rehabilitation Act of 1973, as amended. Third, the commenter proposed to add ''school access'' as a ''quality of life'' measure noting that the commenter's local school is located on the opposite side of the railroad from the central business district, the fire and police stations and a large portion of the residential neighborhoods. Insofar as the commenter was expressing concern that poorly or inconveniently placed rail lines contribute to students/parents/teachers' difficulties in getting to and from school, then this portion of the comment will also be adopted.

Kansas DOT also suggests that traffic, delay, and congestion should be taken into account when measuring ''quality of life'' under subsection 262.9(d). FRA agrees that these are important quality of life factors. The definition of ''quality of life'' has been expanded in subsection 262.3 to include these factors.

North Carolina DOT suggests that safety, congestion and air quality should be taken into account when measuring ''quality of life'' under subsection 262.9(d). FRA agrees that these are important quality of life factors. The definition of ''quality of life'' has been expanded in subsection 262.3 to include these factors, with the exception of ''air quality'' which FRA believes is already adequately addressed in the ''environmental'' factor.

Several commenters (City of Sacramento DOT, Sacramento Regional Transit District, County of Sacramento, Sacramento Area Council of Governments, Capital Corridor Joint Powers Authority CA) requested that relocation, reconstruction or construction of passenger rail facilities or stations be specifically mentioned in the definition of an ''improvement'' in subsection 262.3. The statute's mandate is clear: The purpose of the capital grants program is for the ''improvement of the route or structure of a rail line.'' The statute also makes clear that one of the considerations in approval of a project is the ''effects of the rail line on the freight and passenger rail operations on the line.'' FRA believes that these mandates are broad enough to support consideration of passenger rail facilities or stations if they are a part of a project that meets all the criteria under subsections 262.7 and 262.9; therefore, FRA has determined that it is not necessary to add ''relocation, reconstruction or construction of passenger rail facilities or station'' to the definition of ''improvement'' under subsection 262.3.

One commenter (Kansas DOT) is concerned that the definition of ''allowable costs'' states that only construction costs are reimbursable and that KDOT believes that right of way and utility adjustment costs should also be valid reimbursable construction costs. FRA notes that the definition of construction costs specifically includes both of those costs under subsection 262.3 in the definition of ''construction,'' items (3) and (5). Subsections 20154(h)(1)(C) and (E) also specifically list right of way acquisition and utilities relocation.

Administrator

This definition makes clear that when the term ''Administrator'' is used in this Part, it refers to the Administrator of the Federal Railroad Administration. It also provides that the Administrator may delegate authority under this rule to other Federal Railroad Administration officials.

Allowable Costs

This definition makes clear that only costs classified as ''allowable'' will be reimbursable under a grant awarded under this Part. Specifically, construction costs are the only costs that are reimbursable.

Construction

This definition sets out the types of project costs that are contemplated as being reimbursable under this Part. Only these costs will be allowable under a grant from this program. This definition closely tracks 49 U.S.C. 20154(h)(1). Subsection 20154(h)(1)(F) gave the Secretary the authority to prescribe additional costs, other than those specifically listed in § 20154(h)(1), as allowable under this Part. As the authority to promulgate this rule has been delegated to FRA by the Secretary, subsection 262.3, in the definition of ''construction,'' item (6) makes clear that FRA has that authority to prescribe additional costs. In addition, item (6) also makes clear that architectural and engineering costs associated with the project as well as costs incurred in compliance with applicable environmental laws and regulations are considered construction costs, and will be allowable.

FRA

This definition makes clear that when the term ''FRA'' is used in this Part, it refers to the Federal Railroad Administration.

Improvement

The program established by the Act is intended to provide funds for both rail line relocation and improvement projects. This definition makes clear the types of projects that fall under the category of ''improvements.'' FRA

considers improvements to be projects such as those that repair defective aspects of a rail system's infrastructure, projects that enhance an existing system to provide for improved operations, or new construction projects that result in better operational efficiencies. Examples include track work that increases the class of track, signal system improvements, and lengthening existing sidings or building new sidings.

Non-Federal Share

This definition indicates that Non-Federal share means the portion of the allowable cost of the local rail line relocation or improvement project that is being paid for through cash or in-kind contributions by a State or other non-Federal entity. The definition has been revised in the final rule as explained above.

Private Entity

This definition makes clear what types of entities are contemplated under § 262.13. A private entity must be a nongovernmental entity, but can be a domestic or foreign entity and can be either for-profit or not-for-profit.

Project

This definition makes clear that the term ''project'' refers only to a local rail line relocation or improvement project undertaken with funding from a grant from FRA under this Part.

Quality of Life

FRA requested comments in the NPRM on what factors should be considered when measuring ''quality of life.'' The Act requires only that the definition include first responders' emergency response time, the environment, noise levels, and other factors as determined by FRA. Thus, Congress left FRA some discretion in determining what else should be considered under this definition. FRA believes ''quality of life'' should include factors associated with an individual's overall enjoyment of life or a community's ability both to function and to provide services to its residents at a reasonable level. Commenters were invited to discuss specific factors that can measure these somewhat amorphous concepts, as well as any other factors that may be appropriate. The definition has been revised in the final rule as discussed above.

Real Property

This definition makes clear that ''real property'' refers to land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Relocation

This definition states what relocation consists of and provides the distinction between the two types of rail line relocations. A lateral relocation occurs when a rail line is horizontally moved from one location to another, usually away from dense urban development, grade crossings, etc., in an effort to allow trains to operate more efficiently and the community surrounding the old line to function more effectively. The typical example is moving a rail line that runs through the middle of a town or city to a location outside of the town or city. A vertical relocation occurs when a rail line remains in the same location, but the track is lifted above the ground, as with an overpass, or is sunk below ground level, as with a trench.

Secretary

This definition makes clear that ''Secretary'' refers to the Secretary of Transportation.

State

This definition is reprinted from SAFETEA–LU and can be found at 49 U.S.C. 20154(h)(3). It makes clear that, for the purposes of this Part except for § 262.17, any of the fifty States, political subdivisions of the States, and the District of Columbia is a ''State'' and eligible for funding from this program. The definition also makes clear, however, that for purposes of § 262.17 only, ''State'' does not include political subdivisions of States, but instead only the fifty States and the District of Columbia.

Tangible Personal Property

This definition indicates that ''tangible personal property'' refers to property that has physical substance and can be touched, but is not real property. Examples of tangible personal property include machinery, equipment and vehicles.

Section 262.5 Allocation Requirements

This section is based on the language included in 49 U.S.C. 20154(d). It mandates that at least fifty percent of all grant funds awarded under this Part out of funds appropriated for a fiscal year be provided as grant awards of not more than $20,000,000 each. Designated, high-priority projects will be excluded from this allocation formula. The statute states that the $20,000,000 amount will be adjusted by the Secretary to reflect inflation for each fiscal year of the program beginning in FY 2007. Under the Secretary's delegation of rulemaking authority to FRA, however, FRA will make the annual inflationary adjustment. In making the adjustment for inflation, FRA will use guidance published by the Association of American Railroads (AAR). Specifically, FRA will use the materials and supplies component of the *AAR Railroad Cost Indexes.* FRA will make the adjustment each October based on the most recent edition of the *Cost Indexes.*

Several commenters (North Carolina Railroad Company, Sacramento Area Council of Governments) suggested that the requirements could be more clearly defined by FRA, specifically what type of projects will be considered high-priority, and therefore, excluded from the allocation formula. FRA did not include a definition of ''high priority projects,'' because Congress designates certain projects as ''high-priority'' when it determines that specific projects will be funded and appropriates funds for those particular projects through the appropriations process. Subsection 262.5 remains unchanged from the NPRM.

Section 262.7 Eligibility

This section is reprinted directly from SAFETEA–LU and can be found at 49 U.S.C. 20154(b). It sets out the eligibility criteria for projects and declares that any State (or political subdivision of a state) is eligible for a grant under this section for any construction project for the improvement of a route or structure of a rail line that either is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle, traffic flow, community quality of life, or economic development, or involves a lateral or vertical relocation of any portion of a rail line. As noted above, lateral relocation refers to horizontally moving the rail line to another location while vertical relocation refers to either lifting the rail line above the ground or sinking it below the ground. Subpart (b) of this section also makes clear that only costs associated with construction, as defined in this Part, will be allowable costs for purposes of this Part. Therefore, only construction costs will be eligible for reimbursement under a grant agreement administered under this Part.

One commenter (New York DOT) suggested that FRA clarify what, if any, retroactive expenses will be eligible for reimbursement through identification of a time frame or project start date that would vary with expense type. This section was taken verbatim from the statute and can be found at 49 U.S.C. 20154(b). The statute is clear that ''only costs associated with construction, as defined in this Part [subsection 20154(h)(1)] will be considered allowable costs for purposes of this Part [section 20154].'' FRA has determined

that identifying specific expenses, including retroactive expenses, runs counter to the purposes of the statute which ties allowable costs to ''costs associated with construction.'' FRA does not opine on whether specific expenses, including retroactive expenses might be ''allowable costs'' as contemplated under the statute. This determination is best left to the individual grant agreements on a case-by-case basis.

New York DOT also requests that FRA clarify whether public or private grade crossings will be eligible for the program. Although it was not exactly clear what kind of grade crossing the commenter was referring to, FRA assumes the comment refers to any grade crossing, public or private within the confines of an otherwise eligible project. The statute's mandate is clear: The purpose of the capital grants program is for the ''improvement of the route or structure of a rail line.'' The statute also states that one of the considerations in approval of a project is the ''effects of the rail line on the freight and passenger rail operations on the line.'' FRA has concluded that these mandates are broad enough to support consideration of grade crossings if they are a part of a project that meets all the criteria under subsections 262.7 and 262.9. It is not necessary to specifically refer to ''public or private grade crossings'' as a potentially eligible project under subsection 262.7

New York DOT also suggests that FRA define more specifically what costs would be eligible for reimbursement under subsection 262.7 and to clarify how those costs will be verified. The commenter suggests referencing 23 CFR 140, Subpart 1—Reimbursement for Railroad Work. FRA has reviewed the regulation cited by the commenter. These regulations address reimbursement to the States for railroad work on projects undertaken in accordance with the provisions of 23 CFR 646, subpart B, entitled, ''Railroad-Highway Projects.'' The purpose of this subpart is to prescribe policies and procedures for advancing federal-aid projects involving railroad facilities.

While somewhat similar in nature, there are marked differences in the purposes of the two programs. This program is being promulgated under 49 CFR 262 and is solely applicable to rail line relocations and/or improvements. The statute has set out what costs are to be allowable and these criteria will be incorporated into any grant agreement. While 23 CFR 140, Subpart 1 is helpful as a reference and reminder of the different costs associated with a project, FRA has determined that it will be more in keeping with the statutory directions to craft grant agreements that are specifically geared to the statutory criteria and the project being funded.

One commenter (Charlotte Area Transit System) wants to ensure that a rail line, even though it may be currently out-of-service, would potentially be eligible for the program. Specifically, the commenter proposes to revise ''mitigating adverse effects'' in subsection 262.7(a)(1) to ''mitigating current or anticipated adverse effects.'' Additionally the commenter proposes to add the following language to the end of subsection 262.7(a)(2): ''whether or not currently in use.'' Both of these subsections incorporate the statutory language and FRA cannot make changes to Congressional mandates where it has not been given discretion to do so. In the case of out-of-service rail lines, however, the current language of subsection 262.7 appears to be broad enough to support such a project if it meets other requirements of the program as set out in the statute and regulation. NC DOT offered a very similar concern requesting that the final rule authorize projects that make use of both active and out-of-service rail rights of way and programmed service expansions.

One commenter (Sacramento Regional Transit) wanted FRA to expand the eligibility of projects that can be funded under the program to include facilities that are already in use as passenger rail stations under subsection 262.7 In the case of facilities already in use as passenger rail stations, the current language of subsection 262.7 appears to be broad enough to support such a project if it meets the other requirements of the program as set out in the statute and regulation. Additionally, as previously discussed in the FRA response to comments under subsection 262.3, the statute's mandate is clear: The purpose of the capital grants program is for the ''improvement of the route or structure of a rail line.'' The statute also states that one of the considerations in approval of a project is the ''effects of the rail line on the freight and passenger rail operations on the line.'' FRA believes that these mandates are broad enough to support consideration of passenger rail facilities or stations if they are a part of a project that meets all the criteria under subsections 262.7 and 262.9. It is not necessary to specifically refer to ''facilities already in use as passenger rail stations'' as a potential ''improvement'' under subsection 262.3.

One commenter (Gateway Rural Improvement Pilot Association (VT)) criticized the exclusion of public authorities and special-purpose non-profit corporations as eligible applicants for the program. FRA again emphasizes that the eligibility criteria were established by Congress and the statutory language directed that only States or political subdivisions of States are eligible applicants. FRA cannot make changes to Congressional mandates where it has not been given discretion to do so.

One commenter (the National Capital Planning Commission) thought that subsection 262.7(b) should be clarified as it relates to NEPA requirements to state that only NEPA costs associated with construction of a particular project be considered ''allowable costs.'' FRA agrees that some clarification is needed in this regard and adopts NCPC's comment to include ''as defined in section 262.3'' in section 262.7(b), which now reads ''(b) Only costs associated with construction, as defined in § 262.3, will be considered allowable costs.'' This is the only revision made to subsection 262.7 from the NPRM.

Section 262.9 Criteria for Selection of Rail Lines

This section is based extensively on 49 U.S.C. 20154. It sets out the criteria for FRA to use in determining which projects should be approved for grants under this Part. The statute specifies that in determining whether to award a grant to an eligible State (as defined in this Part) under this section, the Secretary shall consider the following factors:

- The capability of the State (as defined in this part) to fund the project without Federal grant funding;
- The requirement and limitation relating to allocation of grant funds provided in § 262.5 of this Part;
- Equitable treatment of the various regions of the United States;
- The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce; and
- The effects of the rail line, relocated or improved as proposed, on the freight and rail passenger operations on the rail line.

Although the listed factors are fairly comprehensive, FRA sought to retain the flexibility to consider other factors that may not be readily apparent, but may be critical in evaluating the effectiveness of expending funds to achieve the expected benefits of a project. Accordingly, FRA included an additional ''catchall'' criterion in its NPRM subsection 262.9(f). This additional criterion would allow FRA to consider any other factors FRA determines to be relevant to assessing

the effectiveness and/or efficiency of the grant application in achieving the goals of the national program, including the level of commitment of non-Federal and/or private funds to a project and the anticipated public and private benefits.

FRA's NPRM solicited comments on this addition and any other potential factors that the FRA may consider in determining whether to award a grant.

The South Dakota Department of Transportation commented:

''We are not opposed to the FRA having some flexibility in weighing applications, but note that neither the statute not{r} the proposed rule includes a statement of the 'goals of the national program.' We are concerned that this approach implies that FRA could develop 'national' program goals on its own, with no notice and comment process, and then apply them in weighing the merits of applications. Because the NPRM does not identify the national goals that would receive weight under subsection (f) we cannot support the proposed additional language. Again, we are not against all flexibility for FRA but, with the exception of one factor, discussed below [the level of commitment of non-Federal and or private funds to a project] subsection (f) is too open-ended and vague to warrant our support.''

In response to comments received, FRA believes that additional clarification is needed regarding how it will select from eligible projects. FRA as well as the federal government, believes that one of the national goals is to select projects that are cost effective in that the benefits exceed the cost. States, the FRA and the federal government have an interest in maximizing the benefits derived from the investment of Federal, State, local or private funding in rail line relocation projects and in proposing and selecting projects that are cost effective in terms of the benefits achieved in relation to the funds expended. Statutory criteria in subsections 262.9(d) and (e) each require an assessment of the benefits to be derived from a project. The criterion in subsection 262.9(f) seeks to expand the universe of factors the FRA will consider in assessing effectiveness and efficiency of the project. To be clear, in evaluating applicant projects for funding, FRA will examine the evidence of the project's cost effectiveness. While we will consider all the statutory criteria in evaluating applications, we intend to approve only those projects where the benefits can reasonably be expected to exceed the costs. FRA will attempt to target funds to projects that produce the greatest net benefits.

Therefore, the rule language has been clarified to require applicants to submit evidence sufficient for the FRA to determine whether projects proposed for Federal investment are cost-effective in terms of the benefits achieved in relation to the funds expended. In addition, as provided for in subsection 262.11 a State must submit a description of the anticipated public and private benefits associated with each rail line relocation or improvement project described in subsections 262.7(a)(1) and (2) and the State's assessment of how those benefits outweigh the costs of the proposed project. The determination of such benefits should be developed in consultation with the owner and user of the rail line being relocated or improved or other private entity involved in the project. The State shall also identify any financial contributions or commitments it has secured from private entities that are expected to benefit from the proposed project. Project applications that include a realistic projection of and detailed analysis of the project's costs and benefits will be considered most favorably. The FRA does not intend to impose a rigid list of data elements that applicants could address in demonstrating cost effectiveness, and we will consider all relevant information, consistent with our statutory obligation. However, the following are among the considerations that might be relevant factors.

- Vehicle counts at highway crossings; distinguishing among passenger, heavy truck, emergency, etc., vehicles would strengthen an application.
- Pedestrian counts.
- Trains per day (passenger and freight). Average train length and for freights the frequency of hazmat in train consists.
- Train horn frequency (passenger and freight). Average number (and volume) of train horns daily near populated areas that a relocation or improvement project could potentially reduce.
- Class of track under FRA's track safety standards for both the existing and the proposed relocated rail line.
- Average train speeds (passenger and freight) and length of time any crossing is blocked.
- Proximity of switching yards to a crossing and length of time any crossing is blocked by freight switching moves.
- Movement of emergency vehicles through a crossing and distance of the crossing from a hospital, nursing home, fire station, military base, power plant, school or similar facility where time lost waiting for a crossing to clear could contribute to injury or death.
- Relocation/closing of a grade crossing so that volunteer firefighters can travel more quickly from their office/home to the fire station, potentially resulting in better time to emergency calls.
- Number of crossings in a particular community/segment and the impact of frequent crossings on a community (e.g., traffic congestion, train whistles/horns).
- Amount of railroad-owned land in a town/city/political jurisdiction that might be abandoned, leading to the loss of property tax receipts, resulting from a relocation.
- With respect to local industries served by the line proposed for relocation, identify transport alternatives that would be available if the relocation is approved; identify industries that would be newly served by the relocated rail line; and identify economic impacts on the community from the project such as jobs created/lost, tax revenues, etc.
- Documented incursions of vehicles on to rail right-of-way. Number of accidents per year, severity (fatalities), dollar value (current dollars) of each accident, and any findings of fault by police, railroads, FRA, National Transportation Safety Board.
- Any pertinent information taken from FRA's on-line safety data base *www.fra.gov/safetydata.* (e.g., number of grade crossing or trespasser accidents/incidents, injuries, fatalities, ranking in the FRA Highway Rail Grade Crossing Web Accident Prediction System.)
- Environmental impacts from the existing rail line (noise, vibration, air pollution) that would be eliminated by the relocation; environmental impacts from the relocated rail line (positive and negative).

As noted above, this list presents examples of the types of data that would support an assessment of cost effectiveness, but is not all inclusive. FRA invites applicants to submit analysis of alternate or additional data, appropriate to the specific project under consideration for funding.

One commenter (North Carolina Railroad Company) indicated that while it agreed with the FRA that the criteria for selection in subsection 262.9 should ensure equitable treatment of various regions of the United States, it suggested that FRA clarify how high priority projects (see subsection 262.5) will be recognized within those regions. It is the agency's view that the presence of designated high priority projects in a particular region of the country would be a factor to be considered by FRA in evaluating whether to award a grant to another project in that same area of the country as the agency seeks to ensure

equitable treatment of various regions of the United States.

North Carolina Railroad Company additionally requests that FRA clarify the language, ''the capability of the State to fund the rail line relocation without Federal grant requirement'' criterion under subsection 262.9(a). Specifically, the commenter questions whether the above criterion means that FRA will provide greater support to poorer States, to States with larger projects that are more difficult to fund, or to States that have or are likely to have significant matching funds from non-Federal entities. The language found in subsection 262.9(a) tracks the statutory language as set out in 49 U.S.C. 20154(c)(1), which reads: ''[t]he capability of a State to fund the rail line relocation project without Federal grant funding.'' This factor as set out in the statute is one of five criteria that FRA must consider and was not assigned any greater weight than any of the other four factors. Congress' inclusion of this factor does suggest to the FRA that the rail line relocation and improvement program should not be used to fund a project that the State is fully capable of funding on its own. FRA included a discussion of some of the considerations that might be relevant to the agency in evaluating this factor in the NPRM section-by-section discussion related to this section. On the other hand, a State or other non-Federal entity is required to provide at least 10 percent of the shared costs of a project funded under this program. Logically, the program can support more improvements to the extent that States or other non-Federal entities cover a percentage of the shared costs that is in excess of 10% and this would be relevant to the agency in evaluating the proposed projects.

One commenter (South Dakota DOT) is concerned that FRA's intention to divide the country along the lines of FRA's eight regions in interpreting the language in subsection 262.9(c) may put rural areas at a disadvantage. South Dakota DOT wants FRA to add ''including equitable treatment of rural and metropolitan areas'' to the end of the subsection. The language found in subsection 262.9(c) tracks the statutory language as set out in 49 U.S.C. 20154(c)(3), which reads: ''[e]quitable treatment of the various regions of the United States.'' This factor as set out in the statute is one of five criteria that FRA must consider and there is no indication that it is to have any greater weight than any of the other four factors. Whether the consideration of this factor along with the other four factors as set out by Congress will disadvantage (or advantage) ''rural areas'' would have to be evaluated on a case-by-case basis. FRA does not have the discretion to change the language set out in the statute. At this point, FRA does not believe that its intention to use the agency's current regional breakdown will have an adverse impact on rural or metropolitan areas. FRA did not receive any suggestions for alternative ways of dividing up the country. The Idaho Transportation Department and the Spokane Regional Transportation Council urged their support for subsection 262.9(c) as drafted.

South Dakota DOT raises a concern about the interplay between subsections 262.9(a) and (f). While it recognizes the statutory basis for subsection 262.9(a), it is concerned that FRA's addition of the non-statutory language in subsection 262.9(f), and specifically the language relating to the level of commitment of non-Federal or private sector funds to a project, may potentially disadvantage those most in need of federal assistance as they would be least able to make a commitment to the project beyond the minimum required match. FRA notes that this is but one of six factors that must be evaluated before deciding whether to approve funding for a particular project. FRA included this language for several reasons.

First, the statute clearly indicates that the required non-Federal match is not set at a certain percentage as it is with some other funding programs but provides for FRA to secure *at least* 10 percent from non-Federal sources. This suggests to the agency a goal of achieving the maximum benefit from the available Federal funds. Second, the statute requires the Secretary to consider the feasibility of seeking financial contributions or commitments from private entities involved with a project in proportion to the expected benefits to such private entities. Again, this requirement reinforces the concept of securing the maximum public benefit from the program funds. Leveraging the Federal funds along with state, local and private funds can produce the most benefit for Federal dollar expended.

Several commenters (City of Sacramento DOT, Sacramento Regional Transit, County of Sacramento, Sacramento Area Council of Governments) wanted ''security risks'' or ''Homeland Security risks'' to be set forth in the selection criteria under subsection 262.9. FRA agrees that ''security risks'' or ''Homeland Security risks'' are important factors that may be relevant in assessing the effectiveness or efficiency of a grant application. However, these particular considerations are only two among the ''other factors'' that FRA may consider under subsection 262.9(f). Five of the six criteria in section 262, specifically subsections 262.9(a)–262.9(e) were mandated in the statute.

Sacramento Regional Transit also wanted FRA to provide explicit scoring of project criteria, particularly giving highest priority to community benefit and quality of life. FRA, as discussed in some of the previous comments, has determined that the statute does not provide for giving one criterion more weight than another. Similarly, because the NPRM did not identify what FRA would consider a ''good'' project, New York State DOT suggests that FRA provide additional detail on project preferences to guide project development and submittals. As the previous discussion under this subsection has highlighted, FRA does not have a preconceived notion of what constitutes a good project. The agency intends to fairly and consistently apply the selection criteria included in subsection 262.9 in determining whether to award a grant to an eligible State under this program.

One commenter (the Gateway Rural Improvement Pilot Association (VT)) recommended that FRA consider the following factors in identifying eligible projects: (1) The potential of a project to share the load for both freight and passengers in a corridor where rail lines run parallel to the route of a National Highway System in an area not served by an interstate highway; (2) the potential to address two or more projects within a single corridor; and (3) the potential of a project to support economic development and urban revitalization efforts. FRA agrees that the three factors suggested by this commenter are important factors that may be relevant in assessing the effectiveness or efficiency of a grant application. However, these factors should also be considered as one (or more) among the ''other factors'' that FRA may consider under subsection 262.9(f). The likelihood that some projects will offer public benefits not specifically foreseen by Congress or the agency underscores the importance of including subsection 262.9(f). Five of the other six criteria, specifically subsections 262.9(a)–(e) were mandated in the statute.

Section 262.11 Application Process

All grant applications submitted under this program must be submitted to FRA through the Internet at *http://www.grants.gov.* All Federal grant-making agencies are required to receive applications through this website. Potential applicants should note that the information below describes FRA's

typical grant application requirements. However, the specific requirements for individual grants will be listed in the ''Instructions'' section for the particular grant for which FRA is accepting applications.

The application process for funds appropriated under § 20154 will differ depending on whether the grant is non-competitive or discretionary (competitive). Non-competitive applications—usually projects designated as high-priority in the appropriations statute or in the Conference Report accompanying an annual appropriation—generally must include the following: (1) A detailed project description; (2) Standard Forms (SF) 424—Application; SF 424A or C—Budget Information; SF 424B or D—Assurances; Assurances and Certifications (i.e., Certification Regarding Debarment/Suspension/Ineligibility, Certification Regarding Drug-free Work Place Requirements; Certification Regarding Lobbying, Certificate of Indirect Costs); SF 3881—Payment Information; SF 1194—Authorized Signatures; and (3) an Audit History. Potential applicants should keep in mind that these are the typical forms that FRA requests with non-competitive applicants. FRA may not require all of these for a particular application.

For a discretionary (competitive) grant, applicants will be provided with certain basic information covering deadlines and addresses for submitting statements of interest, and an estimate of the amount of funding available. FRA had indicated in the preamble to the NPRM that FRA's staff would develop a Source Selection Plan (SSP) to be used for evaluating applications and that the SSP would be made available to all applicants. This process was described only in the preamble and was not included as a part of the proposed rule. The agency has now concluded that it is not needed and is not included in the final rule. The agency will make project selections on the basis of the criteria described in the final rule. Applicants selected for funding will then be required to submit some of the same information described above for the non-competitive projects (i.e., standard forms, audit history, etc.).

All applicants should keep in mind that no funding will be available for this program unless and until Congress appropriates funding for it. SAFETEA–LU authorized, but did not appropriate, $350 million per fiscal year for each fiscal year 2006 through 2009. As of the publication date of this final rule, Congress has not appropriated any funds for fiscal years 2006 or 2007 and has appropriated $20,040,200 for fiscal year 2008. As Congress has appropriated both competitive and non-competitive funds for specific projects under this Program, FRA will notify the potential recipient(s) of the non-competitive funds and will disburse the funds as soon as this final rule is effective. With respect to the competitive funds, FRA will publish a Notice of Funds Availability (NOFA) in the **Federal Register** and eligible applicants will be able to apply for a grant through *www.grants.gov.* FRA anticipates that the NOFA will simply indicate the amount of funds appropriated by Congress and basic information about the application deadlines for applying through *www.grants.gov.*

Subsection 262.11(b) mandates that, when submitting an application, a State must submit a description of the anticipated public and private benefits associated with each proposed rail line relocation or improvement project and its assessment of how those benefits outweigh the costs of the proposed project. The determination of the benefits must be developed in consultation with the owner and user of the rail line being relocated and improved or other private entity involved in the project. Since one of the factors that FRA will consider in selecting projects is the level of commitment of non-Federal and/or private funds available for the project (see proposed section subsection 262.9(f)), applications should also identify the financial contributions or commitments the State has secured from any private entities that are expected to benefit from the proposed project. The language for this subsection is based upon SAFETEA–LU requirements and can be found at 49 U.S.C. 20154(e)(4)(A) and (B).

Subsection 262.11(c) allows for a potential applicant to request a meeting with the FRA Associate Administrator for Railroad Development or his designee to discuss a project the potential applicant is considering for financial assistance under this Part. Subsection 262.11(c) does not require that such a meeting occur, but it has been FRA's experience that pre-application meetings generally save the potential applicant both time and money, and, therefore, FRA strongly encourages potential applicants to schedule such a meeting.

One commenter (New York DOT) suggests that FRA clarify whether an application must be filed by a state DOT. The eligible applicants are ''States, including political subdivisions of a State as defined in subsection 20154(h)(3).'' There is no requirement that applicants are limited to state Departments of Transportation. This same commenter also suggests that FRA address whether and how cost changes will be addressed. Cost changes can occur in any project and the typical grant process allows for them as long as the cost changes meet the specific criteria set out in the typical grant application and administration. The Web site, *www.grants.gov* provides general information. Specific information will be set out in each individual grant agreement.

Section 262.13 Matching Requirements

This section is reprinted entirely from SAFETEA–LU and can be found at 49 U.S.C. 20154(e). It sets out the requirement that a State or other non-Federal entity shall pay at least ten (10) percent of the shared costs of a project that is funded in part by a grant awarded under this Part. The ten percent may be in cash or in the form of the following in-kind contributions:

- Real property or tangible personal property, whether provided by the State (as defined by this Part) or a person for the State;
- The services of employees of the State or other non-Federal entity, calculated on the basis of costs incurred by the State or other non-Federal entity for the pay and benefits of the employees, but excluding overhead and general administrative costs;
- A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made to comply with a provision of a statute required to be satisfied in order to carry out the project.

Finally, this section states that FRA will consider the feasibility of seeking financial contributions or commitments from private entities involved with the project in proportion to the anticipated public and private benefits that accrue to such entities from the project.

FRA's NPRM invited comments and suggestions from commenters on how FRA can best accomplish this requirement. Because project sponsors are most directly involved and familiar with the details of the proposed projects and are required to submit a description of the anticipated public and private benefits associated with each rail line relocation or improvement project as a part of the application process, the requirement to seek financial contributions or commitments from

private entities might best be accomplished by the project sponsors in assembling the overall financial package to complete the project. This could then be one of the factors evaluated by the FRA in deciding whether to proceed with a project or in selecting one project over another should there be more than one project competing for any available funding.

Several commenters (City of Sacramento DOT, Sacramento Regional Transit, County of Sacramento, Sacramento Area Council of Governments) wanted FRA to clarify whether non-Federal matches in excess of 10% will be ''rewarded'' in the selection criteria. Non-federal matches in excess of the 10% requirement will be evaluated on a case-by-case basis. As for the concept of being ''rewarded,'' the matching percentage is one of many variables that might have an effect on a particular application. FRA does not, at this time, plan to give an across-the-board advantage. Each application will judged on the entire spectrum of factors and criteria.

One commenter (the Gateway Rural Improvement Pilot Association (VT)) wanted FRA to establish a provision similar to the ''Tapered Match'' allowed under FHWA's Innovative Finance program by which projects can provide their matching share at any point during the project. As a side note, GRIP was concerned that FRA recognize the contribution of costs incurred prior to the FRA grant under subsection 262.13 and the time pressures faced by the applicants. There is currently no language in either the statute or Part 262 that calls for the match to be made by a certain time and FRA will consider these issues in evaluating individual applications.

Section 262.15 Environmental Assessment

This section clearly states that, in order for FRA to award funding for any project, the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA) and related laws, regulations and orders must be complied with. NEPA mandates that before any ''major'' Federal action can take place, the Federal entity performing the action must complete an appropriate environmental review. The use of Federal funds in a project triggers the NEPA process. Thus, because FRA will be providing Federal funds to grantees for local rail line relocation and improvement projects, a completed NEPA review will be required before the agency decides to approve any project. FRA may request that a State provide environmental information and/or fund the NEPA review, either directly (if the entity administering the grant is a State agency with statewide jurisdiction) or through a third party contract. FRA's NEPA compliance will be governed by FRA's ''Procedures for Considering Environmental Impacts'' (65 Fed. Reg. 28545) and the NEPA regulations of the Council on Environmental Quality (40 CFR Part 1500).

This section also notes several of the other environmental and historic preservation statutes that must be considered during the NEPA review. This is not, however, a comprehensive list of all environmental and historic preservation statutes and implementing regulations that must be considered, but instead merely illustrative of the issues that a State may be required to address in the environmental review.

Several commenters (City of Marceline, MO, American Public Transportation Association) commented that it may be unnecessarily restrictive to require that NEPA review be complete before FRA decides to approve the project for funding. The commenter suggested incrementally approving funding for the preliminary engineering and environmental compliance and then fully funding a project after these steps are completed and approved. Additionally, the commenter suggested that FRA provide grants that assist in the project development process, including the NEPA process.

Another commenter (the National Capital Planning Commission) wanted subsection 262.15 to include a requirement that environmental and historic documents be completed and approved by the Administrator prior to a decision by FRA to approve a project for physical construction. As FRA understands it, the commenters want the environmental assessment costs to be eligible costs before a decision is made as to whether FRA will approve actual physical construction funding for a particular project.

FRA believes that some of the confusion arose from including NEPA work in the definition of construction in subsection 262.3 and then stating in subsection 262.15 that FRA will not fund any construction until the NEPA work is completed. FRA understands that NEPA work is more properly classified as pre-construction work. Thus, the NPRM suggested that the project proponent must fund NEPA work up front and then FRA will reimburse the proponent if FRA decides to go forward with construction on the project.

FRA understands that this is a risky approach for the proponent especially if the proponent is unsure how many applications FRA has received or how their project might fit in competition with others (although the risk might be minimized if the applicants paid for the compliance work themselves and applied this cost to the 10% matching requirement if a grant is awarded). NCPC's suggestion is to clearly tie subsection 262.7(b) back to the definition of construction in subsection 262.3 to be sure NEPA costs are included (which FRA has agreed to as explained earlier) and to revise subsection 262.15 to limit the need to secure the Administrator's approval to actual physical construction with the implicit assumption that NEPA work that the statute (and FRA's implementing regulations) call ''construction'' could proceed and be reimbursed in advance of final NEPA approval. An alternative approach that FRA believes is an easier solution is to clarify in the relevant subsection(s) that FRA will in appropriate circumstances pay for NEPA work in advance of a decision to actually construct a project but with the caveat that FRA's decision to fund NEPA work does not guarantee or express any FRA decision with respect to the project generally.

Section 262.17 Combining Grant Awards

This section is reprinted entirely from SAFETEA–LU and can be found at 49 U.S.C. 20154(f). It allows for two or more States, but not political subdivisions of States, pursuant to an agreement entered into by the States, to combine any part of the amounts provided through grants for a project under this Part, provided the project will benefit each State and the agreement is not a violation of a law of any of the States. SAFETEA–LU specifically excludes political subdivisions of States from taking advantage of this section, but does not exclude the District of Columbia. FRA did not receive any substantive comments or suggested revisions to this section though the Idaho Transportation Department and the Spokane Regional Transportation Council urged FRA to maintain this subsection as drafted. Subsection 262.17 remains unchanged from the NPRM.

Section 262.19 Closeout Procedures

The ''grant closeout'' is the process by which the FRA and grantee perform final actions that document completion of work, administrative requirements, and financial requirements of the grant agreement. FRA, the grantee, and any other involved parties, such as an auditor, need to fulfill these

requirements promptly in order to avoid unnecessary delays in grant closeout.

FRA will notify the grantee in writing 30 days before the end of the grant period regarding what final reports are due, the dates by which they must be received, and where they must be submitted. The grantee will be required to submit the reports within 90 days after the expiration or termination of the grant. Copies of any required forms and instructions for their completion will be included with the notification. The financial, performance, and other reports required as a condition of the grant will generally include the following:

- Final performance or progress report;
- Financial Status Report (SF–269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271);
- Final Request for Payment;
- Federally-owned Property Report. A grantee must submit an inventory of all Federally-owned property (as opposed to property acquired with grant funds) for which it is accountable and request disposition instructions from FRA if the property is no longer needed.

Upon receipt of this information, FRA will determine whether any additional funds are due the grantee or whether the grantee needs to refund any funds. FRA will also determine final costs and, if necessary, make upward or downward adjustments to any allowable costs within 90 days after receipt of reports and make prompt payment to the grantee for any unreimbursed allowable costs. If the grantee has received more funds than the total allowable costs, the grantee must immediately refund to FRA any balance of unencumbered cash advanced that is not authorized to be retained for use on other grants.

FRA will notify the grantee in writing that the grant has been closed out. The grant agreement will in most cases be ready to be closed out before receipt of the single audit report that covers the period of the grant performance. Therefore, the grant will be closed administratively without formal audit. The grant may be reopened later to resolve subsequent audit findings.

The closeout of a grant does not affect FRA's right to disallow costs and recover funds on the basis of a later audit or other review and the grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

FRA did not receive any comments on this section and it remains unchanged from the NPRM.

IV. Regulatory Impact

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking action is economically significant for purposes of review under U.S. Department of Transportation regulatory policies and procedures. However, it is not economically significant under E.O. 12866 and has not been submitted for OMB review.

This section summarizes the estimated economic impact of the rule. As mandated by 49 U.S.C. 20154, this rulemaking establishes the process for applying for capital grants for local rail line relocation and improvement projects. This regulation will affect only those entities that voluntarily elect to apply for the capital grants under section 20154 and those that are selected to receive a grant under the program. It will not impose any direct, involuntary, un-reimbursed costs on those entities not applying for the program. Prospective applicants will normally already have available the information needed to prepare applications for funding so these costs should be minimal.

FRA has prepared a final evaluation of the economic impact of this regulatory action. A copy of this document has been placed in the docket for this rulemaking. As noted in the NPRM, the only costs imposed on the participants (States and political subdivisions) are the costs associated with completing an application and providing the required minimum ten percent non-Federal funding match and these are the costs that FRA has considered in the evaluation of economic impact.

In the NPRM, FRA requested comments, information, and data from the public and potential users concerning the economic impact of implementing this rule. Among the 28 comments received in response to the NPRM, FRA received no direct comments about the costs of the application process. Commenters did express concern about the need to provide preliminary engineering and environmental compliance documentation before FRA decides to approve a project for funding. The final rule adds options for funding these compliance tasks. Whether or not applicants pay for these costs or are reimbursed by FRA, from a national point of view real resources will be expended for performing these tasks. The NPRM regulatory evaluation accounted for these costs and they remain unchanged in the final regulatory evaluation. Note that the burden of funding these compliance tasks would be reduced for those applicants that are reimbursed under the new options in the final rule in subsection 262.15.

FRA estimates that implementation of the application requirements contained in this rule could cost approximately $714,261 (PV, 7%), if funds are appropriated for this program and government jurisdictions apply for grants. FRA believes that these application costs would be justified by the benefits associated with better allocation of grant funds to improve safety and quality of life.

This rule is not anticipated to adversely affect, in a material way, any sector of the economy. This rulemaking sets forth eligibility and selection criteria for project proposals in the local rail line relocation and improvement projects capital grants program, which will result in only minimal cost to program applicants. In addition, this rule would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601–612) requires a review of rules to assess their impact on small entities. In the NPRM, FRA was unable to determine whether the rule was expected to have significant economic impact on a substantial number of small entities because no funds were appropriated to the program and FRA was unable to determine what projects would be funded. In response to the NPRM, the Small Business Administration (SBA) communicated to the FRA that it needed to certify the rule as not having a significant economic impact on a substantial number of small entities, or prepare a Regulatory Flexibility Analysis (RFA). FRA has revised the regulatory flexibility determination and certifies that the final rule is not expected to have a significant economic impact on a substantial number of small entities. For this rule, the relevant definition of small entities is based on population served. As defined by the SBA, this term means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. States are not included in the definition of small entity set forth in 5 U.S.C. 601, but political subdivisions of States may well fall into this category. Out of 28 entities that expressed interest in the grant program as indicated by

comments to the docket, two were small entities. Only one small entity, the City of Marceline, MO, expressed concern regarding the impact of the application requirements. Given the fact that Congress appropriated no funding for the program in FY 2006 and FY 2007, FRA is unsure how many additional small entities might potentially apply. FRA notes that both of the small entities that did comment are working with larger governmental units or States serving populations larger than 50,000. Given these working relationships, FRA believes that is reasonable that a larger governmental unit or State would provide assistance or other resources in applying for the grants.

FRA notes that of the $20,040,200 (of the $350 million authorized) that was appropriated in FY 2008, $5,135,200 consists of non-competitive (non-discretionary) grants. Nine separate projects were identified in the Conference Report accompanying the Transportation, Housing and Urban Development and Related Agencies Appropriations Act, 2008, included as Division K of the Consolidated Appropriations Act, 2008 (Pub. L. No. 101–161). Of the nine projects identified, three of the communities are considered small entities: The cities of Pierre, SD, population 14,095, Barron, WI, population 3,162 and Adams County, CO, population 47,475. The city of Terre Haute, IN, population of 56,893 exceeds the small governmental threshold, but is near it. Similar to the small entities that commented, these two cities and one county would in all likelihood be working with larger governmental units or States serving populations larger than 50,000.

The new funding options in subsection 262.15 (discussed above) for preliminary engineering and environmental compliance potentially reduce the burden for these tasks on small entities as they may receive grant money for these tasks, if approved. The number of small entities that commented is relatively small, and FRA recognizes that there is likely to be additional interest now that funds have been appropriated to the program. The group of entities that provided comments includes several States that expressed support for the small jurisdictions they govern. These comments indicate that the State would assist with the grant application, reducing the rule's impact on small entities. Other provisions of the rule also mitigate the rule's impact on all entities, including small entities. One of these provisions is permitting the grant applicant to request a meeting with the FRA Associate Administrator for Railroad Development (or his/her designee), thus facilitating the application process. It should also be noted that participation in the local rail line relocation and improvement projects capital grants program is voluntary. The statute requires a State or other non-Federal entity to provide at least ten percent of the shared cost of a project funded under this program. To the extent a small entity was providing that non-Federal share, the impact would be considered by the small entity in deciding whether to file an application under the program.

FRA views it as unlikely that a small entity such as a local government would be disproportionately impacted by the rule. The capital grants for the rail line relocation and improvement program could certainly provide benefits to small entities, such as local governments (political subdivisions of a State). The program could provide economic, safety, and environmental benefits if funding for projects is approved. A copy of the complete Regulatory Flexibility Assessment has been placed in the docket for this rulemaking.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) addresses the collection of information by the Federal government from individuals, small businesses and State and local governments and seeks to minimize the burdens such information collection requirements might impose. A collection of information includes providing answers to identical questions posed to, or identical reporting or record-keeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States. This final rule contains information requirements that would apply to States or political subdivisions of States that file applications for Federal funding for local rail line relocation and improvement projects.

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section—49	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
262.11—Application Process	50 States	18 applications	580 hours/290 hours	7,830	[1] $0
—Requests for Meeting with FRA	50 States	5 requests	30 minutes	3	129
—Meeting Discussions	50 States	5 meetings	2 hours	10	730
262.15—Environmental Assessment	50 States	18 documents	200 hours	3,600	158,760
—Consultations with FRA before a State begins environmental or historic preservation analysis.	50 States	9 consultation	2 hours	18	1,314
262.17—Combining Grant Awards	50 States	1 agreement	10 hours	10	730
262.19—Close-Out Procedures	50 States	18 documents	6 hours	108	4,644
—Inspection of All Construction Report	50 States	18 reports	80 hours	1,440	105,120

[1] Cost incl. in RIA.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, attn: FRA Desk Officer. Comments may also be sent to the Office of Information and Regulatory Affairs (OIRA) at OMB via e-mail at the following address: *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full

effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA) and related directives (*see* FRA Policy Statement on Procedures for Considering Environmental Impacts, 64 Fed.Reg. 28545). FRA has concluded that the issuance of this final rule, which establishes regulations governing the awarding of grants for local rail line relocation and improvement projects, does not have a potential impact on the environment and does not constitute a major Federal action requiring an environmental assessment or environmental impact statement. Because all projects undertaken with grants administered under this section will involve Federal funding, appropriate NEPA analyses, including studies of any potential environmental justice issues, will be undertaken in connection with individual project approvals.

E. Federalism Implications

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 42355. This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This final rule will not have federalism implications that impose any direct compliance costs on state and local governments. There will be costs associated with the submission of applications, but they are discretionary and will only be incurred should a state or local government wish to apply for funding. Otherwise, this final rule directs how Federal funds will go to the States, and thus, there are no federalism implications.

F. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on state, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $132,300,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on state, local, and tribal governments and the private sector.

There are no ''regulatory actions'' contemplated within the meaning of the Unfunded Mandates Reform Act of 1995. One of the purposes of the Unfunded Mandates Reform Act of 1995 is ''to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding[.]'' 2 U.S.C. 1501(2). The statute which authorizes this grant program does not fall into the category of an unfunded mandate because it does not contain any mandates (applicants freely choose whether to apply for grants) nor is the statute ''legislation containing significant Federal intergovernmental mandates without providing adequate funding to comply with such mandates[.]'' 2 U.S.C. 1501(6); 49 CFR 20154. If Congress does not appropriate funds for the program, then no grants will be made. If Congress does appropriate funds, as it has for FY 2008, then grant applications will be requested and presumably grant monies will be disbursed.

The only requirements in this final rule for funding other than grant funds provided to state and local governments is the ten percent matching requirement. That requirement, however, is specifically set forth in § 9002 of SAFETEA–LU and FRA need not assess its effect. This final rule, therefore, will not result in the expenditure by state, local, or tribal governments, in the aggregate, of $132,300,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' See 66 FR 28355 (May 22, 2001). Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule is not a ''significant energy action'' within the meaning of the Executive Order.

H. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html*.

List of Subjects in 49 CFR Part 262

Grants and rail line relocation and improvement projects.

V. The Final Rule

■ For the reasons discussed in the preamble, the Federal Railroad Administration is adding Part 262 to Title 49, Code of Federal Regulations to read, as follows:

PART 262—IMPLEMENTATION OF PROGRAM FOR CAPITAL GRANTS FOR RAIL LINE RELOCATION AND IMPROVEMENT PROJECTS

Table of Contents for Part 262

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262.3 Definitions.
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262.15 Environmental assessment.
262.17 Combining grant awards.
262.19 Close-out procedures.

Authority: 49 U.S.C. 20154 and 49 CFR 1.49.

§ 262.1 Purpose.

The purpose of this part is to carry out the statutory mandate set forth in 49 U.S.C. 20154 requiring the Secretary of Transportation to promulgate regulations implementing a capital grants program to provide financial assistance for local rail line relocation and improvement projects.

§ 262.3 Definitions.

Administrator means the Federal Railroad Administrator, or his or her delegate.

Allowable Costs means those project costs for which Federal funding may be expended under this part. Only construction and construction-related costs will be allowable.

Construction means supervising, inspecting, demolition, actually building, and incurring all costs incidental to building a project described in § 262.9 of this part, including bond costs and other costs related to the issuance of bonds or other debt financing instruments and costs incurred by the Grantee in performing project related audits, and includes:

(1) Locating, surveying, and mapping;

(2) Track and related structure installation, restoration, and rehabilitation;

(3) Acquisition of rights-of-way;

(4) Relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(5) Elimination of obstacles and relocation of utilities; and

(6) Any other activities as defined by FRA, including architectural and engineering costs, and costs associated with compliance with the National Environmental Policy Act, National Historic Preservation Act, and related statutes, regulations, and orders.

FRA means the Federal Railroad Administration.

Improvement means repair or enhancement to existing rail infrastructure, or construction of new rail infrastructure, that results in improvements to the efficiency of the rail system and the safety of those affected by the system.

Non-Federal Share means the portion of the allowable cost of the local rail line relocation or improvement project that is being paid for through cash or in-kind contributions by a State or other non-Federal entity or any combination thereof.

Private Entity means any domestic or foreign nongovernmental for-profit or not-for-profit organization.

Project means the local rail line relocation or improvement for which a grant is requested under this section.

Quality of Life means the level of social, environmental and economic satisfaction and well being a community experiences, and includes factors such as first responders' emergency response time, impact on emergency services, accessibility to the disabled as required under the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973 (as amended), school access, safety, traffic delay and congestion, the environment, grade crossing safety, and noise levels.

Real Property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Relocation means moving a rail line vertically or laterally to a new location. Vertical relocation refers to raising above the current ground level or sinking below the current ground level a rail line. Lateral relocation refers to moving a rail line horizontally to a new location.

Secretary means the Secretary of Transportation.

State except as used in § 262.17, means any of the fifty United States, a political subdivision of a State, and the District of Columbia. In § 262.17, *State* means any of the fifty United States and the District of Columbia.

Tangible personal property means property, other than real property, that has a physical existence and an intrinsic value, including machinery, equipment and vehicles.

§ 262.5 Allocation requirements.

At least fifty percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each. Designated, high-priority projects will be excluded from this allocation formula. FRA will adjust the $20,000,000 amount to reflect inflation for fiscal years beginning after fiscal year 2006 based on the materials and supplies component from the all-inclusive index of the *AAR Railroad Cost Indexes.*

§ 262.7 Eligibility.

(a) A State is eligible for a grant from FRA under this section for any construction project for the improvement of the route or structure of a rail line that either:

(1) Is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development; or

(2) Involves a lateral or vertical relocation of any portion of the rail line.

(b) Only costs associated with construction as defined in § 262.3 will be considered allowable costs.

§ 262.9 Criteria for selection of projects.

Applicants must submit evidence sufficient for the FRA to determine whether projects proposed for Federal investment are cost-effective in terms of the benefits achieved in relation to the funds expended. To that end, the FRA will consider the anticipated public and private benefits associated with each rail line relocation or improvement project. In evaluating applications, FRA will consider the following factors in determining whether to grant an award to a State under this part.

(a) The capability of the State to fund the rail line relocation project without Federal grant funding;

(b) The requirement and limitation relating to allocation of grant funds provided in § 262.5;

(c) Equitable treatment of various regions of the United States;

(d) The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce;

(e) The effects of the rail line, relocated as proposed, on the freight rail and passenger rail operations on the line;

(f) Any other factors FRA determines to be relevant to assessing the effectiveness and/or efficiency of the grant application in achieving the goals of the national program, including the level of commitment of non-Federal and/or private funds to a project and the anticipated public and private benefits.

§ 262.11 Application process.

(a) All grant applications for opportunities funded under this subsection must be submitted to FRA through *www.grants.gov.* Opportunities to apply will be posted by FRA on *www.grants.gov* only after funds have

been appropriated for Capital Grants for Rail Line Relocation Projects. The electronic posting will contain all of the information needed to apply for the grant, including required supporting documentation.

(b) In addition to the information required with an individual application, a State must submit a description of the anticipated public and private benefits associated with each rail line relocation or improvement project described in § 262.7(a)(1) and (2) and the State's assessment of how those benefits outweigh the costs of the proposed project. The determination of such benefits shall be developed in consultation with the owner and user of the rail line being relocated or improved or other private entity involved in the project. The State should also identify any financial contributions or commitments it has secured from private entities that are expected to benefit from the proposed project.

(c) Potential applicants may request a meeting with the FRA Associate Administrator for Railroad Development or his designee to discuss the nature of the project being considered.

§ 262.13 Matching requirements.

(a) A State or other non-Federal entity shall pay at least ten percent of the construction costs of a project that is funded in part by the grant awarded under this section.

(b) The non-Federal share required by paragraph (a) of this section may be paid in cash or in-kind. In-kind contributions that are permitted to be counted under this section are as follows:

(1) A contribution of real property or tangible personal property (whether provided by the State or a person for the state) needed for the project;

(2) A contribution of the services of employees of the State or other non-Federal entity or allowable costs, calculated on the basis of costs incurred by the State or other non-Federal entity for the pay and benefits of the employees, but excluding overhead and general administrative costs;

(3) A payment of any allowable costs that were incurred for the project before the filing of an application for a grant for the project under this part, and any in-kind contributions that were made for the project before the filing of the application; if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

(c) In determining whether to approve an application, FRA will consider the feasibility of seeking financial contributions or commitments from private entities involved with the project in proportion to the expected benefits determined under § 262.11(b) that accrue to such entities from the project.

§ 262.15 Environmental assessment.

(a) The provision of grant funds by FRA under this Part is subject to a variety of environmental and historic preservation statutes and implementing regulations including, but not limited to, the National Environmental Policy Act (NEPA) (42 U.S.C. 4332 *et seq.*), Section 4(f) of the Department of Transportation Act (49 U.S.C. 303(c)), the National Historic Preservation Act (16 U.S.C. 470(f)), and the Endangered Species Act (16 U.S.C. 1531). Appropriate environmental and historic documentation must be completed and approved by the Administrator prior to a decision by FRA to approve a project for physical construction. FRA's ''Procedures for Considering Environmental Impacts,'' as posted at *http://www.fra.dot.gov/us/content/252,* the NEPA regulation of the Council on Environmental Quality (40 CFR part 1500) and the Advisory Council on Historic Preservation Protection of Historic Properties regulation (36 CFR part 800) will govern FRA's compliance with applicable environmental and historic preservation review requirements.

(b) States have two options for proceeding with environmental/historic preservation reviews. A State may file an application under subsection § 262.11 seeking funds for preliminary design and environmental/historic preservation compliance for a potentially eligible project and FRA will review and decide on the application as outlined in this Part. Alternatively, a State may proceed with and fund any costs associated with environmental/historic preservation reviews (including environmental assessments and categorical excisions, but not environmental impact statements since there are restrictions on what types of entities can manage an environmental impact statement) and seek reimbursement from FRA for these costs to the extent they otherwise qualify as allowable costs if FRA later approves the project for physical construction and enters into a grant agreement with the State. If a State pays for the compliance work itself, it may apply this cost to the 10% matching requirement if a grant is awarded. Applicants should consult with FRA before beginning any environmental or historic preservation analysis.

§ 262.17 Combining grant awards.

Two or more States, but not political subdivisions of States, may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section provided:

(1) The project will benefit each of the States entering into the agreement; and

(2) The agreement is not a violation of the law of any such State.

§ 262.19 Close-out procedures.

(a) Thirty days before the end of the grant period, FRA will notify the State that the period of performance for the grant is about to expire and that close-out procedures will be initiated.

(b) Within 90 days after the expiration or termination of the grant, the State must submit to FRA any or all of the following information, depending on the terms of the grant:

(1) Final performance or progress report;

(2) Financial Status Report (SF–269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271);

(3) Final Request for Payment (SF–270);

(4) Patent disclosure (if applicable);

(5) Federally-owned Property Report (if applicable)

(c) If the project is completed, within 90 days after the expiration or termination of the grant, the State shall complete a full inspection of all construction work completed under the grant and submit a report to FRA. If the project is not completed, the State shall submit a report detailing why the project was not completed.

(d) FRA will review all close-out information submitted, and adjust payments as necessary. If FRA determines that the State is owed additional funds, FRA will promptly make payment to the State for any unreimbursed allowable costs. If the State has received more funds than the total allowable costs, the State must immediately refund to the FRA any balance of unencumbered cash advanced that is not authorized to be retained for use on other grants.

(e) FRA will notify the State in writing that the grant has been closed out.

Issued in Washington, DC, on June 24, 2008.

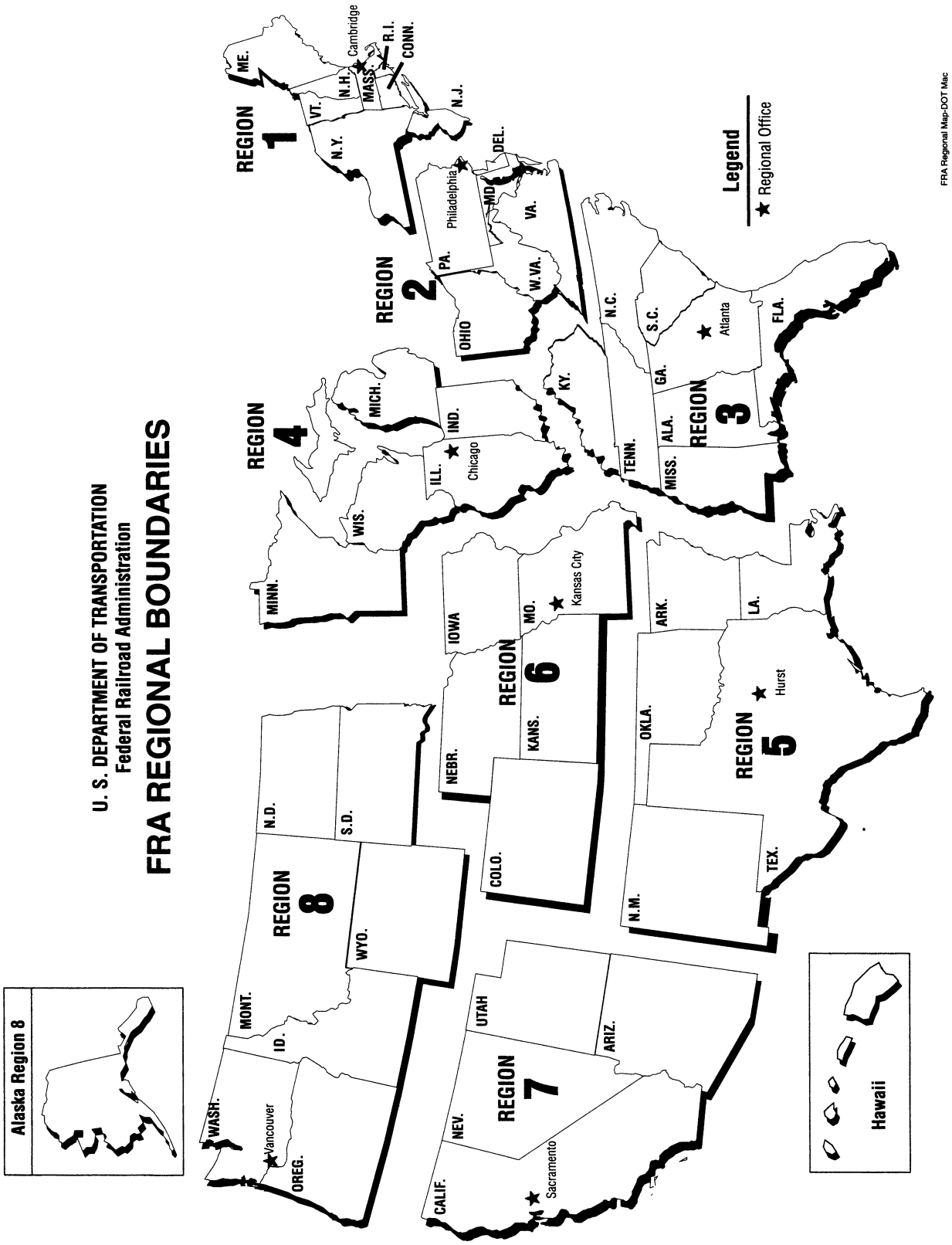
Joseph H. Boardman,

Federal Railroad Administrator.

Note: THIS APPENDIX WILL NOT APPEAR IN THE CODE OF FEDERAL REGULATIONS.

BILLING CODE 4910–06–P

Appendix A to Part 262—FRA Regional Boundaries



[FR Doc. E8–15160 Filed 7–10–08; 8:45 am]

BILLING CODE 4910–06–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA–2007–0037; Notice 2]

RIN 2127–AK10

Schedule of Fees Authorized by 49 U.S.C. 30141 Offer of Cash Deposits or Obligations of the United States in Lieu of Sureties on DOT Conformance Bonds

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends NHTSA's regulations that prescribe fees authorized by 49 U.S.C. Sec. 30141 for various functions performed by the agency with respect to the importation of motor vehicles that are not originally manufactured to conform to all applicable Federal motor vehicle safety and bumper standards. An importer must file with U.S. Customs and Border Protection (CBP) a Department of Transportation (DOT) conformance bond at the time that a nonconforming motor vehicle is offered for importation into the United States, or in lieu of such a bond, the importer may post cash deposits or obligations of the United States to ensure that the vehicle will be brought into conformance with all applicable standards within 120 days from the date of importation, or will be exported from, or abandoned to, the United States. To avoid the costs of a DOT conformance bond, some importers have attempted to post cash deposits, which would relieve the importers of the bonding costs, but cause the agency to expend considerable resources. The amendments adopted today establish a fee of $459.00 that will permit the government to recover all the direct and indirect costs incurred by the agency in processing cash deposits or obligations of the United States that are furnished in lieu of a DOT conformance bond.

DATES: *Effective date:* The effective date for this final rule is October 1, 2008.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received by NHTSA not later than August 25, 2008.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice numbers set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

In addition, a copy of the petition for reconsideration must be submitted to the docket number cited in the heading above by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting information.
- *Mail Addressed to:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except for Federal holidays.
- *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Coleman Sachs, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202–366–3151). For legal issues: Michael Goode, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202–366–5238).

SUPPLEMENTARY INFORMATION:

I. Introduction

As described in the notice of proposed rulemaking (NPRM), subject to certain exceptions, 49 U.S.C. 30112(a) prohibits any person from importing into the United States a motor vehicle manufactured on or after the date that an applicable Federal motor vehicle safety standard (FMVSS) takes effect unless the vehicle complies with the standard and is so certified by its manufacturer. 72 FR 65532 (November 21, 2007). One of the exceptions to this prohibition is found in 49 U.S.C. 30141. That section permits an importer that is registered with NHTSA (a ''registered importer'') to import a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, provided NHTSA has decided that the vehicle is eligible for importation. Under the criteria that are specified in section 30141 for these decisions, a motor vehicle is not eligible for importation unless, among other things, it is capable of being altered to comply with all applicable FMVSS. See 49 U.S.C. 30141(a)(1)(A)(iv) and (B).

II. Requirements for Bonding

Once NHTSA decides that a motor vehicle is eligible for importation, a vehicle of the same make, model, and model year can be imported by a registered importer (RI) or by a person who has executed a contract with an RI to bring the vehicle into compliance with all applicable FMVSS. For vehicles that are imported in this fashion, a DOT conformance bond (Form HS–474), in an amount equivalent to 150 percent of the declared value of the vehicle, must be furnished to CBP at the time of importation to ensure that the necessary modifications are completed within 120 days from the date of entry or, if conformance is not achieved, for the vehicle to be delivered to the Secretary of Homeland Security for export at no cost to the United States, or for the vehicle to be abandoned to the United States. See 49 CFR 591.6(c). The DOT conformance bond must be underwritten by a surety that possesses a certificate of authority to underwrite Federal bonds. See 49 CFR 591.8(c), referencing a list of certificated sureties at 54 FR 27800, June 30, 1989.

In lieu of sureties on a DOT conformance bond, an importer may offer United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills (hereinafter referred to as ''cash deposits'') in an amount equal to the amount of the bond. See 49 CFR 591.10(a).

As stated in the NPRM, in recent years some RIs have encountered difficulty in obtaining DOT conformance bonds underwritten by certificated sureties. To achieve the entry of the nonconforming vehicles they have sought to import, these RIs have had to resort to furnishing NHTSA with cash deposits in lieu of sureties on a DOT conformance bond. Other RIs have attempted to post cash deposits to avoid the cost of procuring a DOT conformance bond. The receipt, processing, handling, and disbursement of the cash deposits that have been tendered by RIs have caused the agency to consume a considerable amount of staff time and material resources.

III. Fees Authorized by 49 U.S.C. 30141

As detailed in the NPRM, NHTSA is authorized under 49 U.S.C. 30141(a)(3) to establish an annual fee requiring RIs to pay for the costs of carrying out the RI program. The agency is also authorized under this section to establish fees to pay for the costs of processing the conformance bonds that RIs provide, and fees to pay for the costs of making agency decisions relating to the importation of noncomplying motor vehicles and equipment.

Because NHTSA's acceptance of the cash deposits is a necessary predicate to the release of the vehicle into the

commerce of the United States, NHTSA has concluded that the expense incurred by the agency to receive, process, handle, and disburse cash deposits may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. 30141(a)(3)(A).

Even if such authority did not exist in Chapter 301 of Title 49, U.S. Code, the Independent Offices Appropriation Act of 1952, 31 U.S.C. Sec. 9701, provides ample authority for NHTSA to impose fees that are sufficient to recover the agency's full costs to receive, process, handle, and disburse cash deposits. By performing these tasks, NHTSA is performing a specific service for an identifiable beneficiary that can form the basis for the imposition of a fee under 31 U.S.C. Sec. 9701. Courts have long recognized that Federal agencies may impose fees under section 9701 for providing comparable services to regulated entities. See, e.g., *Seafarers International Union of North America* v. *U.S. Coast Guard*, 81 F.3d 179, 183 (D.C. Cir. 1996) (finding the Coast Guard authorized to charge reasonable fees for processing applications for merchant mariner licenses, certificates, and work documents); *Engine Manufacturers Association* v. *E.P.A.,* 20 F.3d 1177, 1180 (D.C. Cir. 1994) (finding the E.P.A. authorized to impose a fee to recover its costs for testing vehicles and engines for compliance with the emission standards of the Clean Air Act); and *National Cable Television Association, Inc.* v. *F.C.C.,* 554 F.2d 1094, 1101 (D.C. Cir. 1976) (finding the F.C.C. authorized to impose fees for issuing certificates of compliance to cable television operators). In view of the language and judicial construction of 31 U.S.C. 9701, NHTSA is relying on this provision as an independent source of authority for the fee to cover the agency's cost of processing cash deposits.

IV. Fee for Processing Cash Deposits

Although the fees described above have permitted NHTSA to recover the costs it incurs in administering certain aspects of the RI program, other services that NHTSA provides to importers of nonconforming vehicles have gone unreimbursed. One such service is the receipt, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on DOT conformance bonds. The amendments adopted in this final rule will permit the agency to collect a fee to recover its costs in providing these services.

V. Fee Computation

As noted in the NPRM, NHTSA computes the fees that it collects under the authority of 49 U.S.C. 30141 on the basis of all direct and indirect costs incurred by the agency in performing the function for which the fee is charged. In the **Federal Register** notice proposing the original schedule of fees that was adopted in Part 594, the agency observed that this approach was consistent with the manner in which other agencies have computed user fees under the Independent Offices Appropriation Act, 31 U.S.C. 9701, and the Consolidated Omnibus Budget Reconciliation Act, Public Law 99–272. See 54 FR 17792, 17793 (April 25, 1989). NHTSA specified in the 1989 NPRM proposing rules for the RI program that ''the fees imposed by Part 594 would include the agency's best direct and indirect cost estimates of the man-hours involved in each activity, on both the staff and supervisory levels, the costs of computer and word processor usage, costs attributable to travel, salary, and benefits, and maintenance of work space,'' as appropriate for each fee. See 54 FR 17795 (April 25, 1989).

Consistent with this approach, the agency considered its direct and indirect costs in calculating the fee for the review, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on a DOT conformance bond. In the NPRM, the agency proposed a fee of $598.00 to recover the expenses the government incurs in the performance of these functions. In computing this proposed fee, the agency estimated that it would take 60 minutes of a government employee's time to deliver the funds provided by importers and RIs to a bank for deposit in the agency's account and an additional 60 minutes to withdraw those funds. This estimate was based on the need for the funds to be deposited in a non-interest bearing commercial account for which the agency would not be charged any transactional fees. The bank in which the agency had established such an account was in downtown Washington, DC, some distance from the DOT Headquarters Building, requiring transit time for the deposit and withdrawal to be made.

Following publication of the NPRM, the agency was able to open a non-interest bearing commercial account for which it will not be charged any transactional fees at a bank in close proximity to the new DOT Headquarters building in the Southeast Federal Center. Given the location of this bank, the agency estimates that it will take 15 minutes of an employee's time to bring the importer's cash deposit to the bank, wait there for the transaction to be completed, and return to the office and an additional 15 minutes to go to the bank, wait for a cashier's check payable to the importer to be drawn, and return to the office once the agency receives satisfactory evidence that all necessary conformance modifications have been performed on the vehicle for which the cash deposit was made. As a result, the total amount of staff time needed to accomplish these tasks has been reduced from 2 hours to 30 minutes. Calculating the charge for this time at the rate of $92.64 per hour, this will result in a reduction of $138.96 from the $598.00 fee originally proposed.

Accounting for this difference, NHTSA is adopting a fee of $459.00 to recover the costs it incurs for each vehicle imported during FY 2009, for which the importer or RI submits a cash deposit in lieu of a DOT conformance bond. This fee will have to be tendered with each cash deposit submitted to the agency in lieu of sureties on a DOT conformance bond. The factors that the agency has taken into account in establishing the fee, including time expended by agency personnel, hourly rates for their services, and other direct and indirect costs, are detailed in a chart included in Appendix A of this notice.

VI. Response to Comment

The NPRM solicited comments from interested members of the public. One comment was submitted in response to the NPRM. The substance of this comment, which was submitted by an RI, and the agency response to each point that it raised, are set forth below.

A. General Observations

The comment, in general, disputed whether the agency had accurately set forth in the analysis included in the NPRM the direct and indirect costs of processing cash deposits. The commenter expressed the opinion that some of the costs identified by the agency should be reduced or eliminated, especially in circumstances where importers already understand the obligations associated with importing a nonconforming motor vehicle, have previously submitted cash deposits in lieu of sureties on a DOT conformance bond, and have entered into formal agreements with the agency relating to those cash deposits in the past.

In the NPRM, the agency stated that it considered its direct and indirect costs relating to administering cash deposits for the purposes of calculating the proposed fee. As further stated in the NPRM, the agency's direct costs included the estimated cost of contractor and professional staff time and direct costs including computer

equipment and maintenance costs, telephone toll charges, and postage. To present the best available information, the agency included in the NPRM a detailed itemization of each step in the process for administering cash deposits, including the time spent by agency staff on each step and the cost associated with each step.

We are aware that more or less staff time may actually be spent on processing a cash deposit in an individual circumstance, and that this could be influenced by the experience level of the importer. To be reasonable, the agency based its cost estimates on the average time its staff spent time accomplishing each step of the process and the direct and indirect costs associated with each step.

More specific observations raised in the comment, and the agency's responses are set forth below.

B. Importer Obligations

The commenter stated that the agency should not charge for time that it expends in discussing with importers their obligations pertaining to cash deposits. The commenter also asked whether the agency would charge an importer for this time even if the importer should ultimately decide not to provide a cash deposit.

We believe that importers must clearly understand their obligations relating to the submission of cash deposits before those importers enter into formal agreements with the agency. While agency personnel may expend more time explaining those obligations to a first time importer than to one who has previously submitted cash deposits, we believe that the average time shown in the analysis is reasonable. Naturally, an importer could only be expected to pay the fee for the processing of cash deposits if the importer actually submits a cash deposit to the agency. In circumstances where the importer discusses with the agency the prospect of making a cash deposit, but ultimately elects not to submit one, there would be no basis for assessing a fee and the agency would not seek to collect one. Nevertheless, in circumstances where the importer decides to go ahead and make a cash deposit, the time expended by the agency in discussing the preliminaries with the importer is part of the transaction and is fairly compensable.

C. Toll Charges

The commenter observed that the agency could email the formal agreement to the importer at no charge rather than having to incur toll charges by transmitting the agreement by facsimile. By doing so, the commenter contended that the agency could reduce the fee associated with this step in the process.

In its analysis of the costs incurred by the agency for administering cash deposits, the agency identified three long-distance toll calls totaling $5.75 to reimburse the government for its expenses in transmitting the agreement by facsimile to the importer for signature and later notifying CBP and the importer by letter that the importation of the vehicle may proceed. While the commenter is correct that the agreement could be emailed to the importer, the agency incurs computer time costs, and any difference in the costs associated with either method of transmitting the agreement is *de minimis*.

D. Formal Agreement

The commenter noted that NHTSA has already developed the language incorporated into the agreement and that the importer is only required to fill in blank spaces with identifying information on itself and the nonconforming vehicle that it seeks to enter. The commenter further noted that after the importer completes and signs the agreement, it must be returned to the agency for signature by an official authorized to sign on the agency's behalf. In light of these formalities, the commenter observes that the agency should not charge the importer for the actions it takes at this step in the process.

In its analysis, the agency estimated that it would take 10 minutes to prepare the formal agreement for transmittal to the importer. This total includes staff time expended to locate and retrieve the agreement from a computer hard drive, to review the document and make any changes to the agreement that may be required to accommodate the importer's unique circumstances, to print out a hard copy of the document, and to otherwise prepare the document for transmittal to the importer. Because agency resources are expended at this step in the process for the benefit of an individual importer, there is clear justification for the government to be reimbursed for those expenses. As noted in this analysis, the agency will not be charging importers for the time it originally expended to develop the agreement in the format now being used.

E. Receipt and Transmittal of Cash Deposits

The commenter asked why the agency is charging for receiving in the mail and transmitting to responsible agency staff, the cash deposit and formal agreement sent to the agency by an importer.

As discussed above, the agency provided an itemization of its direct and indirect costs associated with each step of the process of administering cash deposits. The agency attributed 10 minutes of contractor time to processing mail containing the importer's cash deposit and delivering the cash deposit to agency staff. The agency attributed an additional 5 minutes of contractor time to receiving mail containing the formal agreement executed by the importer and delivering the signed agreement to agency staff. The difference in processing time is attributable to additional controls associated with the handling of cash and cash equivalents. Because the contactor time expended on these two occasions is a direct cost incurred by the agency in administering cash deposits, the agency is fully justified in obtaining reimbursement for this expense.

F. Approval of Formal Agreement

The commenter questioned whether it in fact takes six government employees 70 minutes to prepare and approve the agreement.

As reflected in the first table in Appendix A to this notice, one government employee spends an average of 20 minutes preparing a memo to transmit the formal agreement up the chain of command and three managers spend an average of no more than 10 minutes each to review and forward the agreement for the signature of the NHTSA manager who is authorized by regulation to enter such agreements on the agency's behalf. Four agency employees are involved in this process and the total average time for all of these steps is 50 minutes. Because this is another direct cost incurred by the agency in processing cash deposits, the agency is fully justified in obtaining reimbursement for this cost.

G. Importer Approval Letter

The commenter questioned why the agency would use its resources to create and mail a letter notifying the importer that the agency representative has signed the formal agreement and that the agency has authorized the entry of the importer's vehicle. The importer stated that after both parties sign the formal agreement, the agency notifies CBP by letter that the importer's vehicle may be imported. The commenter stated that in lieu of creating a separate letter to the importer, the agency could send to the importer a courtesy copy of the letter it sends to CBP and eliminate the agency's cost to create the importer's letter.

The agency believes that when an importer enters into an agreement with, and sends a cash deposit to the government, a proper practice is for the agency to provide a written acknowledgment that the agreement is in place and that the agency has deposited the importer's cash deposit into the non-interest bearing commercial bank account the agency established for holding these funds. The letter provides the importer with a written record that its funds are in the government's hands. The agency would be remiss in its responsibility as the custodian of those funds if it were not to provide the importer with this acknowledgment. This is another expense that the government is fully justified to collect.

H. Disbursement of Cash Deposits

The commenter questioned why the agency attributed 60 minutes of staff time to sending back to the importer a check in the amount of the cash deposit.

As part of the analysis for the fee proposed in the NPRM, the agency estimated that it would take one hour of the NHTSA finance manager's time to travel to the bank, be issued a check drawn on the agency's account, and return to DOT headquarters. The agency stated in the NPRM that these tasks must be accomplished in person at the agency's designated bank by the NHTSA official authorized to withdraw funds from the agency's bank account. As explained in section V of this notice under the heading ''Fee Computation,'' the agency has now opened a non-interest bearing commercial account for which it will not be charged transactional fees at a bank that is close to the DOT Headquarters Building at the Southeast Federal Center in Washington, DC. This will reduce from one hour to 15 minutes the time needed to deliver the importer's cash deposit to the bank, and reduce from one hour to 15 minutes the time needed to withdraw that deposit once the agency receives satisfactory evidence that all needed conformance modifications have been completed on the vehicle for which the cash deposit was made. On account of this reduction in staff time needed to process a cash deposit, the agency will be charging $459.00 for that processing, as opposed to the $598.00 it originally proposed.

No other issues were raised in the one comment submitted in response to the NPRM. As is evident from the above discussion, the agency has found no basis in the issues that were raised in the comment to make any other changes in the rule as originally proposed.

VII. Statutory Basis for the Final Rule and Effective Date

NHTSA is required under 49 U.S.C. 30141(e) to ''review and make appropriate adjustments at least every 2 years in the amounts of the fees'' relating to the registration of importers, the processing of bonds, and making decisions concerning the importation of nonconforming vehicles. The statute further requires the agency to ''establish the fees for each fiscal year before the beginning of that year.'' Fiscal Year 2009 begins on October 1, 2008. In the NPRM, we proposed to make this rule effective October 1, 2008, and did not receive any comments on this issue. Accordingly, the effective date of this final rule is October 1, 2008.

VIII. Petitions for Reconsideration

Petitions for reconsideration of this final rule must be received by NHTSA not later than the date specified in the ''Dates: Petitions for reconsideration:'' heading at the beginning of this notice. Petitions received after that date will be considered petitions filed by interested persons to initiate rulemaking pursuant to 49 U.S.C. Chapter 301. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest. The statement and explanation together may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit. If it is requested that additional facts be considered, the petitioner must state the reason why they were not presented to the Administrator within the prescribed time. The Administrator does not consider repetitive petitions and unless the Administrator otherwise provides, the filing of a petition does not stay the effective date of the final rule.

IX. Appendix A

The following tables provide an itemization of the time expended, hourly rates, and direct and indirect costs associated with NHTSA's receipt, handling, processing, and disbursement of cash deposits submitted to the agency in lieu of sureties on DOT conformance bonds:

RECEIPT, PROCESSING, AND HANDLING OF CASH DEPOSITS [CASH]

Step of process	Staff *	Time mins.	FY 07 rate	FY 07 cost	FY 08 rate	FY 08 cost
Cash received and delivered	C	10	$50.50	$8.42	$51.77	$8.63
Agreement obligations discussed with importer	E	10	89.88	14.98	92.64	15.44
Prepare formal agreement	E	10	89.88	14.98	92.64	15.44
Agreement faxed for importer's signature	.....	.....	.....	(1)	.....	(1)
Signed agreement received and delivered	C	5	50.50	4.21	51.77	4.31
Prepare agreement approval memo	E	20	89.88	29.96	92.64	30.88
Agreement review and signature	E	10	98.52	16.42	101.61	16.94
	E	10	98.52	16.42	101.61	16.94
	E	10	98.52	16.42	101.61	16.94
Prepare CBP letter approving vehicle entry	E	10	89.88	14.98	92.64	15.44
Fax CBP letter	.....	.....	.....	(1)	.....	(1)
Prepare importer letter approving vehicle entry	E	10	89.88	14.98	92.64	15.44
Transmit letter to importer by fax	.....	.....	.....	(1)	.....	(1)
Create database record	C	5	50.50	4.21	51.77	4.31
Prepare and deliver memo/cash to finance	E	10	89.88	14.98	92.64	15.44
Deposit cash in bank	E	15	89.88	22.47	92.64	23.16
Subtotal	.....	.....	.....	193.43	.....	199.31

* Staff Notes: (C) is contractor and (E) is employee.
[1] Toll charge.

HANDLING AND DISBURSEMENT OF CASH DEPOSITS [CASH]

Step of process	Staff *	Time mins.	FY 07 rate	FY 07 cost	FY 08 rate	FY 08 cost
Importer notifies NHTSA that vehicle conformance obligations are met	E	10	$89.88	$14.98	$92.64	$15.44
Prepare memo requesting check to importer	E	10	89.88	14.98	92.64	15.44
Withdraw funds from bank by check	E	15	89.88	22.47	92.64	23.16
Deliver check	E	5	89.88	7.49	92.64	7.72
Notify NHTSA Finance Director	E	5	89.88	7.49	92.64	7.72
Prepare letter with check enclosure	E	10	89.88	14.98	92.64	15.44
Mail letter and check to importer	.....	.....	.....	(1)	.....	(1)
Review monthly bank statements	E	5	89.88	7.49	92.64	7.72
Subtotal	.....	.....	.....	89.88	.....	92.64

* Staff Notes: (C) is contractor and (E) is employee.
1 Postage.

OTHER DIRECT COSTS

Direct costs	Time mins.	FY 07 rate	FY 07 cost	FY 08 rate	FY 08 cost
Computer and Computer Maintenance	85	$1.86/hr	$158.10	$1.86/hr	$158.10
Postage	.....	3.00	3.00	3.00	3.00
Toll Calls (3)	.....	1.92	5.75	1.92	5.75
Subtotal	.....	.....	166.85	.....	166.85

Subtotals	FY 07 cost	FY 08 cost
Subtotal	$193.43	$199.31
Subtotal	89.88	92.64
Subtotal	166.85	166.85
Total	450.16	458.80

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, 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.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866. This rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Based on the level of the fees and the volume of affected vehicles, NHTSA has concluded that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. Because NHTSA's acceptance of the cash deposits is a necessary predicate to the release of the vehicle into the commerce of the United States, NHTSA has concluded that the expense incurred by the agency (the subject of this rulemaking) to receive, process, handle, and disburse cash deposits may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. 3014(a)(3)(A).

This action does not involve any substantial public interest or controversy. It has no substantial effect upon State and local governments and imposes no substantial impact upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the registered importer program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBFEFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or a final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' See 13 CFR § 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The agency has considered the effects of this rulemaking under the Regulatory Flexibility Act, and certifies that the amendment it adopts will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The adopted amendment will primarily

affect entities that currently modify nonconforming vehicles and which are small businesses within the meaning of the Regulatory Flexibility Act. Of the 67 such entities that are currently licensed with NHTSA, only a few have furnished the agency with cash deposits in lieu of sureties on DOT conformance bonds. Despite the fact that they qualify as small businesses, the agency has no reason to believe that these companies will be unable to pay the adopted fee. Moreover, consistent with prevailing industry practices, the fee should be passed through to the ultimate purchasers of any vehicle for which a cash deposit in lieu of sureties is given to the agency. The cost to owners or purchasers of these vehicles may be expected to increase to the extent necessary to reimburse the RI for the fee payable to the agency for the cost of processing a cash deposit.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA 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.'' Executive Order 13132 defines the term ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The amendment adopted in this final rule 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. That is because this final rule applies to importers of motor vehicles and registered importers, and not to State or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through RIs would not vary significantly from that existing before promulgation of the rule.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 ''Civil Justice Reform,'' the agency has considered whether the amendment adopted in this final rule will have any retroactive effect. NHTSA concludes that the amendment will not have any retroactive effect. Judicial review of this final rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to 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 NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because this final rule does not require the expenditure of resources beyond $100 million annually, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The collection of information resulting from the RI program, including 49 CFR Part 594, has been approved by OMB and assigned OMB Control No. 2127–0002, ''Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards.'' The expiration date is 11/30/2010. The clearance covers 63,818 respondents, and is for 42,413 hours. Today's final rule only establishes a fee for a collection of information that has already been approved by OMB, and does not affect the scope of the approved collection.

H. Executive Order 13045

Executive Order 13045 applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant and does not concern an environmental, health, or safety risk that will have a disproportionate effect on children. It therefore is not subject to the Executive Order.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, with explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have concluded that there

are no voluntary consensus standards applicable to this final rule.

J. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 594

Administrative practice and procedure, Imports, Motor vehicle safety.

■ In consideration of the foregoing, part 594, Schedule of Fees Authorized by 49 U.S.C. 30141, in Title 49 of the Code of Federal Regulations is amended as follows:

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

■ 1. The authority citation for part 594 continues to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

■ 2. Section 594.9 is amended by:
■ a. Revising the section heading;
■ b. Adding paragraph (d); and
■ c. Adding paragraph (e) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs and costs for processing offers of cash deposits or obligations of the United States in lieu of sureties on bonds.

* * * * *

(d) Each importer must pay a fee based upon the direct and indirect costs the agency incurs for receipt, processing, handling, and disbursement of cash deposits or obligations of the United States in lieu of sureties on bonds that the importer submits as authorized by § 591.10 of this chapter in lieu of a conformance bond required under § 591.6(c) of this chapter.

(e) The fee for each vehicle imported on and after October 1, 2008, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond, is $459.00.

Issued on: June 25, 2008.

Nicole R. Nason,

Administrator.

[FR Doc. E8–14858 Filed 7–10–08; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 73, No. 134
Friday, July 11, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0420; FRL–8690–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Dallas/Fort Worth 1-Hour Ozone Nonattainment Area; Determination of Attainment of the 1-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the Dallas/Fort Worth (DFW) 1-hour ozone nonattainment area is currently attaining the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 1-hour ozone NAAQS for the 2004–2006 monitoring period. In addition, quality controlled and quality assured ozone data for 2007 and 2008 that are available in the EPA Air Quality System database, but not yet certified, show this area continues to attain the 1-hour ozone NAAQS. If this proposed determination is made final, the requirements for this area to submit an attainment demonstration or 5% Increment of Progress (IOP) plan, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the 1-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 1-hour ozone NAAQS.

DATES: Comments must be received on or before *August 11, 2008*.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2008–0420, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 Contact Us Web site: *http://epa.gov/region6/r6coment.htm*. Please click on 6PD (Multimedia) and select Air before submitting comments.
- *E-mail:* Mr. Guy Donaldson at donaldson.guy@*epa.gov*. Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2008–0420. The 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 the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Paige, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6521, fax (214) 665–7263, e-mail address *paige.carrie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA. This supplementary information section is arranged as follows:

I. What Is the Background for This Action?
II. What Is the Impact of a United States Court of Appeals Decision in the *South Coast* Case Regarding EPA's Phase 1 Ozone Implementation Rule on This Proposed Rule?
III. Proposed Determination of Attainment
IV. What Action Is EPA Taking?
V. Statutory and Executive Order Reviews

I. What Is the Background for This Action?

The Clean Air Act (the Act) requires us to establish National Ambient Air Quality Standards (NAAQS) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (sections 108 and 109 of the Act). In 1979, we promulgated the 1-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979). For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm x 1000. Thus, 0.12 ppm becomes 120 ppb or 124 ppb when rounding is considered.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.12 ppm in any given day. Only the highest 1-hour ozone concentration at the monitor during any 24 hour day is considered when determining the number of exceedance days at the monitor. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of exceedances occur at the same monitor. For more information please see ''National 1-hour primary and secondary air quality standards for ozone'' (40 CFR 50.9) and ''Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone'' (40 CFR 50, Appendix H).

The fourth-highest daily ozone concentration over the 3-year period is called the design value (DV). The DV indicates the severity of the ozone problem in an area; it is the ozone level around which a state designs its control strategy for attaining the ozone standard. A monitor's DV is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area's DV is the highest of the design values from the area's monitors.

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period (section 107(d)(4) of the Act; 56 FR 56694, November 6, 1991). The Act further classified these areas, based on their ozone DVs, as marginal, moderate, serious, severe, or extreme.

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas are subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while severe and extreme areas are subject to more stringent planning requirements and are provided more time to attain the standard. The DFW 1-hr ozone nonattainment area was initially classified as moderate (56 FR 56694, November 6, 1991) with an attainment date of November 15, 1996. Since the area did not attain the standard by November 15, 1996, we reclassified the area to serious on March 20, 1998 (63 FR 8128). The statutory attainment date for DFW, with its reclassification to serious, was November 15, 1999. The DFW 1-hour ozone nonattainment area contains Dallas, Tarrant, Collin, and Denton Counties (40 CFR parts 81.344). As a result of the reclassification to serious, the State was required to submit an attainment demonstration SIP with an attainment date of November 15, 1999 and a Rate of Progress (ROP) SIP covering the years from November 15, 1996 to November 15, 1999. The State submitted those SIPs on March 19, 1999. The State had previously submitted the moderate area 15% ROP plan on August 8, 1996, before the area was reclassified to serious. The 15% plan was given a conditional, interim approval.

Our review showed that the attainment demonstration SIP submitted in 1999 did not contain an adequate control strategy or adopted measures to implement the strategy and the 1999 Post-1996 ROP SIP did not achieve the required 9% reduction in emissions for the time period. Therefore, we found both SIPs incomplete and started sanctions and Federal Implementation Plan (FIP) clocks effective May 13, 1999.

A new Post-1996 ROP SIP was submitted October 25, 1999, and was found complete on December 16, 1999, since the new plan contained additional volatile organic compound (VOC) reductions to meet the 9% requirement. The new attainment demonstration SIP was submitted April 25, 2000, and was found complete on June 23, 2000, because it contained a modeled control strategy and adopted regulations to implement the strategy. These two completeness findings stopped the sanctions clocks. The 2000 SIP also contained a transport determination. Under an EPA policy, ''Extension of Attainment Dates for Downwind Transport Areas,'' dated July 16, 1998, an area such as DFW could have been granted an attainment date extension if it could be shown that the DFW area was affected by emissions from an up-wind nonattainment area with a later attainment date (e.g., Houston 2007) to a degree that affects the downwind area's ability to achieve attainment. This policy was not upheld by the Courts. See, *Sierra Club* v. *EPA*, 294 F.3rd 155 (*D.C.* Cir. 2002), *Sierra Club* v. *EPA*, 311 F.3rd 853 (7th Cir. 2002), and *Sierra Club* v. *EPA*, 314 F.3rd 735 (5th Cir. 2002). EPA proposed approval of the 2000 SIP and transport demonstration on January 18, 2001 (66 FR 4756). However, due to the Courts' ruling EPA could not take final action on this SIP.

EPA published the 8-hour ozone designations and the first phase governing certain facets of implementation of the 8-hour ozone standard (Phase 1 Rule) on April 30, 2004 (69 FR 23858 and 69 FR 23951, respectively). The DFW area was designated as nonattainment for the 8-hour ozone standard and comprises nine counties: Collin, Dallas, Denton, and Tarrant counties (these four constitute the 1-hour ozone nonattainment area, hereafter referred to as the four core counties), and Ellis, Johnson, Kaufman, Parker and Rockwall counties. At the time of designation however, the four core counties remained in nonattainment for the 1-hour standard and had two outstanding 1-hour ozone obligations: (1) The area did not have an approved 1-hour ozone attainment demonstration; and (2) the area did not have approved reasonably available control technology (RACT) requirements for major sources of VOC emissions (VOC RACT).

The Phase 1 Rule revoked the 1-hour ozone standard (see 69 FR 23951). The Phase 1 Rule further provided the following three options for areas that had not met the 1-hour ozone attainment demonstration requirement: (1) Submit a 1-hour attainment demonstration no later than 1 year after designation; (2) Submit a Reasonable Further Progress (RFP) plan for the 8-hour NAAQS, no later than 1 year following designations for the 8-hour NAAQS, providing a 5% increment of emissions reduction from the area's 2002 emissions inventory (EI); or (3) Submit an early 8-hour ozone attainment demonstration SIP that ensures that the first segment of RFP is achieved early (See 40 CFR 51.905(a)(ii)). Texas selected option 2, to submit the RFP plan providing a 5% increment of emissions reduction from the area's 2002 EI. This increment of emissions reduction is called the 5% Increment of Progress (IOP) plan. Texas submitted the 5% IOP plan for DFW, but EPA has not taken final action on the plan.

The Phase 1 Rule also provided that 1-hour ozone nonattainment areas are required to adopt and implement ''applicable requirements'' according to the area's classification under the 1-hour ozone standard for anti-backsliding

purposes (see 40 CFR § 51.905(a)(i)). On May 26, 2005, we determined that an area's 1-hour designation and classification as of June 15, 2004 would dictate what 1-hour obligations remain as ''applicable requirements'' under the Phase 1 Rule (70 FR 30592). The DFW 1-hour nonattainment area was still classified as serious on June 15, 2004, so the 1-hour ozone standard requirements applicable to the four core counties are those that apply to nonattainment areas classified as serious. An outstanding ''applicable requirement'' for the four core counties is the VOC RACT. We proposed to approve RACT for all major sources of VOCs in the 1-hour DFW nonattainment area on January 18, 2001 (66 FR 4756) and received no comments. In a separate rulemaking, we are re-proposing to approve RACT for all major sources of VOCs in the 1-hour DFW nonattainment area.

Apart from the attainment demonstration and RACT, the DFW area has satisfied all other serious area applicable requirements under the 1-hour ozone standard. See the area's Clean Fuels Fleet Program (February 7, 2001 at 66 FR 9203); the area's post 1996 Rate of Progress (ROP) plan and associated motor vehicle emission budgets (MVEBs) (March 28, 2005 at 70 FR 15592); and the area's 15% ROP plan and associated MVEBs (April 12, 2005 at 70 FR 18993). For a complete list, see the Texas SIP map at *http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm*.

II. What Is the Impact of a United States Court of Appeals Decision in the *South Coast* Case Regarding EPA's Phase 1 Ozone Implementation Rule on This Proposed Rule?

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Phase 1 Rule. *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA*, Docket No. 04–1201, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. With respect to the challenges to the anti-backsliding provisions of the rule, the Court vacated three provisions that would have allowed States to remove from the SIP or not to adopt three 1-hour obligations once the 1-hour standard was revoked to transition to the implementation of the 8-hour ozone standard: (1) Nonattainment area new source review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas that fail to attain the 1-hour standard by the 1-hour attainment date; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS or for failure to attain that NAAQS. The Court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

The provisions in 40 CFR 51.905(a)–(c) concerning anti-backsliding remain in effect and areas must continue to meet those requirements. However, the three provisions noted above, which are specified in 40 CFR 51.905(e), were vacated by the Court. As a result, States must continue to meet the obligations for 1-hour NSR; 1-hour contingency measures; and, for severe and extreme areas, the obligations related to a section 185 fee program. Currently, EPA is developing several proposed rules to address the Court's vacatur and remand with respect to these three requirements. We address below how the obligations for DFW will be met, specifically, the 1-hour obligations under EPA's anti-backsliding rule (as interpreted by the Court), and the obligation under 40 CFR 51.905(a)(ii)(B) that applies to DFW because DFW did not have a fully approved attainment SIP for the 1-hour NAAQS at the time of its designation under the 8-hour NAAQS, will be met.

III. Proposed Determination of Attainment

EPA is proposing to find that the DFW 1-hour ozone nonattainment area is currently in attainment of the 1-hour standard based on the most recent 3 years of quality-assured air quality data. Certified ambient air monitoring data show that the area has monitored attainment of the 1-hour ozone NAAQS for the 2004–2006 monitoring period. Quality controlled and quality assured ozone data for 2007 and 2008 that are available in the EPA Air Quality System database (AQS), but not yet certified, show this area continues to attain the 1-hour ozone NAAQS. In addition, as of June 30, 2008, data available in AQS and on the Texas Commission on Environmental Quality Web site at *http://www.tceq.state.tx.us/cgi-bin/compliance/monops/ozone_exceedance.pl* show no exceedances of the 1-hour standard for the DFW area in 2008. Consistent with 40 CFR 50, Appendix H, Table 1 contains the 1-hour ozone data for the DFW 1-hour ozone nonattainment area monitors that show that the area is currently attaining the 1-hour ozone NAAQS.

TABLE 1.—1-HOUR OZONE DATA FOR THE DFW 1-HOUR OZONE NONATTAINMENT AREA

Site	Design value (ppb)		Actual and estimated number of exceedances [a]				3-year exceedance average	
	2004–2006	2005–2007	2004	2005	2006	2007	2004–2006	2005–2007
Denton County Airport (48–121–0034)	118	118	0	0	0	1	0	0.33
Nuestra (48–113–0075)	117	16	0	0	0	0	0	0
Hinton (48–113–0069)	114	114	0	0	0	0	0	0
Executive (48–113–0087)	111	110	1	0	0	0	0.33	0
Keller (48–439–2003)	115	117	0	2	0	1	0.67	1.00
Meacham (48–439–1002)	117	118	0	2	0	1	0.67	1.00
Arlington (48–439–3011)	113	113	0	0	0	0	0	0
Eagle Mt. Lake (48–439–0075)	124	124	1	2	0	1	1.00	1.00
Grapevine (48–439–3009)	112	111	1	0	0	0	0.33	0
Frisco (48–085–0005)	113	111	0	0	0	0	0	0

[a] The actual and estimated number of exceedances were equal in all cases.

Pursuant to the interpretation set forth in the May 10, 1995 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone Ambient Air Quality Standard'' (Clean Data Policy), EPA is proposing to make a finding of attainment based on current air quality. Under this policy, if EPA determines through rulemaking that the DFW 1-hour ozone nonattainment area is meeting the 1-hour ozone standard, the requirements for the State to submit and have approved an attainment demonstration and related components such as reasonably available control measures (RACM), an RFP demonstration (including the 5% IOP plan), and contingency measures for failure to attain or make RFP are suspended as long as the area continues to attain the 1-hour ozone NAAQS. If the area subsequently violates the ozone NAAQS, EPA would initiate notice-and-comment rulemaking to withdraw the determination of attainment, which would result in reinstatement of the requirement for the State to submit such plans.

The Tenth, Seventh and Ninth Circuits have upheld EPA rulemakings applying the Clean Data Policy. See *Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club* v. EPA, 375 F.3d 537 (7th Cir. 2004) and *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005) memorandum opinion.[1] See also the discussion and rulemakings cited in the Phase 2 Rule, 70 FR 71644–71646 (November 29, 2005).

IV. What Action Is EPA Taking?

EPA proposes to find that the DFW 1-hour ozone nonattainment area has attained the 1-hour ozone standard. Thus the requirements for submitting the attainment demonstration, RFP requirements, or in this case a 5% IOP, (40 CFR 51.905(a)), and section 172(c)(9) and section 182(c)(9) contingency measures are suspended for so long as the area is attaining the standard.

Thus pursuant to our proposed determination of attainment and in accordance with our Clean Data Policy, the effect of the finding is that the following requirements to submit SIP measures under the 1-hour anti-backsliding provisions (40 CFR Section 51.905) are suspended for so long as the area continues to attain the 1-hour standard:

RFP reductions under section 182(c)(2)(B) (for serious and above areas)

Attainment demonstration under section 182(c)(2) (for serious and above areas)

Contingency measures under section 172(c)(9) and section 182(c)(9) (for serious and above areas).

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting Federal standards. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 1, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8–15809 Filed 7–10–08; 8:45 am]

BILLING CODE 6560–50–P

[1] The Clean Data Policy, as it is embodied in 40 CFR 51.918, is being challenged in the context of the 8-hour ozone standard in the Phase 2 Rule ozone litigation pending in the D.C. Circuit, *NRDC* v. *EPA*, No. 06–1045 (D.C. Cir.).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0523; FRL–8690–5]

Approval and Promulgation of Implementation Plans; Texas; Control of Emissions of Nitrogen Oxides (NO_X) From Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of rules for the control of NO_X emissions into the Texas State Implementation Plan (SIP). The Texas

Commission on Environmental Quality (TCEQ) submitted this revision to the SIP to us on May 30, 2007 (May 30, 2007 SIP revision). The May 30, 2007 SIP revision is a substantive and non-substantive recodification and reformatting of the NO_X rules currently approved in the Texas SIP. This revision also includes a part of the NO_X reductions needed for the Dallas/Forth Worth (D/FW) area to attain the Federal 8-hour ozone National Ambient Air Quality Standard (NAAQS). This rulemaking covers four separate actions. First, we are proposing to approve the repeal of the current Chapter 117 rules that correspond to the non-substantive new rules and the revised and reformatted rules because the reformatted revision will better accommodate future additions/revisions to the rules. See section 1 of this document. Second, we are proposing to approve revisions to the Texas SIP that add new controls for the D/FW major NO_X point sources. We are not, however, taking action on the Texas rules for cement plants in this document. The rules for cement plants are being evaluated in a separate **Federal Register** document. See sections 5, 6, 13, and 14 of this document. Third, we are proposing to approve revisions to the Texas SIP that add new controls for D/FW minor NO_X sources. See section 15 of this document. Fourth, we are proposing to approve revisions to the Texas SIP that add new controls for combustion sources in East Texas. See section 16 of this document. These NO_X reductions will assist the D/FW area to attain the 8-hour ozone NAAQS. We are proposing approval of these actions as meeting the requirements of section 110 and part D of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before August 11, 2008.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0523, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0523. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected from disclosure. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6691, fax (214) 665–7263, e-mail address *shar.alan @epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

I. General Information

What Should I Consider as I Prepare My Comments for EPA?

A. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

• Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a 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

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1. What are we proposing to approve?

On May 30, 2007, TCEQ submitted rule revisions to 30 TAC, Chapter 117, ''Control of Air Pollution from Nitrogen Compounds,'' as a revision to the Texas SIP for point sources of NO_X (May 30, 2007 SIP revision). The State of Texas submitted the May 30, 2007 SIP revision to us, to, among other things, provide a portion of the NO_X reductions needed for the D/FW area to attain the Federal 8-hour ozone NAAQS. We are taking four separate actions in this rulemaking action.

First, these revisions involve repealing the current Chapter 117 rules, and simultaneously proposing to approve into the Texas SIP, a new reformatted Chapter 117. We are proposing to approve the repeal of the current Chapter 117, and the recodification and reformatting of Chapter 117 because the reformatted revision will better accommodate future additions/revisions to the rules and will maintain consistency between the State rules and Federal SIP. We are proposing to approve all of the non-substantive reformatted, restructured, renumbered, reorganized, and administrative revisions to the wording of Chapter 117 into Texas SIP. We want to clarify that the specifically identified rules do not make any changes to the substance of the rules that we previously approved into the Texas SIP, Chapter 117. By approving the repeal of the current Texas SIP, Chapter 117's rules we are making it clear that the new rules replace the previous rules in their entirety. We are proposing to approve these non-substantive reformatted, restructured, renumbered, reorganized, and administrative revisions to the wording of Chapter 117 under section 110 and part D of the Act. For a full list of affected sections see section 3 of this document.

Second, we are proposing to approve revisions to the D/FW NO_X major point source rules. See sections 5, 6, 13, and 14 of this document. Sections 117.410(a), 117.410(b) and 117.310(b) contain substantive changes in the reformatted Chapter 117 rules that result in additional NO_X reductions. These reductions were not previously a part of EPA-approved Texas SIP, Chapter 117.

Third, we are proposing to approve revisions to the D/FW minor source rules for the control of NO_X. See section 15 of this document. Sections 117.2010(a) and 117.2110(a) contain substantive changes in the reformatted Chapter 117 rules that result in additional NO_X reductions which will help the DFW area to attain the 1997 8-hour ozone standard. These reductions were not previously a part of EPA-approved Texas SIP, Chapter 117.

Fourth, we are proposing to approve revisions to the rules for the control of NO_X emissions from combustion sources in East Texas. See section 16 of this document. Sections 117.3310(a) and 117.3010(a) contain substantive changes in the reformatted Chapter 117 rules that result in 22.4 Tons Per Day (TPD) of cumulative NO_X reductions. These reductions were not previously a part of EPA-approved Texas SIP, Chapter 117.

Tables 1 and 2 list the section of the Texas rules with significant modifications and minor substantive modifications, respectively. Since Texas has reformatted and recodified the rule, the remaining sections of Chapter 117 are affected by this revision in nonsubstantive ways. Table 3 lists all of the sections that are impacted by this revision both in substantive and in nonsubstantive ways.

Table 1 contains a list of the sections of Chapter 117 with significant modifications. Also see Figure 1 of 30 TAC Chapter 117 at 31 Texas Register 10899, published December 29, 2006.

TABLE 1.—DESCRIPTION AND SECTIONS OF 30 TAC, CHAPTER 117 PROPOSED FOR MODIFICATION

Description	Section
Subchapter A: Definitions	117.10(2), 117.10(14), 117.10(24), 117.10(29), 117.10(44), and 117.10(51).
Subchapter B, Division 4, Dallas-Fort Worth Eight Hour Ozone Nonattainment Area Major Sources.	117.400–117.456.
Removal from Subchapter B, Division 2 after compliance date for Division 4	117.200(b).
Subchapter C, Division 4, Dallas-Fort Worth Eight Hour Ozone Nonattainment Area Utility Electric Generation Sources.	117.1300–117.1356.
Removal from Subchapter C, Division 2 after compliance date for Division 4	117.1100(c)
Subchapter D, Division 2, Dallas-Fort Worth Eight Hour Ozone Nonattainment Area Minor Sources.	117.2100–117.2145.

TABLE 1.—DESCRIPTION AND SECTIONS OF 30 TAC, CHAPTER 117 PROPOSED FOR MODIFICATION—Continued

Description	Section
Subchapter E: Multi-Region Combustion Control, Division 4, East Texas Combustion	117.3300–117.3345.
Subchapter H: Administrative Provisions, Division 1, Compliance Schedules	117.9030, 117.9130, 117.9210, 117.9320, and 117.9340.

The following Table 2 contains a list of changes to existing Chapter 117 language that are minor in nature. Also see Figure 1 of 30 TAC Chapter 117 at 31 Texas Register 10900, published December 29, 2006.

TABLE 2.—DESCRIPTION AND SECTIONS OF 30 TAC, CHAPTER 117 WITH MINOR CHANGES

Description	Section
Add equation for oxygen correction of pollutant concentration	117.10(35).
Update utility boiler definition and utility electric generation rules applicability consistent with East and Central Texas utility rules.	117.10(52), 117.1000, 117.1100, and 117.1200.
Update emergency fuel oil exemption to include only appropriate reliability councils	117.1003(c), 117.1103(c), and 117.1203(c).
Include list of ammonia methods in test methods procedures	117.8000(c).
Allow major sources to petition ED for shorter test times	117.8000(b)
Change references of "upsets" to "emissions events."	117.123(k), 117.223(k), 117.323(k), 117.1020(k), 117.1120(k), and 117.1220(k).
Clarify system cap equations to allow for adjustment period after startup	117.320(c).
Additional data substitution option for major sources subject to MECT	117.340(c).
Expand engine low use requirement from quarterly testing to BPA and D/FW	117.8140(b).
Update references to 101.222 to be consistent with current	101.222, 117.145(a), 117.245(a), 117.345(a), 117.1045(a), 117.1145(a), 117.1245(a), and 117.3045(a).
Clarify compliance schedule for industrial EGFs to submit level of activity information	117.9020(2)(B).

For more details on each of these actions, you can refer to our Technical Support Document (TSD) developed in conjunction with this rulemaking action. We are proposing to approve revisions to 30 TAC, Chapter 117, described above as actions one through four, because these revisions to 30 TAC Chapter 117 will enhance the Texas SIP for controlling NO_X emissions from stationary sources and the NO_X emission reductions will assist the D/FW area to attain the 1997 8-hour ozone NAAQS. Furthermore, approving the non-substantive changes will maintain consistency between the State rules and Federal SIP.

2. What is the relationship between the May 30, 2007 SIP revision and the ozone attainment demonstration plan for the D/FW?

The resulting emissions reductions of NO_X, an ozone precursor, from this SIP revision will assist in bringing the D/FW area into attainment with the 8-hour ozone NAAQS, and help with the maintenance of the ozone NAAQS in the East and Central parts of the State. We will be reviewing the 8-hour ozone attainment demonstration plan in a separate rulemaking action.

3. What sections of the May 30, 2007, SIP revision will become part of Texas SIP?

Table 3 below contains a summary list of the sections of 30 TAC, Chapter 117 that Texas submitted on May 30, 2007, for point sources of NO_X that we are proposing become part of the Texas SIP. Table 3 includes both the sections with substantive changes and the nonsubstantive changes.

TABLE 3.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF 30 TAC, CHAPTER 117 AFFECTED BY THE MAY 30, 2007, PROPOSED RULE REVISION

Section No.	Description
Section 117.10	Definitions.
Section 117.100	Applicability.
Section 117.103	Exemptions.
Section 117.105	Emission Specifications for Reasonably Available Control Technology (RACT).
Section 117.110	Emission Specifications for Attainment Demonstration.
Section 117.115	Alternative Plant-Wide Emission Specifications.
Section 117.123	Source Cap.
Section 117.130	Operating Requirements.
Section 117.135	Initial Demonstration of Compliance.
Section 117.140	Continuous Demonstration of Compliance.
Section 117.145	Notification, Recordkeeping, and Reporting Requirements.
Section 117.150	Initial Control Plan Procedures.
Section 117.152	Final Control Plan Procedures for Reasonably Available Control Technology.
Section 117.154	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.
Section 117.156	Revision of Final Control Plan.
Section 117.200	Applicability.
Section 117.203	Exemptions.
Section 117.205	Emission Specifications for Reasonably Available Control Technology (RACT).

TABLE 3.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF 30 TAC, CHAPTER 117 AFFECTED BY THE MAY 30, 2007, PROPOSED RULE REVISION—Continued

Section No.	Description
Section 117.210	Emission Specifications for Attainment Demonstration.
Section 117.215	Alternative Plant-Wide Emission Specifications.
Section 117.223	Source Cap.
Section 117.230	Operating Requirements.
Section 117.235	Initial Demonstration of Compliance.
Section 117.240	Continuous Demonstration of Compliance.
Section 117.245	Notification, Recordkeeping, and Reporting Requirements.
Section 117.252	Final Control Plan Procedures for Reasonably Available Control Technology.
Section 117.254	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.
Section 117.256	Revision of Final Control Plan.
Section 117.300	Applicability.
Section 117.303	Exemptions.
Section 117.305	Emission Specifications for Reasonably Available Control Technology (RACT).
Section 117.310	Emission Specifications for Attainment Demonstration.
Section 117.315	Alternative Plant-Wide Emission Specifications.
Section 117.320	System Cap.
Section 117.323	Source Cap.
Section 117.330	Operating Requirements.
Section 117.335	Initial Demonstration of Compliance.
Section 117.340	Continuous Demonstration of Compliance.
Section 117.345	Notification, Recordkeeping, and Reporting Requirements.
Section 117.350	Initial Control Plan Procedures.
Section 117.352	Final Control Plan Procedures for Reasonably Available Control Technology.
Section 117.354	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.
Section 117.356	Revision of Final Control Plan.
Section 117.400	Applicability.
Section 117.403	Exemptions.
Section 117.410	Emission Specifications for Eight-Hour Attainment Demonstration.
Section 117.423	Source Cap.
Section 117.430	Operating Requirements.
Section 117.435	Initial Demonstration of Compliance.
Section 117.440	Continuous Demonstration of Compliance.
Section 117.445	Notification, Recordkeeping, and Reporting Requirements.
Section 117.450	Initial Control Plan Procedures.
Section 117.454	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.
Section 117.456	Revision of Final Control Plan.
Section 117.1000	Applicability.
Section 117.1003	Exemptions.
Section 117.1005	Emission Specifications for Reasonably Available Control Technology (RACT).
Section 117.1010	Emission Specifications for Attainment Demonstration.
Section 117.1015	Alternative System-Wide Emission Specifications.
Section 117.1020	System Cap.
Section 117.1035	Initial Demonstration of Compliance.
Section 117.1040	Continuous Demonstration of Compliance.
Section 117.1045	Notification, Recordkeeping, and Reporting Requirements.
Section 117.1052	Final Control Plan Procedures for Reasonably Available Control Technology.
Section 117.1054	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.
Section 117.1056	Revision of Final Control Plan.
Section 117.1100	Applicability.
Section 117.1103	Exemptions.
Section 117.1105	Emission Specifications for Reasonably Available Control Technology (RACT).
Section 117.1110	Emission Specifications for Attainment Demonstration.
Section 117.1115	Alternative System-Wide Emission Specifications.
Section 117.1120	System Cap.
Section 117.1135	Initial Demonstration of Compliance.
Section 117.1140	Continuous Demonstration of Compliance.
Section 117.1145	Notification, Recordkeeping, and Reporting Requirements.
Section 117.1152	Final Control Plan Procedures for Reasonably Available Control Technology.
Section 117.1154	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.
Section 117.1156	Revision of Final Control Plan.
Section 117.1200	Applicability.
Section 117.1203	Exemptions.
Section 117.1205	Emission Specifications for Reasonably Available Control Technology (RACT).
Section 117.1210	Emission Specifications for Attainment Demonstration.
Section 117.1215	Alternative System-Wide Emission Specifications.
Section 117.1220	System Cap.
Section 117.1235	Initial Demonstration of Compliance.
Section 117.1240	Continuous Demonstration of Compliance.
Section 117.1245	Notification, Recordkeeping, and Reporting Requirements.
Section 117.1252	Final Control Plan Procedures for Reasonably Available Control Technology.
Section 117.1254	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

TABLE 3.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF 30 TAC, CHAPTER 117 AFFECTED BY THE MAY 30, 2007, PROPOSED RULE REVISION—Continued

Section No.	Description
Section 117.1256	Revision of Final Control Plan.
Section 117.1300	Applicability.
Section 117.1303	Exemptions.
Section 117.1310	Emission Specifications for Eight-Hour Attainment Demonstration.
Section 117.1335	Initial Demonstration of Compliance.
Section 117.1340	Continuous Demonstration of Compliance.
Section 117.1345	Notification, Recordkeeping, and Reporting Requirements.
Section 117.1350	Initial Control Plan Procedures.
Section 117.1354	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.
Section 117.1356	Revision of Final Control Plan.
Section 117.2000	Applicability.
Section 117.2003	Exemptions.
Section 117.2010	Emission Specifications.
Section 117.2030	Operating Requirements.
Section 117.2035	Monitoring and Testing Requirements.
Section 117.2045	Recordkeeping and Reporting Requirements.
Section 117.2100	Applicability.
Section 117.2103	Exemptions.
Section 117.2110	Emission Specifications for Eight-Hour Attainment Demonstration.
Section 117.2130	Operating Requirements.
Section 117.2135	Monitoring, Notification, and Testing Requirements.
Section 117.2145	Recordkeeping and Reporting Requirements.
Section 117.3000	Applicability.
Section 117.3003	Exemptions.
Section 117.3005	Gas-Fired Steam Generation.
Section 117.3010	Emission Specifications.
Section 117.3020	System Cap.
Section 117.3035	Initial Demonstration of Compliance.
Section 117.3040	Continuous Demonstration of Compliance.
Section 117.3045	Notification, Recordkeeping, and Reporting Requirements.
Section 117.3054	Final Control Plan Procedures.
Section 117.3056	Revision of Final Control Plan.
Section 117.3200	Applicability.
Section 117.3201	Definitions.
Section 117.3203	Exemptions.
Section 117.3205	Emission Specifications.
Section 117.3210	Certification Requirements.
Section 117.3215	Notification and Labeling Requirements.
Section 117.3300	Applicability.
Section 117.3303	Exemptions.
Section 117.3310	Emission Specifications for Eight-Hour Attainment Demonstration.
Section 117.3330	Operating Requirements.
Section 117.3335	Monitoring, Notification, and Testing Requirements.
Section 117.3345	Recordkeeping and Reporting Requirements.
Section 117.4000	Applicability.
Section 117.4005	Emission Specifications.
Section 117.4025	Alternative Case Specific Specifications.
Section 117.4035	Initial Demonstration of Compliance.
Section 117.4040	Continuous Demonstration of Compliance.
Section 117.4045	Notification, Recordkeeping, and Reporting Requirements.
Section 117.4050	Control Plan Procedures.
Section 117.4100	Applicability.
Section 117.4105	Emission Specifications.
Section 117.4125	Alternative Case Specific Specifications.
Section 117.4135	Initial Demonstration of Compliance.
Section 117.4140	Continuous Demonstration of Compliance.
Section 117.4145	Notification, Recordkeeping, and Reporting Requirements.
Section 117.4150	Control Plan Procedures.
Section 117.4200	Applicability.
Section 117.4205	Emission Specifications.
Section 117.4210	Applicability of Federal New Source Performance Standards.
Section 117.8000	Stack Testing Requirements.
Section 117.8010	Compliance Stack Test Reports.
Section 117.8100	Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources.
Section 117.8110	Emission Monitoring System Requirements for Utility Electric Generation Sources.
Section 117.8120	Carbon Monoxide (CO) Monitoring.
Section 117.8130	Ammonia Monitoring.
Section 117.8140	Emission Monitoring for Engines.
Section 117.9000	Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Major Sources.
Section 117.9010	Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources.
Section 117.9020	Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources.

TABLE 3.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF 30 TAC, CHAPTER 117 AFFECTED BY THE MAY 30, 2007, PROPOSED RULE REVISION—Continued

Section No.	Description
Section 117.9030	Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources.
Section 117.9100	Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources.
Section 117.9110	Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources.
Section 117.9120	Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources.
Section 117.9130	Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources.
Section 117.9200	Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources.
Section 117.9210	Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources.
Section 117.9300	Compliance Schedule for Utility Electric Generation in East and Central Texas.
Section 117.9340	Compliance Schedule for East Texas Combustion.
Section 117.9500	Compliance Schedule for Nitric Acid and Adipic Acid Manufacturing Sources.
Section 117.9800	Use of Emission Credits for Compliance.
Section 117.9810	Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP).

You can find the entire TCEQ Chapter 117 rules at: *http://www.tceq.state.tx.us/rules/indxpdf.html#117.*

For a detailed discussion of each of the above changes and why EPA believes they should be approved see the Technical Support Document for this action.

4. What sections of the May 30, 2007, SIP revision will not become part of the Texas SIP?

Per TCEQ's request the following sections, listed in Table 4 below, of the May 30, 2007, SIP revision will not become a part of the EPA-approved Texas SIP. These rules mainly pertain to the control of ammonia or carbon monoxide emissions which are not ozone precursors and therefore, these rules are not necessary components of the Texas SIP. The rules listed in Table 4 are not already in the current Texas SIP and EPA continues to agree with Texas that these rules can remain outside the SIP.

TABLE 4.—SECTIONS OF CHAPTER 117 NOT IN EPA-APPROVED TEXAS SIP

Section No.	Explanation
117.110(c), 117.125, 117.210(c), 117.225, 117.310(c), 117.325, 117.410(d), 117.425, 117.1010(b), 117.1025, 117.1110(b), 117.1125, 117.1210(b), 117.1225, 117.1310(b), 117.1325, 117.2010(i), 117.2025, 117.2110(h), 117.2125, 117.3010(e), 117.3025, 117.3123(f), 117.3125, 117.3310(e), and 117.3325.	Not a part of EPA-approved Texas SIP and TCEQ continues to ask that these rules remain outside the SIP.

Although the above sections of 30 TAC Chapter 117 are not to become a part of the Texas SIP they will continue to remain enforceable at the State level.

5. What sections of the May 30, 2007 SIP revision are we not acting upon in this proposal?

We are not evaluating the cement kiln related sections of the May 30, 2007 SIP revision, in this document. See Table 5 below. We will review and act upon the cement kiln related sections of the May 30, 2007 SIP revision in a separate rulemaking action.

TABLE 5.—SECTIONS OF CHAPTER 117 NOT BEING EVALUATED IN THIS RULEMAKING

Section No.	Explanation
117.3100, 117.3101, 117.3103, 117.3110, 117.3120, 117.3123, 117.3125, 117.3140, 117.3142, and 117.3145.	Cement kiln related, not evaluating in this rulemaking action.

6. What Counties in the D/FW area will the May 30, 2007 SIP revision affect?

Table 6 below lists the Counties in the D/FW 8-hour ozone nonattainment area that will be affected by the May 30, 2007 SIP revision.

TABLE 6.—TEXAS COUNTIES IN THE D/FW 8-HOUR OZONE NONATTAINMENT AREA

D/FW Counties	Explanation
Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant	See section 117.10(2)(C).

7. What Counties in East and Central Texas will the May 30, 2007 SIP revision affect?

Table 7 below lists the Counties in the East and Central Texas that will be affected by the May 30, 2007 SIP revision.

TABLE 7.—COUNTIES PART OF THE EAST AND CENTRAL TEXAS PROVISION OF CHAPTER 117

East and Central Texas counties	Explanation
Anderson, Brazos, Burleson, Camp, Cass, Cherokee, Franklin, Freestone, Gregg, Grimes, Harrison, Henderson, Hill, Hopkins, Hunt, Lee, Leon, Limestone, Madison, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Robertson, Rusk, Shelby, Smith, Titus, Upshur, Van Zandt, and Wood.	See section 117.10(14)(B).

8. What is ozone and why do we regulate it?

Ozone is a gas composed of three oxygen atoms. Ground level ozone is generally not emitted directly from a vehicle's exhaust or an industrial smokestack, but is created by a chemical reaction between NO_X and VOCs in the presence of sunlight and high ambient temperatures. Thus, ozone is known primarily as a summertime air pollutant. NO_X and VOCs are precursors of ozone. Motor vehicle exhaust and industrial emissions, gasoline vapors, chemical solvents and natural sources emit NO_X and VOCs. Urban areas tend to have high concentrations of ground-level ozone, but areas without significant industrial activity and with relatively low vehicular traffic are also subject to increased ozone levels because wind carries ozone and its precursors hundreds of miles from their sources.

Repeated exposure to ozone pollution may cause lung damage. Even at very low concentrations, ground-level ozone triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses like pneumonia and bronchitis. It can also have detrimental effects on plants and ecosystems.

9. What are NO_X?

Nitrogen oxides belong to the group of criteria air pollutants. NO_X are produced from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain. Also see *http://www.epa.gov/air/urbanair/nox/.*

10. What is a SIP?

The SIP is a set of air pollution regulations, control strategies, other means or techniques and technical analyses developed by the state, to ensure that the state meets the NAAQS. The SIP is required by Section 110 and other provisions of the Act. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin.

11. What areas in Texas will today's rulemaking action affect?

The substantive rule revisions we are proposing to approve today mainly affect the D/FW 8-hour ozone nonattainment area. See section 6 of this document. The substantive rule revisions we are proposing to approve today also affect 33 counties in East and Central Texas. See section 7 of this document. If you are in one of these affected areas, you should refer to the Texas NO_X rules to determine if and how today's action will affect you.

As stated elsewhere in this document the D/FW 8-hour ozone nonattainment area (Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, and Rockwall Counties) is designated nonattainment, and classified as a moderate 8-hour non-attainment area for ozone. See 69 FR 23857 published April 30, 2004.

12. What is the section 110(l) ''anti-backsliding'' analysis for the May 30, 2007 SIP revision?

According to section 110(l) of the Act ''each revision to an implementation plan submitted by a State under this Act 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 171), or any other applicable requirement of this Act.''

- The May 2007 SIP submittal includes documentation that the State has met and complied with the reasonable notice and public hearing requirements. The State held public hearings after proper notice and according to the 40 CFR 51.102 requirements. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the dates of the hearings. The hearing notices of intended action were circulated to the public, including interested persons, EPA Region 6, and all applicable local air pollution control agencies. Public hearings were held in Houston, Dallas, Arlington, Midlothian, Longview, and Austin, Texas. The May 2007 SIP submittal contains information to the effect that State has met and complied with the reasonable notice and public hearing requirements. For more information see our SIP Completeness Determination document, prepared in accordance with the Appendix V of 40 CFR 51, made part of the EPA–R06–OAR–2007–0523 docket, and available for public review. Therefore, it is our finding that this revision submitted by Texas under the Act has been adopted by Texas after reasonable notice and public hearing.

- The May 2007 SIP submittal requires NO_X reductions from sources located outside the D/FW nine-County area. The resulting NO_X reductions should assist in bringing the D/FW area into attainment with the 8-hour ozone NAAQS. Sources outside the D/FW nine county area, now regulated by these rules include, gas-fired stationary reciprocating internal combustion engines operating in East Texas (see 117.3310(a) and 117.3010(a)). NO_X emissions from these units were not regulated before. These units are located in Texas Counties that are designated as attainment for ozone NAAQS. These Texas Counties are Anderson, Brazos, Burleson, Camp, Cass, Cherokee, Franklin, Freestone, Gregg, Grimes, Harrison, Henderson, Hill, Hopkins,

Hunt, Lee, Leon, Limestone, Madison, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Robertson, Rusk, Shelby, Smith, Upshur, Van Zandt, and Wood. It is estimated that these revisions will result in 22.4 TPD of NO_X reductions.

• The May 2007 SIP submittal provides for additional NO_X emissions reductions that were not previously a part of the EPA-approved Texas SIP. The May 2007 SIP submittal requires NO_X reductions from major sources or major source categories not previously regulated. An example listing of such sources or categories is as follows: stationary diesel engines in the D/FW nine-County area (see 117.410(b)(4)), stationary reciprocating internal combustion engines located in the D/FW nine county area (see 117.410(a) and (b)), metallurgical furnaces (see 117.410(b)(8)), container glass furnaces (see 117.410(b)(10)(A)), and fiberglass furnaces (see 117.410(b)(10)(B) through (D)). These new regulations provide an additional 8.88 tons/day of reductions.

• The May 2007 SIP submittal provides for additional NO_X emissions reductions that were not previously a part of the EPA-approved Texas SIP. The May 2007 SIP submittal requires NO_X reductions from minor sources within the DFW nine county area not previously regulated. See 117.2110(a)(1), and 117.2010(a)(1) and (2). These rules provide additional NO_X emissions reductions that were not previously a part of the EPA-approved Texas SIP. See section 15 of this document.

• The statewide residential water heater rule was revised due to technical infeasibility which means this rule will achieve slightly less reductions than if the approved rule had proved feasible. We believe this small loss in emission reductions will be offset by other measures. This is further discussed in the Technical Support Document. We have discussed the potential impact of the revised water heater rule in our separate action on the 1997 8-hour ozone attainment demonstration for the D/FW area. In that action we explain how the revisions do not interfere with attainment or maintenance of the NAAQS.

For the reasons stated above, the provisions of the May 2007 SIP submittal meet the section 110(l) requirements of the Act.

13. What are the NO_X emissions requirements for major point sources in the D/FW area that we are proposing to approve?

We approved NO_X emissions specifications for stationary sources in 66 FR 15195 published March 16, 2001. In addition to requiring NO_X emissions control requirements for those sources, we are proposing to approve the following NO_X emissions requirements for the following affected sources with emissions greater than 50 Tons Per Year (TPY) in the D/FW 8-hour ozone nonattainment area. We have included the Chapter 117 citation for each source category in the Table 8 below for reference purposes.

TABLE 8.—NO_X EMISSIONS SPECIFICATIONS FOR THE D/FW 8-HOUR OZONE NONATTAINMENT AREA

Source	NO_X limit	Additional information	Citation
Reciprocating Internal Combustion Engines.	2.0 g/hp-hr	Natural gas, rich burn, capacity ≥ 300 hp, before January 1, 2000, also a 3.0 g/hp-hr limit of CO.	117.410(a)(1)(B)(i).
Reciprocating Internal Combustion Engines.	0.50 g/hp-hr	Natural gas, rich burn, capacity ≥ 300 hp, on or after January 1, 2000, also a 3.0 g/hp-hr limit of CO.	117.410(a)(9)(B)(ii).
Reciprocating Internal Combustion Engines.	0.60 g/hp-hr	Gas-fired, rich burn, landfill gas	117.410(b)(4)(A)(i).
Reciprocating Internal Combustion Engines.	0.50 g/hp-hr	Gas-fired, rich burn, not using landfill gas	117.410(b)(4)(A)(ii).
Reciprocating Internal Combustion Engines.	0.70 g/hp-hr	Gas-fired, lean burn, before June 1, 2007, not modified afterwards.	117.410(b)(4)(B)(i).
Reciprocating Internal Combustion Engines.	0.60 g/hp-hr.	Gas-fired, lean burn, landfill gas, on or after June 1, 2007.	117.410(b)(4)(B)(ii)(I).
Reciprocating Internal Combustion Engines.	0.50 g/hp-hr	Dual-fuel	117.410(b)(4)(B)(ii)(II).
Duct Burners	0.032 lb/MMBtu	Used in turbine exhausts, rated ≥ 10 MW	117.410(b)(6).
Duct Burners	0.15 lb/MMBtu	Used in turbine exhausts, 1.0 (rated < 10 MW.	117.410(b)(6).
Duct Burners	0.26 lb/MMBtu	Used in turbine exhausts, rated < 1.0 MW	117.410(b)(6).
Lime Kilns	3.7 lb/ton of CaO	Individual kiln basis	117.410(b)(7)(A)(i).
Lime Kilns	3.7 lb/ton of CaO	Site-wide basis	117.410(b)(7)(A)(ii).
Ceramic and Brick Kilns	40% NO_X reduction	Using daily 2000 calendar year EI	117.410(b)(7)(B)(i).
Brick Kilns	0.175 lb/ton of product	As option	117.410(b)(7)(B)(ii).
Ceramic Kilns	0.27 lb/ton of product	As option	117.410(b)(7)(B)(iii).
Metallurgical Furnaces	0.087 lb/MMBtu	Heat Furnace, March 1–October 31 any year.	117.410(b)(8)(A).
Metallurgical Furnaces	0.10 lb/MMBtu	Reheat Furnace, March 1–October 31 any year.	117.410(b)(8)(B).
Metallurgical Furnaces	0.45 lb/MMBtu	Lead smelting blast cupola and reverberatory.	117.410(b)(8)(C).
Incinerators	80% NO_X reduction	Using real emissions of 2000 EI	1117.410(b)(9)(A).
Incinerators	0.030 lb/MMBtu	As option	117.410(b)(9)(B).
Container Glass Furnaces	4.0 lb/ton of glass pulled	Melting furnace, within 25% of permitted production capacity, or MAER of permit issued before June 1, 2007.	117.410(b)(10)(A)(i), or 117.410(b)(10)(A)(ii).
Fiberglass Furnaces	4.0 lb/ton product pulled	Mineral wool, cold-top electric	117.410(b)(10)(B).
Fiberglass Furnaces	1.45 lb/ton product pulled	Mineral wool, regenerative	117.410(b)(10)(C).
Fiberglass Furnaces	3.1 lb/ton product pulled	Mineral wool, non-regenerative	117.410(b)(10)(D).
Curing Ovens	0.036 lb/MMBtu	Gas fired, used in mineral wool-type or textile-type fiberglass.	117.410(b)(11).

TABLE 8.—NO_X EMISSIONS SPECIFICATIONS FOR THE D/FW 8-HOUR OZONE NONATTAINMENT AREA—Continued

Source	NO_X limit	Additional information	Citation
Ovens and Heaters	0.036 lb/MMBtu	Natural gas-fired	117.410(b)(12).
Dryers	0.036 lb/MMBtu	Natural gas-fired, used in organic solvent, printing ink, clay, brick, ceramic tile, calcining, and vitrifying processes.	117.410(b)(13)(A).
Spray Dryers	0.15 lb/MMBtu	Natural gas-fired, used in ceramic tile manufacturing processes.	117.410(b)(13)(B).

The tables in this document are not intended to be exhaustive, but rather provide a guide for readers regarding NO_X control requirements the affected sources are likely to be required to comply with in conjunction with today's rulemaking action. To determine whether or how your facility would be affected by this particular action, you should refer to the actual text of 30 TAC Chapter 117, and the June 8, 2007 issue of the Texas Register (32 TexReg 3206). We are proposing approval of these NO_X emissions specifications under Part D of the Act because their resulting emissions reductions will assist Texas in demonstrating attainment of the 8-hour ozone standard in the D/FW 8-hour ozone nonattainment area. Therefore, we are proposing approval of these requirements into the Texas SIP.

14. What are the NO_X emission requirements for stationary diesel engines in the D/FW area that we are proposing to approve?

This SIP revision requires reductions of NO_X emissions from stationary diesel engines in the D/FW area. The following Table 9 contains a summary of the NO_X emission specifications for stationary diesel engines in the D/FW area. We have included the Chapter 117 citation for each source category in the Table 9 below for convenience purposes.

TABLE 9.—NO_X EMISSION REQUIREMENTS STATIONARY DIESEL ENGINES FOR THE D/FW 8-HOUR OZONE NONATTAINMENT AREA

Source	NO_X Emission Specification	Citation
Diesel engines in service before March 1, 2009: not modified, reconstructed, or relocated on or after March 1, 2009.	11.0 gram/hp-hr	117.410(b)(4)(D).
Rated less than 50 hp: modified, installed reconstructed, or relocated on or after March 1, 2009.	5.0 gram/hp-hr	117.410(b)(4)(E)(i).
50 hp [rated < 100 hp: modified, installed, reconstructed, or relocated on or after March 1, 2009.	3.3 gram/hp-hr	117.410(b)(4)(E)(ii).
100 hp [rated < 750 hp: installed, modified, reconstructed, or relocated on or after March 1, 2009.	2.8 gram/hp-hr	117.410(b)(4)(E)(iii).
Rated ≥ 750 hp: installed, modified, reconstructed, or relocated on or after March 1, 2009.	4.5 gram/hp-hr	117.310(b)(4)(E)(iv).

We are proposing to approve the above-listed NO_X emission requirements for diesel engines because they are in agreement with those found in 40 CFR section 89.112, and EPA's Document Number 420–R–98–016 dated August 1998, titled ''Final Regulatory Impact Analysis: Control of Emissions from Nonroad Diesel Engines.'' In addition, the above-listed NO_X emission requirements for diesel engines are consistent with those we approved for similar units at Table VI of 66 FR 57230 published on November 14, 2001. We are therefore proposing approval of these NO_X emission requirements under Part D of the Act because their resulting emissions reductions will assist Texas in demonstrating attainment of the 8-hour ozone standard within the D/FW 8-hour ozone nonattainment area. Therefore, we are proposing approval of these requirements into the Texas SIP.

15. What are the emissions specifications for minor sources of NO_X in D/FW area that we are proposing to approve?

These minor sources include stationary reciprocating internal combustion engines that are not a major source of NO_X (emit, when uncontrolled, less than 50 Tons Per Year (TPY) of NO_X). See sections 117.2100 and 117.2103 for more information.

TABLE 10.—NO_X EMISSIONS REQUIREMENTS FOR MINOR SOURCES IN THE D/FW AREA

Source	NO_X emission specification	Additional information	Citation
Reciprocating Internal Combustion Engines	0.60 g/hp-hr	Stationary, rich-burn, using landfill gas-fired	117.2110(a)(1)(A)(i).
Reciprocating Internal Combustion Engines	0.50 g/hp-hr	Stationary, rich-burn, not landfill gas-fired	117.2110(a)(1)(A)(ii).
Reciprocating Internal Combustion Engines	0.70 g/hp-hr	Stationary, lean-burn, in service before June 1, 2007.	117.2010(a)(1)(B)(i).
Reciprocating Internal Combustion Engines	0.60 g/hp-hr	Stationary, lean-burn, in service on or after June 1, 2007, using landfill gas.	117.2010(a)(1)(B)(i)(I).
Reciprocating Internal Combustion Engines	0.50 g/hp-hr	Stationary, lean-burn, in service on or after June 1, 2007, not using landfill gas.	117.2010(a)(1)(B)(i)(II).
Reciprocating Internal Combustion Engines	5.83 g/hp-hr	Stationary, dual-fuel	117.2010(a)(2).

As an alternative, a minor source from the Table 10 above located within the D/FW and having an annual capacity factor of 0.0383 or less may choose emissions specification of 0.060 lb/MMBtu, instead. See 117.2110(a)(4).

The NO_X emissions requirements for the above-listed minor sources of NO_X and their resulting emissions reductions will assist in demonstrating attainment of the 8-hour ozone NAAQS within the D/FW 8-hour ozone nonattainment area. Therefore, we are proposing approval of these requirements into the Texas NO_X SIP.

16. What are the NO_X emissions requirements for stationary RICE in East Texas that we are proposing to approve?

The gas-fired stationary reciprocating internal combustion engines located in Anderson, Brazos, Burleson, Camp, Cass, Cherokee, Franklin, Freestone, Gregg, Grimes, Harrison, Henderson, Hill, Hopkins, Hunt, Lee, Leon, Limestone, Madison, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Robertson, Rusk, Shelby, Smith, Upshur, Van Zandt, or Wood Texas Counties are subject to these requirements. See section 117.3300 for more information. The following Table 11 contains NO_X emissions requirements and related information for these affected units.

On July 19, 2007 TCEQ announced implementation of Texas Senate Bill 2000, passed in 2007 by the 80th Texas Legislative Session. The Bill directs the TCEQ to develop an incentive grant program for the partial reimbursement of capital costs for installing nonselective catalytic reduction (NSCR) systems to reduce emissions of NO_X from existing stationary gas-fired rich-burn compressor engines. For more information see *http://www.tceq.state.tx.us/implementation/air/rules/sb2003.html* (URL dating July 20, 2007).

TABLE 11.—NO_X EMISSIONS REQUIREMENTS FOR STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES IN EAST TEXAS

Source	NO_X Emission specification	Additional information	Citation
Reciprocating Internal Combustion Engines ..	1.00 g/hp-hr	Rich burn, gas-fired, capacity < 500 hp	117.3310(a)(1).
Reciprocating Internal Combustion Engines ..	0.60 g/hp-hr	Rich burn, landfill gas-fired, capacity ≥ 500 hp.	117.3010(a)(2)(A).
Reciprocating Internal Combustion Engines ..	0.50 g/hp-hr	Rich burn, not landfill gas-fired, capacity ≥ 500 hp.	117.3010(a)(2)(B).

The NO_X emissions requirements for the stationary reciprocating internal combustion engines in East and Central Texas and their resulting emissions reductions will assist in demonstrating attainment of the 8-hour ozone NAAQS within the Houston-Galveston-Brazoria, D/FW, and Beaumont/Port Arthur areas. Furthermore, these reductions will contribute to the continued maintenance of the standard in the eastern half of the State of Texas, and they enhance the Texas SIP. Therefore, we are proposing approval of these requirements into the May 30, 2007 Texas SIP under part D, and sections 110 and 116 of the Act, respectively.

17. What are the compliance schedules for NO_X emissions sources that we are proposing to approve?

The following Table 12 contains a summary of the NO_X-related compliance schedules for major sources, utility generating units, and minor sources affected by the May 30, 2007 SIP revision. See sections 117.9000 through 117.9500 for more information.

TABLE 12.—NO_X COMPLIANCE SCHEDULES FOR POINT SOURCES UNDER CHAPTER 117

Source	Compliance date	Additional information	Citation
Major, D/FW	Install all NO_X abatement equipment by no later than May 30, 2007.	Increment of Progress (IOP) requirement.	117.9030(a)(1).
Major, D/FW	Submit initial control plan per 117.450 by no later than June 1, 2008..	8-hour attainment demonstration.	
	Comply with emissions requirements by no later than March 1, 2009 when source subject to 117.410(b)(1), (2), (4), (5), (6), (7)(A), (10), and (14).	Requirement	117.9030(b).
	Diesel and dual-fuel engines comply with testing and hours of operation for testing and maintenance by no later than March 1, 2009.		
	Gas turbines or IC engines claiming run time exemption comply with the run time requirements by no later than March 1, 2009.		
D/FW	Submit initial control plan per 117.1350 by no later than June 1, 2008.	Utility electric generation sources.	117.9130(a)(1) and (2).
	Comply with all other requirements by no later than March 1, 2009.		
Minor, D/FW	Rich-burn, gas-fired stationary RICE comply with NO_X requirements by no later than March 1, 2009.	RICE fired with different fuel types.	117.9210.
	Lean-burn, gas-fired stationary RICE comply with NO_X requirements by no later than March 1, 2010.		
	Diesel-fired and dual-fuel stationary RICE comply with NO_X requirements by no later than March 1, 2009.		
East and Central Texas.	Updated final control plan per 117.3054 be submitted by no later than January 31, 2007.	Utility electric generation sources.	117.9300(2)(B).

TABLE 12.—NO_X COMPLIANCE SCHEDULES FOR POINT SOURCES UNDER CHAPTER 117—Continued

Source	Compliance date	Additional information	Citation
East Texas	Stationary RICE comply with NO_X requirements by no later than March 1, 2010.	East Texas combustion sources.	117.9340(a).

Including these compliance dates, summarized in Table 12 above, in the rule provides for enforceability and practicability of the NO_X rule, and enhances the May 30, 2007 Texas SIP; therefore, we are proposing their approval into the May 30, 2007 Texas SIP.

III. Proposed Actions

Today, we are proposing to approve revisions to the 30 TAC Chapter 117 into the Texas SIP. This rulemaking covers four separate actions. First, we are proposing to approve the repeal of all non-substantive changes to the SIP's Chapter 117 rules and the reformatting of current Chapter 117 because the reformatted revision will better accommodate future additions/revisions to the rules. Second, we are proposing to approve substantive revisions to the current NO_X SIP's Chapter 117 rules for D/FW NO_X major point sources. Third, we are proposing to approve substantive revisions to the current Texas SIP's Chapter 117 rules for D/FW minor sources of NO_X. Fourth, we are proposing to approve substantive revisions to the current Texas SIP's Chapter 117 rules for combustion sources in East Texas. These NO_X reductions will assist the D/FW area in attaining the 8-hour ozone NAAQS.

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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 1, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8–15814 Filed 7–10–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–1147; FRL–8690–4]

Approval and Promulgation of Implementation Plans; Texas; Control of Emissions of Nitrogen Oxides (NO_X) From Cement Kilns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of revisions to the Texas State Implementation Plan (SIP). The State of Texas submitted this SIP revision to the 30 TAC Chapter 117 to us on May 30, 2007 (May 30, 2007 submittal) concerning control of emissions of NO_X from cement kilns operating in Bexar, Comal, Ellis, Hays, and McLennan Counties of Texas. We are proposing to approve the cement kilns provisions of the May 30, 2007 submittal for cement kilns operating in these five Texas Counties. We are also proposing to approve the May 30, 2007 submittal as meeting the Reasonably Available Control Technology (RACT) requirements for NO_X emissions from cement kilns operating in the Dallas Fort Worth (D/FW) 8-hour ozone nonattainment area. The NO_X emissions controls associated with this SIP revision will assist the D/FW area to attain the Federal 8-hour ozone National Ambient Air Quality Standards (NAAQS). We are proposing approval of this action as meeting sections 110 and 182 of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before August 11, 2008.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–1147, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also

send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

• *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

• *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

• *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–1147. The 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 the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6691, fax (214) 665–7263, e-mail address *shar.alan @epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

I. General Information

What Should I Consider as I Prepare My Comments for EPA?

A. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

• Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a 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

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1. What are we proposing to approve?

On May 30, 2007, TCEQ submitted rule revisions to 30 TAC, Chapter 117, ''Control of Air Pollution from Nitrogen Compounds,'' as a revision to the Texas SIP, identified by TCEQ as rule project No. 2006–004–117–EN, for cement kilns operating in Bexar, Comal, Ellis, Hays, and McLennan Counties. In this rulemaking, we are proposing to approve the NO_X control requirements for cement kilns operating in these five Texas Counties. See sections 2, 3, 4, 8, and 9 of this document for more information. The NO_X emissions

controls associated with this SIP revision will assist the D/FW area to attain the Federal 8-hour ozone NAAQS, and will enhance the Texas SIP. We are also proposing to approve the cement kilns provisions of the May 30, 2007 submittal as meeting the RACT requirements for NO_X emissions from cement kilns operating in the D/FW 8-hour ozone nonattainment area. By proposing to approve the cement kilns provisions of the May 30, 2007 submittal we are stating that Texas is meeting the NO_X RACT requirements for cement kilns in the D/FW area.

The EPA has defined RACT as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. See 44 FR 53761, September 17, 1979. This requirement is established by sections 182(b)(2) and 182(f) of the Act. These two sections, taken together, establish the requirements for Texas to submit a NO_X RACT regulation for cement kilns (a major source of NO_X) in ozone nonattainment areas classified as moderate (such as D/FW) and above. A State may choose to develop its own RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source. In addition, section 183(c) of the Act provides that we will issue technical documents which identify alternative controls for stationary sources of NO_X. The EPA publishes the NO_X related Alternative Control Techniques documents (ACTs) for this purpose. The information in the ACT documents is generated from literature sources and contacts, control equipment vendors, EPA papers, engineering firms, and Federal, State, and local regulatory agencies. States can use information in the EPA ACTs to develop their RACT regulations. For a listing of EPA's ACT-related documents, including the ACT document for Cement Manufacturing, see *http://www.epa.gov/ttn/naaqs/ozone/ctg_act/index.htm* (URL dated April 22, 2008).

The Chapter 117 cement kilns provisions were last approved by EPA at 69 FR 15681 published on March 26, 2004.

2. What sections of the May 30, 2007 submittal will become part of Texas SIP?

Table 1 below contains a summary list of the sections of 30 TAC, Chapter 117 that Texas proposed on May 30, 2007, for cement kilns to become part of the Texas SIP.

TABLE 1.—SECTION NUMBERS AND SECTION DESCRIPTORS OF 30 TAC, CHAPTER 117 AFFECTED BY THE CEMENT KILNS RULE

Section No.	Description
Section 117.3100	Applicability.
Section 117.3101	Cement Kilns Definitions.
Section 117.3103	Exemptions.
Section 117.3110	Emission Specifications.
Section 117.3120	Source Cap.
Section 117.3123	Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements.
Section 117.3140	Continuous Demonstration of Compliance.
Section 117.3142	Emission Testing and Monitoring for Eight-Hour Attainment Demonstration.
Section 117.3145	Notification, Recordkeeping, and Reporting Requirements.
Section 117.9320	Compliance Schedule for Cement Kilns.

You can find complete TCEQ's rules and regulations at *http://www.tceq.state.tx.us/rules/indxpdf.html.*

3. What sections of the May 30, 2007 submittal will not become a part of Texas SIP?

Per TCEQ's request the following sections, listed in Table 2 below, of the cement kilns rule will not become a part of EPA-approved Texas SIP. These sections mainly pertain to the control of ammonia, that is not a precursor to ozone, and are not required to be a part of the SIP.

TABLE 2.—SECTIONS OF CHAPTER 117 NOT IN EPA-APPROVED TEXAS SIP

Section No.	Explanation
117.3123(f), and 117.3125.	Not a part of EPA-approved Texas SIP.

Although the above sections of 30 TAC Chapter 117 are not to become a part of Texas SIP, they will continue to remain enforceable at the State level.

4. What Texas Counties will this rulemaking affect?

Table 3 below lists the five Texas Counties that will be affected by the cement kilns rule.

TABLE 3.—TEXAS COUNTIES AFFECTED BY CEMENT KILN RULEMAKING OF 2007

Texas counties	Explanation
Bexar, Comal, Ellis, Hays, and McLennan.	See section 117.3101.

5. What are NO_X?

Nitrogen oxides belong to the group of criteria air pollutants. NO_X are produced from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain. Also see *http://www.epa.gov/air/urbanair/nox/.*

6. What is ozone and why do we regulate it?

Ozone is a gas composed of three oxygen atoms. Ground level ozone is generally not emitted directly from a vehicle's exhaust or an industrial smokestack, but is created by a chemical reaction between NO_X and VOCs in the presence of sunlight and high ambient temperatures. Thus, ozone is known primarily as a summertime air pollutant. NO_X and VOCs are precursors of ozone. Motor vehicle exhaust and industrial emissions, gasoline vapors, chemical solvents and natural sources emit NO_X and VOCs. Urban areas tend to have high concentrations of ground-level ozone, but areas without significant industrial activity and with relatively low vehicular traffic are also subject to increased ozone levels because wind carries ozone and its precursors hundreds of miles from their sources.

Repeated exposure to ozone pollution may cause lung damage. Even at very low concentrations, ground-level ozone triggers a variety of health problems including aggravated asthma, reduced

lung capacity, and increased susceptibility to respiratory illnesses like pneumonia and bronchitis. It can also have detrimental effects on plants and ecosystems.

7. What is a SIP?

The SIP is a set of air pollution regulations, control strategies, other means or techniques and technical analyses developed by the state, to ensure that the state meets the NAAQS. The SIP is required by Section 110 and other provisions of the Act. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the federally-enforceable SIP. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin.

8. What are the NO_X control emissions requirements that we approved for Texas under the 1-hour ozone SIP?

We approved the NO_X control emission requirements for cement kilns at 69 FR 15681 published on March 26, 2004. See Table III of that document. We have included that Table in our TSD prepared for this rulemaking action.

9. What are the NO_X control emissions requirements that we are proposing to approve for Texas under the 8-hour ozone SIP?

Under today's rulemaking action, the NO_X control requirements that we approved on March 26, 2004 (69 FR 15681) for cement kilns operating in Texas Counties of Bexar, Comal, Hays, and McLennan still will continue to remain in effect.

Ellis County is located within the D/FW 8-hour ozone nonattainment area. The ozone season for the D/FW area is March 1 through October 31 of each calendar year. See 40 CFR 58, Appendix D, Table D–3, and 40 CFR 81.39. For Ellis County, during the non-ozone season (November 1 through end-of-February of each calendar year), the cement kilns NO_X control requirements that we approved at 69 FR 15681 will continue to remain in effect. However, during the ozone season, March 1 through October 31 of each calendar year, the cement kilns in Ellis County must comply with a source cap formula calculated and expressed in Tons Per Day (TPD) of actual NO_X emissions, per site, on a 30-day rolling average basis. See equation 117.3123(b). The following Table 5 contains a summary list of NO_X control requirements for cement kilns under the 8-hour ozone SIP.

TABLE 5.—NO_X CONTROL REQUIREMENTS FOR CEMENT KILNS UNDER THE 8-HOUR OZONE SIP

Source	County	NO_X emission requirement	Citation
Long wet kiln	Bexar, Comal, Hays, McLennan.	6.0 lb NO_X/ton of clinker produced	117.3110(a)(1)(A).
Long dry kiln	Bexar, Comal, Hays, McLennan.	5.1 lb NO_X/ton clinker of produced	117.3110(a)(2).
Preheater kiln	Bexar, Comal, Hays, McLennan.	3.8 lb NO_X/ton of clinker produced	117.3110(a)(3).
Precalciner or preheater-precalciner kiln.	Bexar, Comal, Hays, McLennan.	2.8 lb NO_X/ton of clinker produced	117.3110(a)(4).
Long wet kiln	Ellis	4.0 lb NO_X/ton of clinker produced, outside D/FW ozone season.	117.3110(a)(1)(B).
Preheater kiln	Ellis	3.8 lb NO_X/ton of clinker produced, outside D/FW ozone season.	117.3110(a)(3).
Long dry kiln	Ellis	5.1 lb NO_X/ton clinker of produced, outside D/FW ozone season.	117.3110(a)(2).
Precalciner or preheater-precalciner kiln.	Ellis	2.8 lb NO_X/ton of clinker produced, outside D/FW ozone season.	117.3110(a)(4).
Portland cement kiln	Ellis	During D/FW ozone season, 30-day rolling average, source cap equation 117.3123(b), with the 2003–2005 reported average annual clinker production, limit is equivalent to 1.7 lb NO_X/ton of clinker produced for dry preheater-precalciner or precalciner kilns, or 3.4 lb NO_X/ton of clinker produced for long wet kilns.	117.3123(b).

The cement kilns rule does not require or endorse a specific post combustion NO_X control technology, and allows the owners or operators to choose their preferred method of compliance as long as the source cap limit, per site, is being met. These NO_X control requirements will result in a 9.7 TPD of NO_X reduction from cement kilns in Ellis County, and will enhance the Texas SIP. We contend that the above NO_X control requirements for existing cement kilns in the D/FW area are more stringent than those found in our reference documents ''Alternative Control Techniques Document—NO_X Emissions from Cement Manufacturing'' EPA–453/R–94–004, and ''NO_X Control Technologies for the Cement Industry'' Final Report, EPA Contract No. 68-D98–026, dated September 19, 2000, and are comparable to or more stringent than controls to be implemented in other parts of the country for RACT purposes. Therefore, we are proposing their approval into Texas SIP, and as meeting the RACT requirement for the D/FW 8-hour ozone nonattainment area. See our TSD prepared in conjunction with this rulemaking action for more information.

10. What are the compliance schedules for NO_X emissions from cement kilns that we are proposing to approve?

The compliance schedule for cement kilns located in Texas Counties of Bexar, Comal, Hays, and McLennan will continue to remain in effect as we approved them at 69 FR 15681. See Table IV of that document. We have included that Table in our TSD prepared for this rulemaking action.

The following Table 6 contains summary of the NO_X compliance schedule-related information for cement kilns in Ellis County. See section 117.9320(c) for more information.

TABLE 6.—NO_X COMPLIANCE SCHEDULES FOR CEMENT KILNS IN ELLIS COUNTY UNDER CHAPTER 117

Source	Compliance date	Additional information	Citation
Cement Kilns—Ellis County	Comply with testing, monitoring, notification, recordkeeping, and reporting requirements as soon as practicable but no later than March 1, 2009.	8-hour attainment demonstration requirement.	117.9320.

We believe that including the compliance dates in the rule provides for enforceability and practicability of the NO_X rule, and enhances the Texas SIP. The March 1, 2009 compliance date for cement kilns in Ellis County is consistent with the implementation requirement set forth in 40 CFR 51.912(a)(3). Therefore, we are proposing their approval into Texas SIP, and as meeting the RACT requirement for the D/FW 8-hour ozone nonattainment area.

III. Proposed Action

Today, we are proposing to approve revisions to the 30 TAC Chapter 117 into Texas SIP. In this rulemaking we are proposing to approve the cement kilns provisions of the May 30, 2007 submittal for cement kilns operating in Bexar, Comal, Ellis, Hays, and McLennan Counties of Texas. We are also proposing to approve the May 30, 2007 submittal as meeting the RACT requirements for NO_X emissions from cement kilns operating in the D/FW 8-hour ozone nonattainment area. These NO_X reductions will assist the D/FW area to attain the 8-hour ozone NAAQS, and enhance the Texas SIP.

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 1, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8–15812 Filed 7–10–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 070717339–8765–02]

RIN 0648–AV37

International Fisheries; Pacific Tuna Fisheries; Revisions to Regulations for Vessels Authorized To Fish for Tuna and Tuna-like Species in the Eastern Tropical Pacific Ocean and to Requirements for the Submission of Fisheries Certificates of Origin

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

ACTION: Proposed rule; collection-of-information requirements; request for comments.

SUMMARY: NMFS proposes to revise regulations governing vessels authorized by the United States to fish for tuna and tuna-like species in the eastern tropical Pacific Ocean (ETP). This proposed rule would update and clarify regulations promulgated by NMFS to implement the Marine Mammal Protection Act, the Tuna Conventions Act, the Dolphin Protection Consumer Information Act, and resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) and by the Parties to the Agreement on the International Dolphin Conservation Program (AIDCP). This proposed rule would modify the procedures and requirements for the Vessel Register, the list of vessels authorized to fish for tuna and tuna-like species in the ETP. Requirements for the submission of certifications by importers would also be revised. This proposed rule is intended to clarify the regulations, facilitate management of U.S. vessels, and update the regulations to be consistent with resolutions adopted by the members of the IATTC and the Parties to the AIDCP.

DATES: Comments on the proposed regulations and collection-of-information requirements must be received by 5 p.m. Pacific Standard Time, on August 11, 2008. A public

hearing will be held on July 28, 2008, at 9 a.m.

ADDRESSES: You may submit comments on the proposed rule and on the collection of information requirements, identified by RIN 0648–AV37, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (562) 980–4027, Attention: Susan Wang.
- *Mail:* Submit written comments to Susan Wang, National Marine Fisheries Service, Southwest Region, Protected Resources Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Southwest Region and by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (please enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

A public hearing will be held at NMFS, Southwest Regional Office, 501 West Ocean Boulevard, Suite 3400, Long Beach, CA 90802–4213. Photo identification is required to enter the building.

FOR FURTHER INFORMATION CONTACT: Susan Wang, NMFS, Southwest Region, Protected Resources Division, at (562) 980–4199.

SUPPLEMENTARY INFORMATION:

Background

The United States is a member of the IATTC, established in 1949 under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention). The IATTC provides an international forum to ensure the effective conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include waters of the ETP bounded by the coast of the Americas, the 40° N. latitude and 40° S. latitude, and the 150° W. longitude (50 Code of Federal Regulations (CFR) section 300.21). The IATTC oversees fishery management issues, such as assessing the status of tuna stocks, managing the cumulative capacity of vessels fishing in the Convention Area, addressing bycatch of non-target and protected species, and imposing time-area closures to conserve tuna stocks. Resolutions under the IATTC are adopted by consensus and are binding on the members of the IATTC. Members of the IATTC and cooperating non-members are responsible for implementation of IATTC resolutions. In the United States, the Tuna Conventions Act (16 U.S.C. 951 *et seq.*) authorizes the Secretary of Commerce to promulgate regulations implementing IATTC resolutions. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NMFS.

The United States is also a Party to the AIDCP. The AIDCP was established in May 1998 when eight nations, including the United States, signed a binding, international agreement to implement the International Dolphin Conservation Program (IDCP). The agreement became effective on February 15, 1999, and provides greater protection to dolphin stocks and enhanced conservation of yellowfin tuna and other living marine resources in the ETP. The IDCP and resolutions adopted by the Parties to the AIDCP are implemented domestically under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*).

This proposed rule would revise regulations at 50 CFR parts 216 and 300 to facilitate management of U.S. vessels authorized to fish for tuna and tuna-like species in the Convention Area and to ensure consistency between operation of these vessels and resolutions adopted by the IATTC and the IDCP. First, collection of a vessel photograph and vessel information would be required for commercial fishing vessels and commercial passenger fishing vessels (CPFVs) authorized to fish for tuna and tuna-like species in the Convention Area. Second, regulations for tuna purse seine vessels would be revised to require: (1) Annual written notification to list a small vessel as active or inactive; (2) written notification of the intent to transfer a vessel to foreign registry and flag; (3) payment of an ETP operator permit application fee; and (4) for vessels authorized to set on dolphins, vessel inspections twice per year and the use of high-intensity floodlights. Additional criteria would be added: (1) to consider a request for active status as frivolous if a purse seine vessel was listed as active but did not fish for tuna at all in the Convention Area; and (2) to remove vessels from the Vessel Register if the owner lacks valid vessel documentation, or, for tuna purse seine vessels, if the owner has made a frivolous request or has notified NMFS of the intent to transfer the vessel to foreign registry and flag. This rule would require importers to submit certifications within 10 days of importing a shipment into the United States, rather than 30 days. Finally, this rule would require electronic submissions of certifications by importers to be in Portable Document Format (PDF). In addition, this rule would make numerous non-substantive modifications and clarifications to the regulations.

Definitions

The definition for ''Tuna product'' would be revised in 50 CFR 216.3 to clarify that tuna products include only products intended for human consumption. A definition for ''Tuna'' would be added to specify that the term refers to fish of the genus Thunnus (i.e., albacore tuna, bigeye tuna, bluefin tuna, longtail tuna, southern bluefin tuna, and yellowfin tuna) and the species *Euthynnus (Katsuwonus) pelamis* (i.e., skipjack tuna). Definitions for ''Albacore tuna,'' ''Bigeye tuna,'' ''Bluefin tuna,'' ''Longtail tuna,'' ''Skipjack tuna,'' ''Southern bluefin tuna,'' and ''Yellowfin tuna'' would also be added to 50 CFR 216.3 to identify the genus and species referred to by these common names.

In 50 CFR 300.21, the definition for ''Vessel Register'' would be removed and replaced with a definition for ''Regional Vessel Register'' to include all commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area, consistent with the definition used by the IATTC. A definition for ''Commercial passenger fishing vessel'' would be added to clarify that CPFVs are vessels licensed for commercial passenger fishing purposes from which passengers are permitted to conduct sportfishing activities. A definition for ''Tuna'' would also be added to specify that the term refers to fish of the genus Thunnus and the species *Euthynnus (Katsuwonus) pelamis* (i.e., skipjack tuna).

Vessel Register

In June 2000, the IATTC adopted a ''Resolution on a Regional Vessel Register'' (C–00–06) to establish a register of all vessels authorized to fish

for tuna and tuna-like species in the Convention Area. To maintain the Regional Vessel Register (Vessel Register), the IATTC requires each member nation to submit specific information for all vessels authorized to fish for tuna and tuna-like species in the Convention Area. The information required for the IATTC Vessel Register includes: The vessel name and registration number; a photograph of the vessel with the registration number legible; previous vessel name(s) and flag; port of registry; the name and address of the owner(s) and managing owner(s); International Radio Call Sign; where and when built; length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity in metric tons; engine horsepower; and type of fishing method(s).

Under current regulations at 50 CFR 300.22(b), submission of vessel information to NMFS is mandatory for large tuna purse seine vessels but voluntary for all other vessels. NMFS proposes to revise 50 CFR 300.22(b) to require the collection of vessel photographs and vessel information for all U.S. commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area, so that all of these vessels would be included on the Vessel Register. Currently, about 2,100 U.S. commercial fishing vessels and CPFVs are authorized under several different permit systems to fish for tuna and tuna-like species in the Convention Area, including: (1) ETP tuna purse seine vessel permits (50 CFR 216.24); (2) Pacific Highly Migratory Species (HMS) vessel permits (50 CFR part 660); and (3) for vessels based in Hawaii and the U.S. Pacific Islands, High Seas Fishing Compliance Act (HSFCA) permits (50 CFR part 300). Owners of large tuna purse seine vessels must obtain both an ETP tuna purse seine vessel permit and an HSFCA permit in order to have a vessel be categorized as active on the Vessel Register. Together, the applications for the ETP tuna purse seine vessel permit and HSFCA permit cover all of the required Vessel Register information except for the vessel photograph. This proposed rule would revise the ETP tuna purse seine vessel permit application to require submission of a vessel photograph with the registration number legible. This revision is subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The Pacific HMS permit application covers all of the required Vessel Register information except for the vessel photograph, and the HSFCA permit application covers all of the required information except for the vessel photograph, carrying capacity, and type of fishing method(s). Revisions to the Pacific HMS permit application and the HSFCA permit application to collect the required additional information are planned as actions separate from this proposed rule.

50 CFR 300.22(a) requires the master or person in charge of a commercial fishing vessel or CPFV listed on the Vessel Register to keep an accurate log of operations of the vessel. This rule would update this provision to reflect differences in these reporting requirements for tuna purse seine vessels greater than 400 st (362.8 mt) carrying capacity compared to reporting requirements for tuna purse seine vessels of 400 st (362.8 mt) carrying capacity or less and for non-purse seine vessels. The rule would revise 50 CFR 300.22(a) to clarify that for tuna purse seine vessels greater than 400 st (362.8 mt) carrying capacity, the master or person in charge of the vessel must maintain and submit to the IATTC the record and bridge log issued by the IATTC, or a general logbook that includes for each day the date, noon position, and the tonnage of fish on board by species. For tuna purse seine vessels of 400 st (362.8 mt) carrying capacity or less and for non-purse seine vessels on the Vessel Register, maintaining and submitting reporting forms (logbooks) under existing state or Federal regulations (e.g., longline logbooks for Pacific pelagic longline vessels, described in 50 CFR 660.14(a)) would be sufficient to comply with this requirement.

On June 28, 2002, the IATTC adopted a ''Resolution on the capacity of the tuna fleet operating in the ETP (revised)'' (Resolution C–02–03) to limit the total capacity of the ETP tuna purse seine fleet and to establish a subset list of active and inactive tuna purse seine vessels as part of the Vessel Register. The U.S. tuna purse seine fleet operating in the ETP is limited to 8,969 metric tons (mt) carrying capacity, thus limiting the number of vessels allowed to actively participate in the fishery each year. On April 12, 2005, NMFS issued a final rule (69 FR 19004) establishing procedures at 50 CFR 300.22(b) for U.S. tuna purse seine vessels to be listed on the Vessel Register and be categorized as active or inactive, and establishing criteria for the removal of vessels from the Vessel Register. The active and inactive list is valid through December 31 of each year. The paragraphs below describe proposed revisions to the procedures at 50 CFR 300.22(b) for tuna purse seine vessels to be listed on the Vessel Register and to requirements for tuna purse seine vessels listed on the Vessel Register, including one requirement that is also applicable to non-purse seine commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the ETP.

Under 50 CFR 300.22(b), tuna purse seine vessels of 400 short tons (st) (362.8 mt) carrying capacity or less must be categorized as active on the Vessel Register if landings of tuna caught in the Convention Area comprise more than 50 percent of the vessel's total landings, by weight, for a given calendar year. To request active or inactive status for a vessel, the vessel owner must submit payment of the vessel assessment fee (also called the observer placement fee) associated with active or inactive status. Beginning in 2006, the Parties to the AIDCP have required payment of the vessel assessment fee only if a vessel: (1) Is listed as active and is required by the AIDCP to carry an observer; or (2) is listed as inactive and exceeds 400 st (362.8 mt) carrying capacity (Resolution A–06–01, Vessel Assessments and Financing). Tuna purse seine vessels of 400 st (362.8 mt) carrying capacity or less are required to carry an observer only if the vessel is suspected of intentionally setting on dolphins (AIDCP, Resolution on vessels of less than 363 mt capacity, October 10, 2002). None of the U.S. tuna purse seine vessels of 400 st (362.8 mt) carrying capacity or less are required to carry an observer and therefore have not been required to pay the vessel assessment fee since 2006. Under the current regulations, payment of the fee is the only mechanism for vessel owners to request active or inactive status for vessels of that size. To address this issue, the proposed rule would revise 50 CFR 300.22(b) to require owners of purse seine vessels of 400 st (362.8 mt) carrying capacity or less to submit annual written notification to request a vessel be categorized as active or inactive on the Vessel Register. To request active status, vessel owners or managing owners would be required to submit written notification by fax to the Administrator, Southwest Region, including, but not limited to, all of the required Vessel Register information as described above and the vessel owner or managing owner's signature and business telephone and fax numbers. A faxed copy would provide a date and time stamp to prioritize applications on a first-come, first-served basis. Prioritization is necessary when the

total capacity of vessels applying for active status exceeds the U.S. tuna purse seine fleet's capacity (8,969 mt). To request inactive status, vessel owners or managing owners would be required to submit written notification by mail to the Administrator, Southwest Region, including, but not limited to, the vessel name, registration number, and vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers. 50 CFR 300.22(b) would also be revised to require payment of the vessel assessment fee for tuna purse seine vessels of 400 st (362.8 mt) carrying capacity or less only if the vessel is categorized as active on the Vessel Register and is required to carry an observer.

50 CFR 300.22(b)(4)(ii) states that a request for active status on the Vessel Register is considered to be frivolous if a tuna purse seine vessel is categorized as active for a given calendar year, but less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area. The current regulation does not address cases in which a vessel did not fish for tuna in the Convention Area at all (i.e., zero landings). This rule would add to 50 CFR 300.22(b)(4)(ii) to allow a request for active status to be considered frivolous if a purse seine vessel was categorized as active but did not fish for tuna in the Convention Area at all in that same year, to ensure all cases constituting a frivolous request are covered.

50 CFR 300.22(b)(5) would be revised to add to criteria under which the Administrator, Southwest Region, may remove vessels from the Vessel Register. First, criteria would be added to allow removal of a vessel if the vessel's state registration or documentation with the U.S. Coast Guard (USCG) is not valid. Vessels must have valid state registration or USCG documentation in order to fish in navigable waters of the U.S. or in the U.S. exclusive economic zone. Vessels without valid state registration or vessel documentation are no longer authorized by the United States to fish for tuna or tuna-like species in the Convention Area and must be removed from the Vessel Register. Second, criteria would be added to allow removal of a tuna purse seine vessel from the Vessel Register if the owner's request for active status has been determined to be frivolous. Removal of these vessels may be necessary to make room for other U.S. purse seine vessels desiring to actively fish for tuna in the Convention Area. Finally, criteria would be added to allow removal of a tuna purse seine vessel from the Vessel Register if the owner or managing owner submits written notification of the intent to transfer the vessel to foreign registry and flag. Removal of a tuna purse seine vessel from the Vessel Register prior to transfer is necessary to protect the U.S. tuna purse seine fleet's capacity limit. Each U.S. vessel on the active tuna purse seine list holds a certain portion (equal to the vessel's carrying capacity) of the U.S. fleet's capacity. If a vessel listed as active is transferred, the capacity held by that vessel could be transferred with it to the foreign nation, resulting in a loss of operating capacity for the U.S. and an increase in operating capacity for the foreign nation. Removal of the vessel from the Vessel Register prior to transfer would prevent this transfer of capacity. Under current regulations, NMFS may remove a tuna purse seine vessel from the Vessel Register prior to transfer, but only if the USCG or the U.S. Maritime Administration (MARAD) notifies NMFS that the vessel owner has submitted an application for transfer. Under an existing Memorandum of Understanding (MOU), MARAD already provides notification to NMFS for all large purse seine vessels requiring MARAD approval prior to transfer. However, NMFS does not have a similar agreement with the USCG regarding notification at this time. To ensure NMFS is notified prior to transfers, this rule would add new paragraph 50 CFR 300.22(b)(8) requiring owners of tuna purse seine vessels listed on the Vessel Register to submit written notification to the Administrator, Southwest Region, prior to submitting an application to transfer a vessel to foreign registry and flag. Written notification would include the vessel name and registration number; the estimated submission date of the application to transfer the vessel to foreign registry and flag; and the vessel owner or managing owner's name and signature. Receipt of the written notification would be required at least 10 business days prior to submitting the application for transfer, to ensure NMFS has sufficient time to remove the vessel from the Vessel Register prior to the transfer. This rule would also add a prohibition at 50 CFR 300.24(j) making it illegal for vessel owners to fail to provide this written notification to the Administrator, Southwest Region, at least 10 business days prior to submitting the application for transfer. The written notification requirement would not apply to owners of vessels that must obtain approval by MARAD prior to transfer because MARAD already provides notification to NMFS. In accordance with available vessel capacity, vessels removed from the Vessel Register could be placed on the Vessel Register again by the United States or any government with jurisdiction over the vessel that also participates in the IATTC.

50 CFR 300.25(a) states that the Administrator, Southwest Region, will directly notify owners and agents of U.S. tuna vessels about fishery management recommendations made by the IATTC and approved by the Department of State, and that approved IATTC recommendations will be announced in the **Federal Register**. This proposed rule would revise 50 CFR 300.25(a) to remove the requirement of direct notification. Instead, NMFS would notify the public of IATTC recommendations and resolutions through appropriate rulemaking in the **Federal Register**. Publications in the **Federal Register** would summarize the new fishery management recommendations and resolutions and respond to public comments received.

ETP Tuna Purse Seine Vessel and Operator Permit Applications and Fees

50 CFR 216.24(b)(4)(i) to (b)(4)(v) and 50 CFR 216.24(b)(5)(i) to (b)(5)(v) list all of the information collected on the ETP vessel and operator permit applications. This proposed rule would remove these paragraphs and add a general statement that an ETP vessel or operator permit application obtained from NMFS must be completed and submitted to request an ETP vessel or operator permit. Changes to information collected from the public in permit applications would still require appropriate rulemaking in the **Federal Register** and approval by the OMB under the PRA. 50 CFR 216.24(b)(6)(ii) would also be revised to allow NMFS to collect an operator permit application fee to cover the administrative costs associated with processing and issuing operator permits.

Under 50 CFR 216.24(b)(6)(iii), payment of the vessel assessment fee is required for tuna purse seine vessels: (1) Listed as active on the Vessel Register and that are required to carry an observer; (2) listed as inactive on the Vessel Register and that exceed 400 st (362.8 mt) carrying capacity; (3) licensed under the South Pacific Tuna Treaty (SPTT) that exercise their option to make a single trip into the ETP per calendar year; (4) not listed on the Vessel Register at the beginning of the calendar year and for which active status is requested to replace a vessel removed from active status during the year; and (5) listed as inactive at the beginning of the calendar year and for

which active status is requested to replace a vessel removed from active status during the year. The regulations establish deadlines for payment of the fee, except in the case of SPTT vessels and replacement vessels not listed at the beginning of the calendar year or in the previous year. 50 CFR 216.24(b)(6)(iii)(F) states that all payments made after the specified dates are subject to a 10-percent surcharge; however, only those payments subject to and made after the deadline are subject to a 10-percent surcharge. 50 CFR 216.24(b)(6)(iii)(F) would be revised to state that the following classes of vessels for which payments were made after the specified dates would not be subject to a 10-percent surcharge: (1) vessels licensed under the SPTT making a single trip into the ETP; and (2) vessels not listed at the beginning of the calendar year or in the previous year, and for which active status was requested to replace a vessel removed from active status during the year. A 10-percent surcharge would apply to the following classes of vessels for which payments were made late: (1) vessels listed as active or inactive at the beginning of the calendar year; and (2) vessels not listed at the beginning of the calendar year, but listed in the previous year, and for which active status was requested to replace a vessel removed from active status during the year.

Tuna Purse Seine Vessels With Dolphin Mortality Limits

Dolphin Mortality Limits (DMLs) are defined as ''the maximum allowable number of incidental dolphin mortalities per calendar year assigned to a vessel'' (50 CFR 216.3). Tuna purse seine vessels with DMLs are subject to additional requirements, including gear specifications and annual inspections. In 2004, the IDCP adopted resolutions to amend gear and inspection requirements for vessels with DMLs. To implement these requirements, this proposed rule would revise the regulations to comply with the resolutions adopted by the IDCP in 2004. Floodlight specifications at 50 CFR 216.24(c)(3)(viii) would be revised to require vessels with DMLs to be equipped with long-range, high-intensity floodlights with a sodium or multivapour lamp, to provide sufficient light to observe dolphin release procedures and to monitor incidental dolphin mortality. 50 CFR 216.24(c)(4)(i) would also be revised to increase the frequency of vessel inspections from once to twice per year, to monitor compliance with gear and equipment requirements associated with DMLs. Vessel inspections would be conducted by IATTC representatives or NMFS staff.

Fisheries Certificates of Origin and Associated Certifications

To import tuna, tuna products, and certain other fish products into the United States, Fisheries Certificates of Origin (FCOs) and associated certifications must be filed with both U.S. Customs and Border Protection (CBP; Department of Homeland Security) and NMFS Southwest Region. Current regulations at 50 CFR 216.24(f)(3)(ii) require FCOs and associated certifications to be submitted to NMFS within 30 days of the shipment's entry into the commerce of the United States. However, allowing 30 days to submit the required certifications may hinder enforcement, because the products will likely be offered for sale or purchased or consumed before violations of the regulations governing certification are determined. This rule would revise 50 CFR 216.24(f)(3)(ii) to require that FCOs and associated certifications be submitted to NMFS within 10 calendar days of the shipment's entry into the commerce of the United States, to aid in enforcement of the regulations. Section 50 CFR 216.24(f)(3) continues to require that FCOs covering tuna processed in the United States be submitted only after endorsement by the final processor or exporter.

FCOs and associated certifications may be submitted to NMFS using a secure file transfer protocol (FTP) site or via mail either on compact disc or as hard copies. The current regulations allow electronic submissions to be in PDF or as an image file embedded in a Microsoft Word, Microsoft PowerPoint, or Corel WordPerfect file. However, because NMFS may not be able to view image files embedded in certain versions of Word, PowerPoint, or WordPerfect, and because PDF is universal and readily available, 50 CFR 216.24(f)(3) would be revised to require all electronic submissions to NMFS of FCOs and associated certifications to be in PDF.

In 50 CFR 216.24(f)(2), the list of Harmonized Tariff Schedule of the United States (HTS) numbers and descriptions of products would be updated based on the most recent HTS.

50 CFR 216.24(f)(4)(xiii) and 50 CFR 216.24(f)(6)(ii) both describe the circumstances under which the High Seas Driftnet Certification contained on the FCO must be completed and by whom. 50 CFR 216.24(f)(4)(xiii) requires a responsible government official of the harvesting nation to sign and date the High Seas Driftnet Certification for any shipments containing fish or fish products ''harvested by'' vessels of a nation known to use large-scale driftnets (a ''large-scale driftnet nation''), to certify the fish or fish products were not harvested using large-scale driftnets. In contrast, 50 CFR 216.24(f)(6)(ii) requires a responsible government official of the large-scale driftnet nation to sign and date the High Seas Driftnet Certification for any shipments containing fish or fish products ''exported from or harvested on the high seas by'' the large-scale driftnet nation. To address these differences, 50 CFR 216.24(f)(4)(xiii) would be revised to be consistent with the language in 50 CFR 216.24(f)(6)(ii). In addition, the instructions on the FCO require a responsible government official of the harvesting nation to sign and date the High Seas Driftnet Certification for any shipments containing fish or fish products ''exported from or harvested by'' a large-scale driftnet nation. In an action outside of this rulemaking under the PRA, the FCO instructions would be revised to require a responsible government official of the large-scale driftnet nation to sign and date the High Seas Driftnet Certification consistent with 50 CFR 216.24(f)(6)(ii).

Dolphin-Safe Certifications and Tuna Tracking Forms

50 CFR 216.24(f)(3) states that documents (e.g., FCOs, certifications, written statements, etc.) covering tuna or tuna products to be imported into the United States or labeled as ''dolphin-safe'' are to be filed with CBP at the time of import and then ''accompany'' the tuna or tuna products by being submitted to the Tuna Tracking and Verification Program, Southwest Region. This proposed rule would add a reference to 50 CFR 216.24(f)(3) wherever the term ''accompany'' is used in 50 CFR sections 216.91, 216.92, and 216.93, to clarify what is meant by the term ''accompany.'' In addition, as is currently required, the documents must be endorsed at each change in ownership, submitted by the last endorser to the Administrator, Southwest Region, retained in records by importers and exporters for 2 years, and made available within 30 days of a request by the Secretary of Commerce or the Administrator, Southwest Region.

Tuna tracking forms (TTFs) are completed by observers on ETP tuna purse seine vessels greater than 400 st (362.8 mt) carrying capacity, to record every set made during a trip. The handling of TTFs and the tracking and verification of dolphin-safe and non-dolphin-safe tuna caught in the Convention Area are regulated by the

international tuna tracking and verification program adopted by the Parties to the AIDCP. This proposed rule would revise 50 CFR 216.93(c)(5), which describes certain parts of the IDCP tuna tracking and verification program, by removing paragraphs (c)(5)(i) through (c)(5)(v) and adding a general statement that the handling of TTFs and the tracking and verification of tuna caught by a U.S. tuna purse seine vessel in the Convention Area will be conducted consistent with the international tuna tracking and verification program adopted by the Parties to the AIDCP. This revision would help avoid confusion and clarify that the procedures for handling TTFs and for tracking and verifying tuna caught in the Convention Area are not regulated by NMFS.

Public Comments Solicited

NMFS is soliciting public comments on this proposed rule. Written comments may be submitted to Susan Wang (see **ADDRESSES** and **DATES**).

Classification

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. NMFS prepared a Regulatory Impact Review on the proposed regulations, available at: *http://www.regulations.gov.*

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is presented in the following paragraphs.

Description of Affected Entities and Small Entities

The proposed regulations would apply to four classes of entities: (1) Owners of U.S. tuna purse seine vessels fishing in the Convention Area; (2) owners of U.S. commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area; (3) vessel operators applying for ETP tuna purse seine operator permits; and (4) importers of tuna, tuna products, and certain other fish products. We used the SBA's size standards established at 13 CFR 121.201 to define small entities. Fishing vessels with less than $4 million in average annual receipts, vessel operators with an average annual income of less than $4 million, and importers with less than 100 employees would be considered small entities.

U.S. tuna purse seine vessels fishing in the Convention Area are divided into two size groups: (1) Vessels greater than 400 st (362.8 mt) carrying capacity (''large'' vessels); and (2) vessels of 400 st (362.8 mt) carrying capacity or less (''small'' vessels). Large vessels typically exceed $4 million in annual receipts, whereas small vessels have less than $4 million in annual receipts and would be considered small entities. Large vessels must be categorized as active on the Vessel Register in order to fish for tuna in the Convention Area. Small vessels are not required to be listed on the Vessel Register unless landings of tuna caught in the Convention Area comprise more than 50 percent of the vessel's total landings, by weight, for a given calendar year. From 2004 to 2006, the active U.S. tuna purse seine fleet operating in the ETP averaged less than 5 large vessels and from 1–2 small vessels per year. In 2007, the active U.S. fleet consisted of three large vessels and one small vessel, and the inactive list consisted of one small vessel. Ten or fewer small purse seine vessels fish most of the year for coastal pelagic species, but opportunistically fish for tuna in the ETP when tuna are seasonably available.

About 2,100 U.S. commercial fishing vessels and CPFVs are authorized to fish for tuna and tuna-like species in the Convention Area per year, including: (1) vessels under Pacific HMS vessel permits (about 1,988 vessels); and (2) vessels based in Hawaii and the U.S. Pacific Islands, under HSFCA permits (about 164 vessels). All of these vessels would be considered small entities with less than $4 million in annual receipts.

Vessel operators are in charge of and control fishing operations on U.S. purse seine vessels fishing for tuna and tuna-like species in the Convention Area and must possess a valid ETP operator permit. About 25 vessel operators apply for the ETP operator permit each year and all would be considered small entities with an annual income of less than $4 million.

There are an estimated 475 distinct U.S. importers of tuna, tuna products, and certain other fish products per year. Of these, about 350 importers would be considered small businesses with less than 100 employees.

Impacts on Owners of Small Tuna Purse Seine Vessels, Commercial Fishing Vessels, and CPFVs

The proposed rule would apply additional requirements to tuna purse seine vessels in the ETP, none of which would result in a significant economic effect. First, payment of the vessel assessment fee is the only mechanism under the current regulations for vessel owners to request active or inactive status for a small tuna purse seine vessel. This rule would: (1) update the regulations to be consistent with resolutions under the AIDCP and require owners of small tuna purse seine vessels to pay the vessel assessment fee only if active status is requested for the vessel and the vessel is required to carry an observer; and (2) require an annual written notification to request active or inactive status for a small tuna purse seine vessel. Submission of written notification would: (1) ensure collection of the required information for the Vessel Register; and (2) provide a method to request active or inactive status, particularly for vessel owners no longer required to pay the vessel assessment fee. Written notification to request active status would require submission by fax to NMFS of the vessel owner or managing owner's signature and business telephone and fax numbers, as well as the required Vessel Register information as described in the preamble. Written notification to request inactive status would require submission by mail to NMFS of the vessel name and registration number and the owner or managing owner's name, signature, and business contact information. The time needed to gather and submit this information would be minimal (about 35 minutes for a request for active status and 5 minutes for a request for inactive status). Vessel owners already provide much of this information to NMFS on a voluntary basis. Additional costs for a request for active status would consist of $0.30 for a photograph and $3.00 for faxing. Additional costs for a request for inactive status would consist of $0.10 for a copy of the written notification, $0.10 for an envelope, and $0.42 for postage.

Vessel Register information would also be collected for vessels authorized to fish for tuna and tuna-like species in the Convention Area under an ETP tuna purse seine vessel permit, a Pacific HMS vessel permit, or an HSFCA permit. This proposed rule would revise the ETP vessel permit application to collect a vessel photograph. However, owners of small purse seine vessels would not be affected, because they are not required to obtain an ETP vessel permit. Revisions to the Pacific HMS vessel permit application and HSFCA permit application to collect the required additional information would affect vessels under these permits. However, these revisions are planned as actions

separate from this proposed rule and are not considered in this analysis.

Current regulations state that a request for active status will be considered frivolous if a purse seine vessel was listed as active but less than 20 percent of the vessel's total landings, by weight, in that same year was comprised of tuna harvested by purse seine in the Convention Area. This proposed rule would add additional criteria to allow a request for active status to be considered frivolous if a purse seine vessel was listed as active but did not fish for tuna at all in the Convention Area in that same year. The additional criteria would reinforce the current regulations and would not result in additional costs.

The proposed rule would require owners of tuna purse seine vessels listed on the Vessel Register to submit written notification to NMFS at least 10 business days prior to submitting an application to transfer the vessel to foreign registry and flag. Written notification would include the vessel name and registration number, the vessel owner or managing owner's name and signature, and the expected date of submission of the application. Vessels requiring approval by MARAD prior to transfer would not be subject to the written notification requirement, because MARAD already provides such notification to NMFS under an MOU. No such agreement exists with the USCG at this time. This written notification would ensure NMFS is notified prior to transfer of the vessel to foreign registry and flag. The time needed to prepare and submit this written notification would be minimal (about 5 minutes). Additional costs would include $0.10 for a copy of the written notification, $0.10 for an envelope, and $0.42 for postage.

Regulations at 50 CFR part 300 provide criteria under which a vessel may be removed from the Vessel Register. The proposed regulations would add additional criteria to aid in managing and updating the U.S. portion of the Vessel Register. First, additional criteria would be added to allow removal of a vessel from the Vessel Register if the vessel lacks valid state registration or documentation with the USCG. Vessels lacking valid state registration or USCG documentation are not authorized to fish in navigable waters of the United States or in the U.S. exclusive economic zone, and therefore are not authorized by the United States to fish for tuna and tuna-like species in the Convention Area. Removal of such vessels is necessary to update and maintain the Vessel Register and would not result in additional costs.

Second, additional criteria would be added to allow removal of a tuna purse seine vessel from the Vessel Register if the owner of the vessel has made a frivolous request for active status. Removal of the vessel may be necessary to make room on the Vessel Register for other U.S. purse seine vessels. Small vessels would experience little to no economic impacts. Although the vessel would no longer be listed on the Vessel Register, current regulations allow a small vessel to continue fishing for tuna as long as landings of tuna caught in the Convention Area comprise 50 percent or less of the vessel's total landings in that calendar year. All small vessels removed from the Vessel Register due to a frivolous request would still be allowed to fish for tuna in the Convention Area, given the definition of a frivolous request. Vessels removed from the Vessel Register due to a frivolous request may be added back to the Vessel Register if the owner submits a request for active or inactive status; however, the request would be considered last among all requests for that year.

Third, additional criteria would be added to allow removal of a tuna purse seine vessel from the Vessel Register upon receipt of written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag. The additional criteria would reinforce current regulations, which allow NMFS to remove a vessel from the Vessel Register prior to transfer, but only if MARAD or the USCG notifies NMFS that the owner has submitted an application for transfer. Removal of a tuna purse seine vessel from the Vessel Register prior to transfer is necessary to protect the U.S. tuna purse seine fleet's capacity limit. A U.S. tuna purse seine vessel listed as active on the Vessel Register holds a certain portion of the U.S. fleet's capacity limit of 8,969 mt. The capacity held by the vessel could be transferred with the vessel upon transfer to foreign registry and flag. Removing the vessel from the Vessel Register prior to transfer would prevent reductions in the U.S. fleet's capacity limit, because the vessel would no longer hold a portion of the U.S. fleet's capacity. However, the vessel's market value would likely decrease. Although this may result in a potentially significant economic impact, this impact would be attributed to the current regulations that already allow removal of vessels from the Vessel Register prior to transfer.

Owners of small purse seine vessels would not be subject to revised floodlight and vessel inspection requirements for purse seine vessels possessing DMLs. Owners of small purse seine vessels are not allowed to obtain DMLs.

Impacts on Vessel Operators

The proposed rule would add an ETP operator permit application fee of $35 to $40 to cover administrative costs for processing and issuing ETP operator permits. An application processing fee of $35 to $40 would not be a significant proportion of the annual income of an ETP vessel operator, who earns approximately $40,000 to more than $100,000 per fishing trip.

Impacts on Importers

The requirement that electronic submissions of FCOs and associated certifications be in PDF would affect importers of tuna, tuna products, and certain other fish products requiring FCOs. Limiting the acceptable file format types to PDF would ensure that files are readable. This action would not significantly affect the ability of importers to submit FCOs and associated certifications. Importers would continue to have the option of submitting FCOs and associated certifications by mail. Submission by mail is the method currently used by almost all of the 475 importers and this would not be expected to change. Since the start of this program, only two out of the 475 importers per year have used the electronic option to submit their forms to NMFS, and both already submit the forms in PDF. No additional costs would be expected to result from this requirement.

Importers would also be affected by the requirement that FCOs and associated certifications be submitted to NMFS within 10 calendar days of the shipment's entry into the commerce of the United States, rather than within 30 days (except when the tuna will be processed in the United States, in which case the form must be submitted after endorsement by the final processor or exporter). Reducing the time period within which the forms must be submitted to NMFS would aid in enforcement. NMFS would be able to detect and respond to problems with the FCOs or certifications before the products are placed in stores for sale, or purchased and consumed. Most importers would have no additional costs, because they already submit their forms within 10 days of the shipment's entry into U.S. commerce. About 20 of the 350 importers that would be considered small businesses currently submit their forms monthly and would need to submit the FCOs and associated certifications more frequently (e.g., 2–3 times per month rather than monthly).

Aside from the extra time required, added out-of-pocket expenses would be small (i.e., $0.10 for each additional envelope and $0.42 for postage for each additional mailing).

Summary

The proposed rule would affect small entities, but would not have a significant economic effect on any of these small entities. In some cases, the new or revised requirements would apply to a substantial number of small entities, but would not result in significant economic effects. In addition, the proposed rule would not create a disproportionate effect on small entities or significantly reduce profit for small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

This proposed rule contains new and revised collection-of-information requirements subject to review and approval by OMB under the PRA for collections under control number 0648–0387. The following collection-of-information requirements have been submitted to OMB for approval: (1) Collection of a vessel photograph as part of the ETP tuna purse seine vessel permit application; (2) annual written notification to request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active on the Vessel Register, including the owner or managing owner's signature and business telephone and fax numbers and the required Vessel Register information (i.e., the vessel name, registration number, and previous name(s) and flag(s); a vessel photograph with the vessel registration number legible; the name and business address of the owner(s) and managing owner(s); port of registry; International Radio Call Sign; where and when built; length, beam, and moulded depth; gross tonnage, fish hold capacity, and carrying capacity; engine horsepower; and type of fishing method(s)); (3) annual written notification to request that a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as inactive on the Vessel Register, including the vessel name, registration number, and vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers; and (4) written notification prior to submitting an application to transfer a purse seine vessel listed on the Vessel Register to foreign registry and flag, including the vessel name and registration number, the estimated submission date of the application, and the vessel owner or managing owner's name and signature. Public reporting burdens per individual response for the new and revised collection-of-information requirements are estimated to average 35 minutes for the ETP tuna purse seine vessel permit application; 35 minutes for the written notification to request active status; 5 minutes for the written notification to request inactive status; and 5 minutes for the written notification of the intent to transfer a vessel to foreign registry and flag. These reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

This proposed rule also contains a non-substantive change subject to review and approval by OMB under the PRA for collections under control number 0648–0335. A non-substantive change request has been submitted to OMB for approval to require that the CBP importer of record submit a copy of the FCO and associated certifications to NMFS within 10 days of a shipment's entry into U.S. commerce, rather than within 30 days (except when the tuna will be processed in the United States, in which case the forms must be submitted to NMFS after endorsement by the final processor or exporter). The public reporting burden for the revised collection of information requirement would remain the same (estimated to average 20 minutes per individual response), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Susan Wang, NMFS, and to David Rostker, OMB (see **ADDRESSES** above).

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

Endangered Species Act

NMFS prepared a Biological Opinion for an interim final rule (65 FR 30, January 3, 2000) to implement the IDCP in December 1999, and in July 2004 issued an amended Incidental Take Statement after taking into account the revisions made in the final rule (69 FR 55288, September 13, 2004). In the 1999 Biological Opinion, NMFS concluded that fishing activities conducted under the interim final rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This proposed rule would not result in any effects beyond those considered in the 1999 Biological Opinion and 2004 Incidental Take Statement.

National Environmental Policy Act

NMFS prepared an Environmental Assessment (EA) for a final rule (70 FR 19004, April 12, 2005) to implement resolutions adopted by the IATTC and the IDCP. The Assistant Administrator for Fisheries concluded that fishing activities conducted under the final rule would not be expected to result in significant effects on the human environment. This proposed rule would not be expected to result in modifications to fisheries operations or effects on the human environment beyond those considered under the alternatives in the EA. This action has been categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. A memo to the record has been prepared memorializing this decision that is available at the Federal E-rulemaking Web site: *http://www.regulations.gov*.

Marine Mammal Protection Act

Incidental take of dolphins and other marine mammals may occur during fishing operations by U.S. tuna purse seine vessels in the ETP. The take of dolphins incidental to the operation of the U.S. ETP tuna purse seine fishery is authorized and managed under the IDCP. This proposed rule would not affect the administration of that program, which is implemented under the MMPA.

List of Subjects

50 CFR Part 216

Fish, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 300

International fisheries regulations, Pacific tuna fisheries.

Dated: July 7, 2008.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 216 and 300 as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3, add definitions for ''Albacore tuna'', ''Bigeye tuna'', ''Bluefin tuna'', ''Longtail tuna'', ''Skipjack tuna'', ''Southern bluefin tuna'', ''Tuna'', and ''Yellowfin tuna'' in alphabetical order and revise the definition for ''Tuna product'' to read as follows:

§ 216.3 Definitions.

* * * * *

Albacore tuna means the species *Thunnus alalunga*.

* * * * *

Bigeye tuna means the species *Thunnus obesus*.

Bluefin tuna means the species *Thunnus thynnus*.

* * * * *

Longtail tuna means the species *Thunnus tonngol*.

* * * * *

Skipjack tuna means the species *Euthynnus (Katsuwonus) pelamis*.

* * * * *

Southern bluefin tuna means the species *Thunnus maccoyii*.

* * * * *

Tuna means any fish of the genus Thunnus and the species *Euthynnus (Katsuwonus) pelamis*.

Tuna product means any food product processed for retail sale and intended for human consumption that contains an item listed in § 216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days.

* * * * *

Yellowfin tuna means the species *Thunnus albacares* (synonomy: *Neothunnus macropterus*).

3. In § 216.24, redesignate paragraph (f)(8)(i)(D)(*3*)(*iii*) as paragraph (f)(8)(ii) and redesignate paragraphs (f)(8)(iv), (f)(8)(v), and (f)(8)(vi) as paragraphs (f)(8)(iii), (f)(8)(iv), and (f)(8)(v); and revise paragraphs (a)(3), (b)(4), (b)(5), (b)(6)(ii), (b)(6)(iii), (c)(3)(viii), (c)(4)(i), (f)(2), (f)(3), (f)(4), (f)(10), and (f)(11), to read as follows:.

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

(a) * * *

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(ii) and (e)(1) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report to the Administrator, Southwest Region, the vessel's date of exit from or subsequent entry into the permit area.

(b) * * *

(4) *Application for vessel permit.* ETP tuna purse seine vessel permit application forms and instructions for their completion are available from NMFS. To apply for an ETP vessel permit, a vessel owner or managing owner must complete, sign, and submit the appropriate form via fax to (562) 980–4047, for prioritization purposes as described under § 300.22(b)(4)(i)(D)(*3*) of this title, allowing at least 15 days for processing. To request that a vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active on the Vessel Register under § 300.22(b)(4)(i) of this title in the following calendar year, the owner or managing owner must submit the vessel permit application via fax, payment of the vessel permit application fee, and payment of the vessel assessment fee no later than September 15 for vessels for which a DML is requested for the following year, and no later than November 30 for vessels for which a DML is not requested for the following year.

(5) *Application for operator permit.* An applicant for an operator permit must complete, sign, and submit the appropriate form obtained from NMFS and submit payment of the permit application fee to the Administrator, Southwest Region, allowing at least 45 days for processing. Application forms and instructions for their completion are available from NMFS.

(6) * * *

(ii) *Operator permit fee.* The Assistant Administrator may require a fee to be submitted with an application for an operator permit. The level of such a fee shall be determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(iii) *Vessel assessment fee.* The vessel assessment fee supports the placement of observers on individual tuna purse seine vessels, and maintenance of the observer program, as established by the IATTC or other approved observer program.

(A) The owner or managing owner of a purse seine vessel for which a DML has been requested must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML is requested. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(B) The owner or managing owner of a purse seine vessel for which active or inactive status on the Vessel Register, as defined in § 300.21 of this title, has been requested, but for which a DML has not been requested, must submit payment of the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the vessel assessment fee is required only if the vessel is listed as active and is required to carry an observer, or if the vessel is listed as inactive and exceeds 400 st (362.8 mt) in carrying capacity. Payment of the vessel assessment fee must be consistent with the vessel's status, either active or inactive, on the Vessel Register in § 300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, prior to obtaining an observer and entering the ETP to fish. Consistent with § 300.22(b)(1)(i) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under § 300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of

the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status, less the vessel assessment fee associated with inactive status that was already paid, before NMFS will request the IATTC Secretariat change the status of the vessel from inactive to active. Payment of the vessel assessment fee is required only if the vessel is required to carry an observer.

(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status only if the vessel is required to carry an observer, before NMFS will request the IATTC Secretariat change the status of the vessel to active.

(F) Payments will be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(D) of this section; under paragraph (b)(6)(iii)(E) of this section for vessels that were listed on the Vessel Register in the calendar year prior to the year for which active status was requested; or after the dates specified in paragraphs (b)(6)(iii)(A) or (b)(6)(iii)(B) of this section. Payments will not be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(C) of this section, or if received under paragraph (b)(6)(iii)(E) of this section for vessels that were not listed on the Vessel Register in the calendar year prior to the year for which active status was requested. The Administrator, Southwest Region, will forward all vessel assessment fees described in this section to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

* * * * *

(c) * * *

(3) * * *

(viii) *Lights*. The vessel must be equipped with long-range, high-intensity floodlights with a sodium lamp of at least 1000 watts, or a multivapour lamp of at least 1500 watts, for use in darkness to ensure sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) *Vessel inspection*—(i) *Twice per year.* At least twice during each calendar year, purse seine nets and other gear and equipment required under § 216.24(c)(3) must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit. The first such inspection shall be carried out before the vessel's request for a DML is submitted to the IATTC. The second such inspection shall be carried out before notification of any reallocation of DMLs for vessels with full-year DMLs or during the last quarter of the year for vessels with second-semester DMLs.

* * * * *

(f) * * *

(2) *Imports requiring a Fisheries Certificate of Origin.* Shipments of tuna, tuna products, and certain other fish products identified in paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this section may not be imported into the United States unless a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, is filed with U.S. Customs and Border Protection (CBP) at the time of importation.

(i) *Imports requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo.* All shipments containing yellowfin tuna or yellowfin tuna products (other than fresh tuna) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following Harmonized Tariff Schedule of the United States (HTS) numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at *http://www.usitc.gov.* The scope of yellowfin tuna embargoes and procedures for attaining an affirmative finding are described under paragraphs (f)(6) and (f)(8) of this section, respectively.

(A) *Frozen:* (products containing Yellowfin).

0303.42.0020 Yellowfin tunas, whole, frozen

0303.42.0040 Yellowfin tunas, head-on, frozen, except whole

0303.42.0060 Yellowfin tunas frozen, except whole, head-on, fillets, livers and roes

0304.29.6097 Tuna fish fillets, frozen, Not elsewhere specified or indicated (NESOI)

0304.99.1090 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI

(B) *Airtight Containers:* (products containing Yellowfin).

1604.14.1010 Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each

1604.14.1099 Tunas and skipjack, in oil, in airtight containers, NESOI

1604.14.2291 Other tunas and skipjack, no oil, in foil/flexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year

1604.14.2299 Tunas, NESOI and skipjack, not in oil, in other airtight containers not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year

1604.14.3091 Tunas and skipjack, NESOI, not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each

1604.14.3099 Other tunas and skipjack, not in oil, in airtight containers, NESOI

(C) *Loins:* (products containing Yellowfin).

1604.14.4000 Tunas and skipjacks, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each

1604.14.5000 Tunas and skipjack, prepared or preserved, not in airtight containers, NESOI

(D) *Other:* (products containing Yellowfin).

1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each

1604.20.3000 Fish balls, cakes and puddings, NESOI

(ii) *Imports requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo.* All shipments containing tuna or tuna products (other than fresh tuna or yellowfin tuna identified in paragraph (f)(2)(i) of this section) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following HTS numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at *http://www.usitc.gov.*

(A) *Frozen:* (other than Yellowfin).

0303.41.0000 Albacore or longfinned tunas, frozen, except fillets, livers and roes

0303.43.0000 Skipjack tunas or stripe-bellied bonito, frozen, except fillets, livers and roes

0303.44.0000 Bigeye tunas, frozen, except fillets, livers and roes

0303.45.0000 Bluefin tunas, frozen, except fillets, livers and roes

0303.46.0000 Southern bluefin tunas, frozen, except fillets, livers and roes
0303.49.0100 Tunas, frozen, except fillets, livers and roes, NESOI
0304.29.6097 Tuna fish fillets, frozen, NESOI
0304.99.1090 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI

(B) *Airtight Containers:* (other than Yellowfin).

1604.14.1010 Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each
1604.14.1091 Tunas, albacore, in oil, in airtight containers, NESOI
1604.14.1099 Tunas and skipjack, in oil, in airtight containers, NESOI
1604.14.2251 Albacore tuna, not in oil, in foil/flexible airtight containers, weighing not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year
1604.14.2259 Albacore tuna, not in oil, in airtight containers weighing not over 7 kg, NESOI, 4.8% of U.S. consumption of canned tuna during preceding year
1604.14.2291 Other tunas and skipjack, no oil, in foil/flexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year
1604.14.2299 Tunas, NESOI and skipjack, not in oil, in other airtight containers, not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year
1604.14.3051 Tuna, albacore not in oil, in foil or other flexible airtight containers, weighing with contents not more than 6.8 kg each, NESOI
1604.14.3059 Tuna, albacore not in oil, in airtight containers, NESOI
1604.14.3091 Tunas and skipjack, NESOI, not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each
1604.14.3099 Other tunas and skipjack, not in oil, in airtight containers, NESOI

(C) *Loins:* (other than Yellowfin).

1604.14.4000 Tunas and skipjacks, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each
1604.14.5000 Tunas and skipjack, prepared or preserved, not in airtight containers, NESOI

(D) *Other:* (only if the product contains tuna).

1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each
1604.20.3000 Fish balls, cakes and puddings, NESOI

(iii) *Exports from driftnet nations only, requiring a Fisheries Certificate of Origin and official certification.* The following HTS numbers identify categories of fish and shellfish, in addition to those identified in paragraphs (f)(2)(i) and (f)(2)(ii) of this section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation, as identified under paragraph (f)(7) of this section, and imported into the United States, including but not limited to those imported into the United States under any of the HTS numbers listed in paragraph (f)(2) of this section, must be accompanied by an FCO and the official statement described in paragraph (f)(4)(xiii) of this section.

(A) *Frozen:*

0303.19.0012 Chinook (King) salmon (*Oncorhynchus tschawytscha*), frozen, except fillets, livers and roes
0303.19.0022 Chum (dog) salmon (*Oncorhynchus keta*), frozen, except fillets, livers and roes
0303.19.0032 Pink (humpie) salmon (*Oncorhynchus gorbuscha*), frozen, except fillets, livers and roes
0303.19.0052 Coho (silver) salmon (*Oncorhynchus kisutch*), frozen, except fillets, livers and roes
0303.19.0062 Pacific salmon (*Oncorhynchus masou, Oncorhynchus rhodurus*), frozen, except fillets, livers and roes, NESOI
0303.21.0000 Trout (*Salmo trutta; Oncorhynchus mykiss, clarki, aguabonita, gilae, apache,* and *chrysogaster*), frozen, except fillets, livers and roes
0303.22.0000 Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), frozen, except fillets, livers and roes
0303.29.0000 Salmonidae, frozen, except fillets, livers and roes, NESOI
0303.61.0010 Swordfish steaks, frozen, except fillets
0303.61.0090 Swordfish, frozen, except steaks, fillets, livers and roes
0303.75.0010 Dogfish (*Squalus* spp.), frozen, except fillets, livers and roes
0303.75.0090 Sharks, frozen, except dogfish, fillets, livers and roes
0303.79.0079 Fish, frozen, except fillets, livers and roes, NESOI
0304.21.0000 Swordfish fillets, frozen, NESOI
0304.29.2066 Fish fillets, skinned, frozen blocks weighing over 4.5 kg each, to be minced, ground or cut into pieces of uniform weights and dimensions, NESOI
0304.29.6006 Atlantic Salmonidae (*Salmo salar*) fillets, frozen, NESOI
0304.29.6008 Salmonidae fillets, frozen, except Atlantic salmon, NESOI
0304.29.6099 Fish fillets, frozen, NESOI
0307.49.0010 Squid fillets, frozen

(B) *Canned:*

1604.11.2020 Pink (humpie) salmon, whole or in pieces, but not minced, in oil, in airtight containers
1604.11.2030 Sockeye (red) salmon, whole or in pieces, but not minced, in oil, in airtight containers
1604.11.2090 Salmon NESOI, whole or in pieces, but not minced, in oil, in airtight containers
1604.11.4010 Chum (dog) salmon, not in oil, canned
1604.11.4020 Pink (humpie) salmon, not in oil, canned
1604.11.4030 Sockeye (red) salmon, not in oil, canned
1604.11.4040 Salmon, NESOI, not in oil, canned
1604.11.4050 Salmon, whole or in pieces, but not minced, NESOI
1604.19.2000 Fish, NESOI, not in oil, in airtight containers
1604.19.3000 Fish, NESOI, in oil, in airtight containers
1605.90.6050 Loligo squid, prepared or preserved
1605.90.6055 Squid except Loligo, prepared or preserved

(C) *Other:*

0305.30.6080 Fish fillets, dried, salted or in brine, but not smoked, NESOI
0305.41.000 Pacific salmon (*Oncorhynchus* spp.), Atlantic salmon (*Salmo salar*), and Danube salmon (*Hucho hucho*), including fillets, smoked
0305.49.4040 Fish including fillets, smoked, NESOI
0305.59.2000 Shark fins, dried, whether or not salted but not smoked
0305.59.4000 Fish, dried, whether or not salted but not smoked, NESOI
0305.69.4000 Salmon, salted but not dried or smoked; in brine
0305.69.5000 Fish in immediate containers weighing with their contents 6.8 kg or less each, salted but not dried or smoked; in brine, NESOI
0305.69.6000 Fish, salted but not dried or smoked; in brine, NESOI
0307.49.0022 Squid, *Loligo opalescens,* frozen (except fillets), dried, salted or in brine
0307.49.0024 Squid, *Loligo pealei,* frozen (except fillets), dried, salted or in brine
0307.49.0029 Loligo squid, frozen (except fillets), dried, salted or in brine, NESOI

0307.49.0050 Squid, frozen (except fillets), dried, salted or in brine, except Loligo squid

0307.49.0060 Cuttle fish (*Sepia officinalis, Rossia macrosoma, Sepiola* spp.), frozen, dried, salted or in brine

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at *http://swr.nmfs.noaa.gov/noaa370.htm.*

(i) A properly completed FCO and its attached certificates as described in § 216.91(a), if applicable, must accompany the required CBP entry documents that are filed at the time of import.

(ii) FCOs and associated certifications as described in § 216.91(a), if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 10 calendar days of the shipment's entry into the commerce of the United States. FCOs submitted via mail should be sent to the Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832–2469. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following e-mail address: *SWRTuna.Track@noaa.gov.* The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned. Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in Portable Document Format (PDF).

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed.

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years, and such records must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region.

(4) *Contents of Fisheries Certificate of Origin.* An FCO, certified to be accurate by the exporter(s) of the accompanying shipment, must include the following information:

(i) CBP entry identification;

(ii) Date of entry;

(iii) Exporter's full name and complete address;

(iv) Importer's or consignee's full name and complete address;

(v) Species description, product form, and HTS number;

(vi) Total net weight of the shipment in kilograms;

(vii) Ocean area where the fish were harvested (ETP, western Pacific Ocean, south Pacific Ocean, eastern Atlantic Ocean, western Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);

(viii) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, pole and line/hook and line, or other);

(ix) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel's fishing operations;

(x) Dates on which the fishing trip began and ended;

(xi) The name of the harvesting vessel;

(xii) Dolphin-safe condition of the shipment, described by checking the appropriate statement on the form and attaching additional certifications as described in § 216.91(a) if required;

(xiii) For shipments containing fish or fish products exported from, or harvested on the high seas by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(7) of this section, the High Seas Driftnet Certification contained on the FCO must be dated and signed by a responsible government official of the large-scale driftnet nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and

(xiv) Each importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.

* * * * *

(10) *Fish refused entry.* If fish is denied entry under paragraph (f)(2) of this section, the Port Director of CBP shall refuse to release the fish for entry into the United States.

(11) *Disposition of fish refused entry into the United States.* Fish that is denied entry under paragraph (f)(2) of this section and that is not exported under CBP supervision within 90 days shall be disposed of under CBP laws and regulations at the importer's expense. Provided, however, that any disposition shall not result in an introduction into the United States of fish caught in violation of the MMPA.

* * * * *

4. In § 216.91, revise paragraphs (a)(2)(i), (a)(2)(ii), and (a)(4) to read as follows:

§ 216.91 Dolphin-safe labeling standards.

(a) * * *

(2) * * *

(i) In a fishery in which the Assistant Administrator has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are accompanied as described in § 216.24(f)(3) by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied as described in § 216.24(f)(3) by a written statement executed by the Captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna was harvested;

* * * * *

(4) *Other fisheries.* By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied as described in § 216.24(f)(3) by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the

Assistant Administrator determines that such an observer statement is necessary.

* * * * *

5. In § 216.92, revise paragraph (b)(2)(ii) and the introductory text of paragraph (b)(2)(iii) to read as follows:

§ 216.92 Dolphin-safe requirements for tuna harvested in the ETP by large purse seine vessels.

* * * * *

(b) * * *

(2) * * *

(ii) The tuna or tuna products are accompanied as described in § 216.24(f)(3) by a properly completed FCO; and

(iii) The tuna or tuna products are accompanied as described in § 216.24(f)(3) by valid documentation signed by a representative of the appropriate IDCP member nation, containing the harvesting vessel names and tuna tracking form numbers represented in the shipment, and certifying that:

* * * * *

6. In § 216.93, revise paragraphs (c)(5), (e), and (f)(2) to read as follows:

§ 216.93 Tracking and verification program.

* * * * *

(c) * * *

(5) The handling of TTFs and the tracking and verification of tuna caught in the Convention Area by a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity shall be conducted consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

* * * * *

(e) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be accompanied as described in § 216.24(f)(3) by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 10 calendar days of the shipment's entry into the commerce of the United States as required by § 216.24(f)(3)(ii).

(f) * * *

(2) *Record submission.* Within 10 calendar days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

* * * * *

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Pacific Tuna Fisheries

7. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951–961 *et seq.*

8. In § 300.21, remove the definition for ''Vessel Register'' and add definitions for ''Commercial passenger fishing vessel'', ''Regional Vessel Register'', and ''Tuna'' in alphabetical order to read as follows:

§ 300.21 Definitions.

* * * * *

Commercial passenger fishing vessel means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

* * * * *

Regional Vessel Register (hereafter referred to as Vessel Register) means the regional register of vessels authorized to fish for tuna and tuna-like species in the Convention Area, as established by the Inter-American Tropical Tuna Commission in June 2000.

* * * * *

Tuna means any fish of the genus Thunnus and the species *Euthynnus* (*Katsuwonus*) *pelamis*.

* * * * *

9. In § 300.22, revise the section heading and paragraphs (a), (b) introductory text, and (b)(2), (b)(3), (b)(4), (b)(5)(iv), and (b)(7); and add new paragraphs (b)(5)(vi), (b)(5)(vii), (b)(5)(viii), and (b)(8) to read as follows:

§ 300.22 Eastern Pacific fisheries—recordkeeping and written reports.

(a) The master or other person in charge of a commercial fishing vessel or commercial passenger fishing vessel (CPFV) authorized to fish for tuna and tuna-like species in the Convention Area, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of operations conducted from the fishing vessel. For vessels greater than 400 st (362.8 mt) carrying capacity that are authorized to purse seine for tuna in the Convention Area, the log must include for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish on board, by species. The record and bridge log maintained and submitted at the request of the IATTC shall be sufficient to comply with this paragraph, provided the items of information specified by the IATTC are accurately entered in the log. For purse seine vessels of 400 st (362.8 mt) carrying capacity or less and for non-purse seine vessels, maintaining and submitting any logbook required by existing state or federal regulation shall be sufficient to comply with this paragraph.

(b) *Vessel Register.* The Vessel Register shall include, consistent with resolutions of the IATTC, all commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area. Except as provided under paragraph (b)(1) of this section, tuna purse seine vessels must be listed on the Vessel Register and categorized as active under paragraph (b)(4)(i) of this section in order to fish for tuna and tuna-like species in the Convention Area.

* * * * *

(2) *Requirements for inclusion of purse seine vessels on the vessel register.* The tuna purse seine portion of the Vessel Register shall include, consistent with resolutions of the IATTC, only vessels that fished in the Convention Area prior to June 28, 2002. Inclusion on the tuna purse seine portion of the Vessel Register is valid through December 31 of each year. New tuna purse seine vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the tuna purse seine vessel or vessels being replaced.

(3) *Vessel information.* Information on each commercial fishing vessel or CPFV authorized to use purse seine, longline, drift gillnet, harpoon, troll, rod and reel, or pole and line fishing gear to fish for tuna and tuna-like species in the Convention Area for sale shall be collected by the Regional Administrator, Southwest Region, to conform to IATTC resolutions governing the Vessel Register. This information initially includes, but is not limited to, the vessel name and registration number; the name and business address of the owner(s) and managing owner(s); a photograph of the vessel with the registration number legible; previous vessel name(s) and previous flag (if known and if any); port of registry; International Radio Call Sign; vessel length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity in metric tons; engine horsepower; date

and place where built; and type of fishing method or methods used. The required information shall be collected as part of existing information collections as described in this and other parts of the CFR.

(4) *Purse seine vessel register status.* For a purse seine vessel to be listed on the Vessel Register, and to be categorized as either ''active'' or ''inactive,'' in the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator, Southwest Region, the required permit applications, written notifications, and fees as described under § 216.24(b) of this title and under paragraphs (b)(4)(i) and (b)(4)(iii) of this section.

(i) *Active status.* As early as August 1 of each year, vessel owners or managing owners may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as active for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator, Southwest Region, the vessel permit application and payment of the permit application fee and vessel assessment fee. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator, Southwest Region, written notification including, but not limited to, a vessel photograph, the vessel information as described under paragraph (b)(3) of this section, and the owner or managing owner's signature and business telephone and fax numbers. If a purse seine vessel of 400 st (362.8 mt) carrying capacity or less is required by the Agreement on the IDCP to carry an observer, the vessel owner or managing owner must also submit payment of the vessel assessment fee to the Regional Administrator, Southwest Region. Vessel permit applications and written notifications must be submitted by fax to (562) 980–4047. The Regional Administrator must receive the vessel permit application or written notification and payment of the permit application fee and vessel assessment fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application or written notification and payment of the vessel assessment fee and permit application fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active. The following restrictions apply to active status:

(A) The cumulative carrying capacity of all purse seine vessels categorized as active on the Vessel Register may not exceed 8,969 mt in a given year;

(B) A purse seine vessel may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under § 216.24(b)(2) of this title;

(C) For 2005 only, requests for vessels will be prioritized on a first-come, first-served basis according to the date and time the fax is received in the office of the Regional Administrator;

(D) Requests for active status for 2006 and subsequent years will be prioritized according to the following hierarchy:

(*1*) Requests received for vessels that were categorized as active in the previous year, beginning with the vessel's status in 2005, unless the request for active status was determined to be frivolous by the Regional Administrator under paragraph (b)(4)(ii) of this section;

(*2*) Requests received for vessels that were categorized as inactive under paragraph (b)(4)(iii) of this section in the previous year, beginning with the vessel's status in 2005;

(*3*) Requests for vessels not described in paragraphs (b)(4)(i)(D)(1) or (2) of this section will be prioritized on a first-come, first-served basis according to the date and time stamp printed by the incoming fax machine upon receipt, provided that the associated vessel assessment fee is paid by the applicable deadline described in § 216.24(b)(6)(iii) of this title; and

(*4*) Requests received from owners or managing owners of vessels that were determined, by the Regional Administrator, to have made a frivolous request for active status under paragraph (b)(4)(ii) of this section.

(ii) *Frivolous requests for active status.* Beginning with requests made for 2005, a request for active status under paragraph (b)(4)(i) of this section will be considered frivolous, unless as a result of force majeure or other extraordinary circumstances as determined by the Regional Administrator, if, for a vessel categorized as active in a given calendar year,

(A) Less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area; or

(B) The vessel did not fish for tuna at all in the Convention Area in that same year.

(iii) *Inactive status.* From August 1 through November 30 of each year, vessel owners or managing owners may request that purse seine vessels qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator, Southwest Region, payment of the associated vessel assessment fee. Payment of the vessel assessment fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit by mail to the Regional Administrator, Southwest Region, a written notification including, but not limited to, the vessel name and registration number and the vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers. Payment of the vessel assessment fee is not required for vessels of 400 st (362.8 mt) carrying capacity or less to be categorized as inactive. At any time during the year, a vessel owner or managing owner may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the remainder of the calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the Regional Administrator payment of the associated vessel assessment fee, plus a 10 percent surcharge of the fee if the vessel was listed on the Vessel Register in the previous year. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the Regional Administrator written notification as described in this paragraph (payment of the vessel assessment fee is not required).

(5) * * *

(iv) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation;

* * * * *

(vi) If the vessel does not have a valid state registration or U.S. Coast Guard certificate of documentation;

(vii) For tuna purse seine vessels, upon receipt of written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag, as described in paragraph (b)(8) of this section; or

(viii) For tuna purse seine vessels, if the request for active status on the Vessel Register has been determined to be a frivolous request.

* * * * *

(7) *Procedures for replacing purse seine vessels removed from the Vessel Register.*

(i) A purse seine vessel in excess of 400 st (362.8 mt) carrying capacity that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel pays the vessel assessment fee associated with inactive status. Payments received will be subject to a 10 percent surcharge for vessels that were listed on the Vessel Register in the calendar year prior to the year for which inactive status was requested. A purse seine vessel of 400 st (362.8 mt) carrying capacity or less that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel submits written notification as described in paragraph (b)(4)(iii) of this section.

(ii) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of the active vessels does not exceed 8,969 mt and the owner submits a complete request under paragraph (b)(7)(iv) or (b)(7)(v) of this section.

(iii) After a purse seine vessel categorized as active is removed from the Vessel Register, the Regional Administrator, Southwest Region, will notify owners or managing owners of vessels categorized as inactive that replacement capacity is available on the active list of the Vessel Register. In the event that owners of inactive vessels do not request to replace a removed vessel, the Regional Administrator will notify owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active list of the Vessel Register.

(iv) Vessel owners or managing owners may request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active to replace a vessel removed from the Vessel Register by submitting to the Regional Administrator, Southwest Region, written notification as described in paragraph (b)(4)(i) of this section and, only if the vessel is required by the Agreement on the IDCP to carry an observer, payment of the vessel assessment fee within 10 business days after submission of the faxed written notification. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel being replaced. Payments received will be subject to a 10 percent surcharge for vessels that were listed on the Vessel Register at the beginning of the calendar year, or in the calendar year prior to the year, for which active status was requested.

(v) Vessel owners or managing owners may request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active to replace a vessel removed from the Vessel Register by submitting to the Regional Administrator, Southwest Region, the vessel permit application as described under § 216.24(b) of this title and payment of the vessel assessment fee and permit application fee within 10 business days after submission of the faxed vessel permit application for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel being replaced, and the captain of the replacement vessel possesses an operator permit under § 216.24(b) of this title. Payments received will be subject to a 10 percent surcharge for vessels that were listed on the Vessel Register at the beginning of the calendar year, or in the calendar year prior to the year, for which active status was requested.

(vi) The Regional Administrator, Southwest Region, will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

(8) The owner or managing owner of a purse seine vessel listed on the Vessel Register must provide written notification to the Regional Administrator, Southwest Region, prior to submitting an application for transfer of the vessel to foreign registry and flag. Written notification must be submitted by mail and received by the Regional Administrator at least 10 business days prior to submission of the application for transfer. The written notification must include the vessel name and registration number; the expected date that the application for transfer will be submitted; and the vessel owner or managing owner's name and signature. Vessels that require approval by the U.S. Maritime Administration prior to transfer of the vessel to foreign registry and flag will not be subject to the notification requirement described in this paragraph.

10. In § 300.23, revise the section heading to read as follows:

§ 300.23 Eastern Pacific fisheries—Persons and vessels exempted.

* * * * *

11. In § 300.24, remove the semicolons at the end of paragraphs (b), (e), (f), and (g) and replace them with periods; remove ''; or'' at the end of paragraph (h) and replace it with a period; and add a new paragraph (j) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(j) Fail to provide written notification as described under § 300.22(b)(8) to the Regional Administrator, Southwest Region, at least 10 business days prior to submission of an application to transfer a purse seine vessel listed on the Vessel Register to foreign registry and flag, unless transfer of the vessel requires approval by the U.S. Maritime Administration.

12. In § 300.25, revise paragraph (a), the heading for paragraph (e) and revise paragraph (e)(1) to read as follows:

§ 300.25 Eastern Pacific fisheries management.

(a) *Notification of IATTC recommendations and resolutions.* Fishery management resolutions made by the IATTC and approved by the Department of State will be promulgated in the **Federal Register** via appropriate rulemaking. The publication in the **Federal Register** will summarize the fishery management resolutions and respond to any public comments received by NMFS.

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(e) *Bycatch reduction measures*—(1) All purse seine vessels must retain on board and land all bigeye, skipjack, and yellowfin tuna brought on board the vessel after a set, except fish deemed unfit for human consumption for other than reason of size. This requirement shall not apply to the last set of a trip if the available well capacity is

insufficient to accommodate the entire fish catch brought on board.

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[FR Doc. E8–15803 Filed 7–10–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 071003556–7575–01]

RIN 0648–AW08

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendment 15

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 15 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 15 would modify the FMP to implement a limited entry program for the non-tribal Pacific whiting fishery. Amendment 15 was approved by NMFS on June 18, 2008, and in accordance with the notification procedures of the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Fishery Management Council was notified of this approval. Amendment 15 is intended to serve as an interim measure to limit potential participation in the Pacific whiting fishery within the U.S. West Coast Exclusive Economic Zone until implementation of a trawl rationalization program under Amendment 20 to the Groundfish FMP.

DATES: Comments on this proposed rule must be received on or before August 11, 2008.

ADDRESSES: Amendment 15 is available on the Pacific Fishery Management Council's (Council's or Pacific Council's) website at: h*ttp://www.pcouncil.org/groundfish/gffmp.html*.

You may submit comments, identified by RIN 0648–AW08 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the FederaleRulemaking Portal: *http://www.regulations.gov*.
- Fax: 206–526–6736, Attn: Becky Renko.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Becky Renko, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Northwest Region (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285. Send comments on collection-of-information requirements to the NMFS address above and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington DC 20503 (Attn: NOAA Desk Officer).

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: Becky Renko, phone: 206–526–6110, fax: 206–526–6736, or e-mail: *becky.renko@noaa.gov*, or for permitting information, Kevin Ford, phone: 206–526–6115, fax: 206–526–6736, or e-mail: *kevin.ford@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the **Federal Register**'s Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm*.

NMFS is proposing this rule to implement Amendment 15 to the FMP, which would create a limited entry program for the three non-tribal sectors of the Pacific whiting fishery off the U.S. West Coast. Under current Federal regulations, Pacific whiting shoreside fishery catcher vessels, mothership catcher vessels, and catcher/processor vessels, must be registered to a groundfish limited entry permit. The limited entry program has been in place since 1994 and allows appropriately registered vessels to harvest groundfish, targeting any of the 90+ species managed under the FMP. The proposed action to implement Amendment 15 to the FMP would require vessels that wish to harvest and/or process Pacific whiting in the non-tribal Pacific whiting fishery to qualify for a Pacific whiting vessel license limitation program. This is in addition to the requirement for harvesting vessels to be registered for use with groundfish limited entry permits. Amendment 15 is intended to serve as an interim measure that sunsets when the Pacific Fishery Management Council adopts and the National Marine Fisheries Service implements a trawl rationalization program under Amendment 20 to the Pacific Groundfish FMP. Amendment 20 is currently under development by the Council, which adopted its preliminary preferred alternative at the June Council meeting. The Council anticipates taking final action on the trawl rationalization program in November 2008. If NMFS approves the Amendment, implementation is scheduled for late 2010, at which time Amendment 15 would no longer be effective. If development and implementation of Amendment 20 is delayed beyond that point, NMFS intends to request that the Council reconsider the provisions of Amendment 15.

NMFS published a Notice of Availability for Amendment 15 on March 19, 2008 (73 FR 14765), and is requested public comment on it through May 19, 2008. Amendment 15 was approved by NMFS on June 18, 2008.

Background

Pacific whiting (*Merluccius productus*), also known as Pacific hake, is a semi-pelagic and relatively productive species that ranges from Sanak Island in the western Gulf of Alaska to Magdalena Bay, Baja California Sur, Mexico. They are most abundant in the California Current System, off the U.S. West Coast. Pacific whiting landings represent the most significant single-species contribution to West Coast groundfish landings from the 90+ groundfish species managed under the FMP by several orders of magnitude. In general, Pacific whiting is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span when compared to other groundfish species. In 1987, the Pacific whiting biomass was at a historically high level due to an exceptionally large number of fish that had spawned in 1980 and 1984 (fished spawned during a particular year are referred to as year classes). As these large year classes of fish passed through

the population and were replaced by moderate sized year classes, the stock declined. The Pacific whiting stock stabilized between 1995 and 1997, but then declined to its lowest level in 2001. After 2001, the Pacific whiting biomass increased substantially as a strong 1999 year class matured and entered the spawning population. The contribution of the 1999 year class to the total population is rapidly declining as it matures.

Coastwide Pacific whiting harvest is managed via a 2003 U.S.-Canada agreement on Pacific whiting conservation, research, and catch sharing. Under that agreement, U.S. fisheries have access to 73.88 percent of the total annual Pacific whiting optimum yield (OY), with Canadian fisheries having access to 26.12 percent of the OY.

Pacific whiting harvest within U.S. waters is first allocated between tribal and non-tribal fisheries. In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes' usual and accustomed ocean fishing areas (described at 50 CFR 660.324). To date, only the Makah Tribe has participated in a tribal fishery for Pacific whiting. Beginning in 1999, NMFS set the tribal allocation according to an abundance-based sliding scale method, proposed by the Makah Tribe in 1998 (see 64 FR 27928 (May 29, 1999); 65 FR 221, (January 4, 2000); 66 FR 2338 (January 11, 2001).) On December 28, 2004, the Ninth Circuit Court of Appeals upheld the sliding scale approach in *Midwater Trawler Cooperative* v. *Daley*, 393 F. 3d 994 (9th Cir. 2004). Under the sliding scale allocation method, the tribal allocation varies with the U.S. Pacific whiting OY, ranging from 14 percent (or less) of the U.S. OY when OY levels are above 250,000 mt, to 17.5 percent of the U.S. OY when the OY level is at or below 145,000 mt.

Since 1997, the non-tribal Pacific whiting fishery has been divided into three separate sectors: the shore-based sector, which is composed of vessels that harvest whiting for delivery to land-based processors; the mothership sector, which is composed of catcher vessels that harvest whiting and mothership vessels that process; and, the catcher/processor sector, which is composed of vessels that harvest and process whiting. Domestic allocation of the annual U.S. Pacific whiting OY between these three sectors is provided for within Federal regulations at 50 CFR 660.323(a)(2): 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the shore-based sector. In addition to these between-sector allocations, no more than 5 percent of the shore-based allocation may be taken and retained south of 42° N. lat. before the June 15 start of the shore-based sector primary Pacific whiting season north of 42° N. lat.

The American Fisheries Act (AFA) and Amendment 15

The 1998 AFA was designed to strengthen U.S. ownership standards that had been exploited under the Anti-reflagging Act, and to rationalize the Bering Sea and Aleutian Islands (BSAI) walleye pollock (pollock) fishery while protecting non-AFA participants in other fisheries. The AFA prioritized U.S. interests in the harvest of U.S. fishery resources and decapitalized the BSAI pollock fishery through buyouts. Management measures required by the AFA include (1) regulations that limit access into the fishing and processing sectors of the BSAI pollock fishery and that allocate pollock to such sectors, (2) regulations governing the formation and operation of fishery cooperatives in the BSAI pollock fishery, (3) regulations to protect other fisheries from spillover effects from AFA, and (4) regulations governing catch measurement and monitoring in the BSAI pollock fishery.

Section 211 of the AFA requires the Pacific Council, not later than July 1, 2000, to recommend conservation and management measures it determines necessary to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by the AFA, or by any fishery cooperatives in the directed pollock fishery. In response to this requirement, the Council initiated discussions on Amendment 15 to the FMP in September 1999. At that time, the initial intent of Amendment 15 was to restrict AFA-qualified vessels that had not met historic Pacific whiting landing requirements during the 1994–1999 period from future participation in the Pacific Coast groundfish fishery.

In September 2001, the Council reviewed a range of alternatives and initial analysis for Amendment 15. The draft environmental assessment (EA) identified four key issues: qualifying criteria for AFA catcher vessels; whether AFA catcher vessel restrictions would be on vessels, permits held by vessels, or both; qualifying criteria for AFA catcher processors; qualifying criteria for AFA motherships; and duration of the restrictions. Upon reviewing the draft 2001 EA, the Council determined that there was no imminent harm to West Coast groundfish fisheries from the AFA. This determination, in combination with competing workload led the Council to table action on Amendment 15 in 2001.

Amendment 15 in the 2007 Council Process

In 2005 and 2006, market conditions for Pacific whiting changed dramatically, with prices paid to fishermen increasing from an average price of about $0.04 per pound ($88 per ton) in the 1992–2005 period to more than $ 0.06 per pound ($143 per ton) in 2006. Preliminary information for Oregon shore-based landings of Pacific whiting indicates an increase from $0.07 in 2006 to $0.08 in 2007, doubling the historic average price. The rise in ex-vessel prices was stimulated by increased world demand for whiting products, in particular new markets for headed and gutted whiting. Higher Pacific whiting prices attracted new entrants to the Pacific whiting fishery from vessels with Pacific coast limited entry groundfish permits that had historically participated in the non-whiting groundfish fisheries, that had purchased West Coast limited entry permits for the purpose of joining the Pacific whiting fishery, or that had historic Pacific whiting catch in one sector but were newly entering other sectors. Historic fishery participants were concerned that new fishery entrants would ultimately accelerate the race for fish in the fishery, making the fishery more dangerous for participants and more prone to poor decision-making in fishing and which could ultimately result in higher rates of bycatch of protected or overfished species associated with Pacific whiting. Some of the new entrants to the Pacific whiting fishery were AFA-qualified vessels with fishing operations off Alaska. Therefore, in 2006, fishing industry members requested that the Council re-open consideration of Amendment 15 to the FMP.

In September 2006, the Council again took up Amendment 15 and, realizing that an FMP amendment could not be completed in time to affect the 2007 Pacific whiting fishery, discussed how to limit Pacific whiting fishery participation in 2007. To address short-term participation in the Pacific whiting fishery, the Council requested that NMFS implement an emergency rule for the 2007 fishery that would prohibit participation in a non-tribal sector by AFA-qualified vessels that had no historic participation in that sector prior

to 2006. NMFS denied this request primarily because it would not have restricted participation in the 2007 fishery by non-AFA vessels; therefore, the requested rule would not solve the serious conservation or management problems in the fishery the Council had identified. Current harm to the fishery could not be traced back solely to the AFA itself, which meant that an emergency rule designed to exclude only AFA-qualified vessels could not be approved.

The Council re-visited its emergency rule request at its March 2007 meeting, and ultimately recommended that NMFS implement an emergency rule. After concluding that conditions were such that new entry into the non-tribal sectors was likely in 2007, the Council recommended an emergency rule to prohibit participation in a particular non-tribal sector by a vessel without a history of sector-specific participation between January 1, 1997 and January 1, 2007. NMFS implemented this request on May 14, 2007 (72 FR 27759, May 17, 2007) stating concern that an accelerated ''race for fish'' was likely to cause serious conservation and management problems. The emergency rule was intended to be interim until longer term regulations could be implemented.

Continuing its work for 2008 and beyond, the Council again addressed Amendment 15 at its April, June, and September 2007 meetings. Based on continued concern with conservation effects of increased entry and the resulting race for fish, the Council discussed action alternatives that would restrict participation in the sectors by any vessel, not just AFA-qualified vessels, that did not meet particular landings requirements. The action alternatives differed only in the qualifications necessary to participate in particular non-tribal sectors of the Pacific whiting fishery. At its September 9–14, 2007 meeting in Portland, Oregon, the Council reviewed an EA and draft amendatory language for Amendment 15, and listened to the advice of its advisory bodies and members of the public on choosing a preferred alternative for implementing Amendment 15. Council discussions concerned the likelihood of new entry given increased whiting exvessel prices and declining pollock quotas. Council discussions centered on the effects of new entry into a fishery already experiencing declining limited West Coast trawl opportunities due to overfished species rebuilding measures, concerns about the conservation of overfished groundfish stocks and salmon stocks listed under the Endangered Species Act, increased costs to manage the fishery if it becomes faster paced due to increased participation, and the decreased economic returns to historical harvesters from new entrants. Ultimately, the Council chose a hybrid alternative that combined historic qualification preferences expressed by participants in the three different non-tribal sectors, based on the evolution of the different sectors.

The Council's preferred alternative for Amendment 15, which this rule proposes to implement, would restrict participation in the non-tribal sectors as follows: catcher vessels in the Pacific whiting shoreside fishery would be required to have made sector-specific Pacific whiting landings in any one calendar year during the period of January 1, 1994, through January 1, 2007; vessels participating in either the catcher/processor or mothership sector would be required to have either caught and processed Pacific whiting (catcher/processor sector,) caught and delivered Pacific whiting (catcher vessels in mothership sector,) or processed Pacific whiting (motherships) in any one calendar year during the period of January 1, 1997 through January 1, 2007. This would be the first participation requirement for motherships, which, unlike catcher vessels, have not needed a groundfish limited entry permit registered to them. The Council preferred the 1994 qualifying period start date for the shore-based sector because that was the first year the groundfish limited entry program was in effect. For the at-sea sectors, however, 1997 was the preferred qualifying period start date because that was the first year that Pacific whiting was specifically allocated between the three sectors. Prior to 1997, Pacific whiting catch was allocated between vessels that landed on shore and those that caught Pacific whiting for processing at sea.

Amendment 15 Implementing Regulations

Amendment 15 proposes to implement a limited entry program for the three non-tribal sectors of the Pacific whiting fishery. Vessels would be required to meet certain participation criteria and, with the exception of the motherships, would also be required to have the vessel registered to a Pacific Coast groundfish limited entry permit. Motherships would only be required to meet the participation criteria. The regulations proposed in this rule for Amendment 15 would follow NMFS Northwest Region's historic practices for implementing license limitation and permit limitation programs, such as the groundfish limited entry program itself, the sablefish endorsement program, and the three-tier sablefish program.

Under the proposed regulations, NMFS would mail Pacific whiting vessel license applications to all current and prior owners of vessels that have been registered for use with limited entry permits with trawl endorsements, excluding owners of those vessels whose permits were purchased through the Pacific Coast groundfish fishing capacity reduction program. NMFS would also make license applications available online at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*.

To participate in the fishery in 2009 and beyond, a vessel owner who believes that his/her vessel may qualify for the Pacific whiting vessel license would have until December 31, 2008, to submit documentation showing how his/her vessel has met the qualifying criteria. NMFS will not accept applications for Pacific whiting vessel licenses received after December 31, 2008. After receipt of a complete application, NMFS will notify applicants by letter of its determination whether their vessels qualify for Pacific whiting vessel licenses and the sector or sectors to which the licenses apply. Vessels that have met the qualification criteria will be issued the appropriate licenses at that time.

For 2008, the proposed action would prohibit vessels from fishing, landing, or processing Pacific whiting in a primary whiting season from the effective date of this action through December 31, 2008, with a catcher/processor, mothership or mothership catcher vessel that has no history of participation within that specific sector of the whiting fishery during the period from January 1, 1997, through January 1, 2007, or with a shoreside catcher vessel that has no history of participation within the shore-based sector of the whiting fishery during the period from January 1, 1994 through January 1, 2007, as specified in § 660.373(j). Participation in the shore-based sector is in reference to participation in the primary whiting season. This rule proposes that, in order to qualify for a Pacific whiting vessel license in the shore-based sector, documentation is required to show the vessel made at least one landing of whiting taken with mid-water trawl gear during a primary shore based season during the period January 1, 1994 through January 1, 2007, and that the weight of whiting exceeded 50 percent of the total weight of the landing.

NMFS is authorized under the Magnuson-Stevens Act to collect funds from permit recipients to recover the

cost of the permitting process. NMFS initially estimates that the fee for initial issuance of Pacific whiting licenses will be $650 per license it issued. NMFS must receive the fee payment in full to consider the application complete and to process the application.

For 2009, NMFS would both publish a list of vessels that have qualified for the Pacific whiting vessel license in the **Federal Register**, and would issue licenses to those vessels that apply prior to the start of the 2009 fishing season. Each license will indicate the sector or sectors for which the vessel has qualified. To participate in any of the non-tribal whiting sectors in 2009 and beyond, a harvesting vessel would be required to be registered for use with both a groundfish limited entry permit and with a Pacific whiting vessel license. The license would be associated with the vessel, not with a limited entry permit. A mothership vessel that processes whiting, but does not harvest would only be required to have a whiting vessel license for the mothership sector. Therefore, once issued, the Pacific whiting vessel license would not be re-issued unless it has been lost, or unless there is some change in the vessel owner information for the vessel to which it is registered. Consistent with the intent of Amendment 15, Pacific whiting vessel license holders would not be allowed to transfer those licenses to any other vessels.

Based on an initial review of potential qualifying vessels for each sector, NMFS anticipates that there would be some catcher vessels that qualify to be licensed for both the shore-based and mothership sectors. However, NMFS also anticipates that there would not be any vessels that qualify to be licensed as both a catcher/processor and as a mothership processor. Therefore, NMFS is proposing via this action to remove § 660.373(h), which allows that catcher/processor vessels have mobility between the different sectors mobility that the Council has recommended eliminating via Amendment 15.

The proposed regulations to implement Amendment 15 would also correct an error made in the temporary rule discussed above and published on May 14, 2007 (72 FR 27759.) Through a mistake in the ''**DATES**'' section of the May 17, 2007, temporary rule, NMFS made permanent revisions to 50 CFR 660.333 and 660.335. These permanent revisions allow limited entry trawl permits that were created between December 31, 2006, and May 14, 2007, by aggregating multiple limited entry permits, to be disaggregated back into the initially combined component parts - an action otherwise prohibited by limited entry permit regulations. At least one vessel owner who had, prior to the implementation of the temporary rule, prepared for participating in the 2007 Pacific whiting fishery by purchasing and aggregating permits in order to create a permit with a length endorsement long enough to suit their vessel. The temporary rule provided an exception to regulations that would normally not allow disaggregating permits, in order to mitigate for the potential long-term effects on vessel owners who had expected to become new participants in the 2007 Pacific whiting fishery, but who were prevented by the temporary rule. Because this provision was improperly implemented as a permanent change to Federal regulations instead of temporarily as provided by the Magnuson-Stevens Act, NMFS proposes to correct that mistake via this proposed rule to implement Amendment 15. NMFS announced this intent in the notice that extended the emergency rule (72 FR 64953; November 19, 2007) These corrections would affect 50 CFR 660.333(f) and 660.335(f)(3).

Regulations Steamlining

In addition to this correction, this action also proposes a measure for Federal regulations at § 660.335(a). In their review of Chapter 11 of the FMP, NMFS and the Council noted that the chapter includes a requirement held over from Amendment 6, the original limited entry program, that calls for NMFS to send out notification of annual limited entry permit renewals by September 1 of each year. This September 1 notification date was included in the FMP in order to accommodate an annual 60–day renewal period for vessel owners of October 1 through November 30. This provision is implemented in Federal regulations at § 660.335(a)(2), which states in part, ''Notification to renew limited entry permits will be issued by SFD prior to September 1 each year to the most recent address of the permit owner...''

The Council recommended that Amendment 15 include a shift in the permit renewal notification date from September 1 to September 15. This shift would not alter the October 1 through November 30 renew period; rather, it would help to ensure that renewals do not occur prior to October 1st, which would be beneficial both from an accounting perspective and from an agency workload perspective.

The Federal fiscal year begins October 1st. When NMFS sends permit renewal notices by September 1st, many permit owners diligently renew their permits as quickly as possible, often sending renewals and fees by mid-September. NMFS immediately deposits funds received, in keeping with good accounting practices. As a result of this one-month lag between renewal notices and fiscal year start date, each renewal period inevitably includes funds received in two separate fiscal years. Moving the renewal date to September 15th would aid NMFS by ensuring that funds received to renew permits for a particular fishing year are credited to the applicable fiscal year.

September 1st is also the start of a two-month cumulative limit period, which means that the week just prior to September 1st, numerous permit owners submit permit transfers to move their permits to new boats for the start of the September-October cumulative limit period. This particular cumulative limit period is often active for permit transfers, since it is the last cumulative limit period that also falls within the April - October primary tier sablefish fishing season. Moving the renewal date to September 15th would allow NMFS to process last-minute permit transfer requests before sending renewal notification packets to permit owners. This will ensure that all renewal forms reflect the most recent changes to these permits. For these reasons, Amendment 15 authorizes Federal regulations at § 660.335(a)(2) to be revised to read in part, ''Notification to renew limited entry permits will be issued by SFD prior to September 15 each year to the most recent address of the permit owner. . . .''

Classification

Pursuant to section 304 of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The Small Business Administration has established size criteria for all major industry sectors in the US including fish harvesting and fish processing businesses. The RFA recognizes and defines three kinds of small entities: small businesses, small organizations, and small governmental jurisdictions. NMFS March 2007 Economic Guidelines (*http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf*) establish the current size standards for Magnuson-Stevens Act related rules as follows: Any fish-harvesting or hatchery business is a small business if it is independently owned and operated and not dominant in its field of operation and if it has total annual gross receipts not in excess of $4.0 million. Total annual gross receipts should include those of affiliates when practicable and appropriate to do so. Any vessel which both harvests and processes fish (also referred to as a catcher processor) is currently considered a small business if its combined total annual gross receipts (including all affiliates, worldwide, where practicable and appropriate) are not in excess of $4.0 million.

Adoption of Amendment 15 under the preferred alternative is expected to maintain the existing economic character of the Pacific whiting fishery. The actual levels of jobs, revenues, profits and total personal income for fishery participants and the affected communities will be influenced by such things as the abundance of Pacific whiting, market prices for Pacific whiting and substitute commodities and the condition of other fishery resources.

The number of fishery participants is expected to stay relatively consistent with the numbers observed in past years as no new entrants to the Pacific whiting fishery will be permitted. Accordingly, the economic impacts of the proposed action per se on existing businesses are expected to be minimal provided that a significant number of historically active vessels are not both eligible for the limited Pacific whiting licenses and choose to enter the fishery. Either because of participation in Alaska Pollock and other fisheries or being affiliated with large seafood companies, catcher/processor and mothership operations operating in the WOC are not considered small businesses.

Since 1994, approximately 26–31 catcher vessels have participated in the shoreside fishery annually. Approximately 10–43 catcher vessels have participated in the mothership fishery annually since 1994. These companies are all assumed to be small businesses. This rulemaking is expected to have minimal impacts on the business that catcher vessels conduct with the mothership processors and shore-based processors. It is also expected to have minimal impact on vessels in the catcher/processor sector of the fishery. If anything, this rule maintains the economics of the existing small businesses participating in the fishery as it prevents new vessels, potentially the larger vessels from Alaska, from participating in the fishery. NMFS is aware of one company that has purchased several permits for possible combination into a single large permit that has the length endorsement for use with a catcher/processor vessel, but this company is not considered a small company as its involvement in Alaska pollock fisheries suggests that it earns more than $4.0 million in revenues. There may be other companies large or small that wish to enter the fishery but we are unaware of any investments that have been undertaken specifically for entering the whiting fishery.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for applying for a Pacific whiting licenses is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Northwest Region at the **ADDRESSES** above, and by e-mail to *David_Rostker@omb.eop.gov* or fax to (202) 395–7285.

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

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, and Oregon coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, southern California).

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000–fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to do a more complete analysis of salmon take in the bottom trawl fishery.

NMFS completed its reinitiation consultation and prepared a Supplemental Biological Opinion dated March 11, 2006. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 Pacific whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook ESUs most likely affected by the Pacific whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior ''no jeopardy'' conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take

Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. Pursuant to Executive Order 13175, this action was developed through the Council process with meaningful collaboration with tribal officials from the area covered by the FMP. The tribal representative on the Council did not make a motion on this action for tribal fisheries.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: July 7, 2008.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.306, paragraph (f)(7) is removed, paragraphs (f)(1) through (f)(6) are redesignated as paragraphs (f)(2)through (f)(7), respectively, and a new paragraph (f)(1) is added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(f) * * *

(1) Fish in any of the sectors of the whiting fishery described at § 660.373(a) after January 1, 2009 using a vessel that is not registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336. Prior to January 1, 2009, vessels are prohibited from fishing, landing, or processing Pacific whiting with a catcher/processor, mothership or mothership catcher vessel that has no history of participation within that specific sector of the whiting fishery during the period from January 1, 1997, through January 1, 2007, or with a shoreside catcher vessels that has no history of participation within the shore-based sector of the whiting fishery during the period from January 1, 1994 through January 1, 2007, as specified in § 660.373(j). For the purpose of this paragraph, ''historic participation'' for a specific sector is the same as the qualifying criteria listed in § 660.336 (a)(2).

(i) If a Pacific whiting vessel license is registered for use with a vessel, fail to carry that license onboard the vessel registered for use with the license at any time the vessel is licensed. A photocopy of the license may not substitute for the license itself.

(ii) [Reserved]

* * * * *

3. In § 660.333, paragraph (f) is removed and paragraph (a) is revised to read as follows:

§ 660.333 Limited entry fishery eligibility and registration.

(a) *General.* A limited entry permit confers a conditional privilege of participating in the Pacific coast groundfish limited entry fishery, in accordance with Federal regulations in 50 CFR part 660. In order for a vessel to participate in the limited entry fishery, the vessel owner must hold a limited entry permit and, through SFD, must register that permit for use with his/her vessel. When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel. There are three types of gear endorsements: trawl, longline, and pot (or trap). All limited entry permits have size endorsements and a vessel registered for use with a limited entry permit must comply with the vessel size requirements of this subpart. A sablefish endorsement is also required for a vessel to participate in the primary season for the limited entry fixed gear sablefish fishery, north of 36° N. lat. After December 31, 2008, a catcher vessel participating in either the whiting shore-based or mothership sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336. After December 31, 2008, a vessel participating in the whiting catcher/processor sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336. After December 31, 2008, although a mothership vessel participating in the whiting mothership sector is not required to be registered for use with a limited entry permit, such vessel must be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336.

* * * * *

4. In § 660.335, paragraph (f)(3) is removed and paragraph (a)(2) is revised to read as follows:

§ 660.335 Limited entry permits renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.

(a) * * *

(2) Notification to renew limited entry permits will be issued by SFD prior to September 15 each year to the most recent address of the permit owner. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

* * * * *

5. A new § 660.336 is added to read as follows:

§ 660.336 Pacific whiting vessel licenses.

(a) *Pacific whiting vessel license*—(1) *General.* After December 31, 2008, participation in the non-tribal primary whiting season described in § 660.373(b) requires that an owner of any vessel that catches or processes Pacific whiting hold: a limited entry permit, registered for use with that vessel, with a trawl gear endorsement; and, a Pacific whiting vessel license, registered for use with that vessel, appropriate to the sector or sectors in which the vessel intends to participate. Pacific whiting vessel licenses are separate from limited entry permits and do not license a vessel to harvest whiting in the primary whiting season unless that vessel is also

registered for use with a limited entry permit with a trawl gear endorsement.

(2) *Pacific whiting vessel license qualifying criteria.*

(i) *Qualifying criteria.* Vessel catch and/or processing history will be used to determine whether that vessel meets the qualifying criteria for a Pacific whiting vessel license and to participate in a specific sector of the Pacific whiting fishery in 2008 and to determine the sectors for which that vessel may qualify. Vessel catch and/or processing history includes only the catch and/or processed product of that particular vessel, as identified in association with the vessel's USCG number. Only whiting regulated by this subpart that was taken with midwater (or pelagic) trawl gear will be considered for the Pacific whiting vessel license. Whiting harvested or processed by a vessel that has since been totally lost or decommissioned will not be considered for this license. Whiting harvested or processed illegally or landed illegally will not be considered for this license. Catch and/or processing history associated with a vessel whose permit was purchased by the Federal government through the Pacific Coast groundfish fishing capacity reduction program, as identified in 68 FR 62435 - 62440 (November 4, 2003), does not qualify a vessel for a Pacific whiting vessel license and no vessel owner may apply for or receive a Pacific whiting vessel license based on catch and/or processing history from one of those buyback vessels. The following sector-specific license qualification criteria apply:

(A) For catcher/processor vessels, the qualifying criteria for a Pacific whiting vessel license is evidence of having caught and processed any amount of whiting during a primary catcher/processor season during the period January 1, 1997 through January 1, 2007.

(B) For mothership at-sea processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having received and processed any amount of whiting during a primary mothership season during the period January 1, 1997 through January 1, 2007.

(C) For catcher vessels delivering whiting to at-sea mothership processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having delivered any amount of whiting to a mothership processor during a primary mothership season during the period January 1, 1997, through January 1, 2007.

(D) For catcher vessels delivering whiting to Pacific whiting first receiver, the qualifying criteria for a Pacific whiting vessel license is documentation of having made at least one landing of whiting taken with mid-water trawl gear during a primary shore-based season during the period January 1, 1994, through January 1, 2007, and where the weight of whiting exceeded 50 percent of the total weight of the landing.

(ii) *Documentation and burden of proof.* A vessel owner applying for a Pacific whiting vessel license has the burden to submit documentation that qualification requirements are met. An application that does not include documentation of meeting the qualification requirements during the qualifying years will be considered incomplete and will not be reviewed. The following standards apply:

(A) A certified copy of the current vessel document (USCG or State) is the best documentation of vessel ownership and LOA.

(B) A certified copy of a State fish receiving ticket is the best documentation of a landing at a Pacific whiting shoreside first receiver, and of the type of gear used.

(C) For participants in the at-sea whiting fisheries, documentation of participation could include, but is not limited to: a final observer report documenting a particular catcher vessel, mothership, or catcher/processor's participation in the whiting fishery in an applicable year and during the applicable primary season, a bill of lading for whiting from an applicable year and during the applicable primary season, a catcher vessel receipt from a particular mothership known to have participated in the whiting fishery during an applicable year, a signed copy of a Daily Receipt of Fish and Cumulative Production Logbook (mothership sector) or Daily Fishing and Cumulative Production Logbook (catcher/processor sector) from an applicable year during the applicable primary season.

(E) Such other relevant, credible documentation as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

(3) *Issuance process for Pacific whiting vessel licenses.*

(i) SFD will mail Pacific whiting vessel license applications to all current and prior owners of vessels that have been registered for use with limited entry permits with trawl endorsements, excluding owners of those vessels whose permits were purchased through the Pacific Coast groundfish fishing capacity reduction program. NMFS will also make license applications available online at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm.* A vessel owner who believes that his/her vessel may qualify for the Pacific whiting vessel license will have until December 31, 2008, to submit an application with documentation showing how his/her vessel has met the qualifying criteria described in this section. NMFS will not accept applications for Pacific whiting vessel licenses received after December 31, 2008.

(ii) After receipt of a complete application, NMFS will notify applicants by letter of its determination whether their vessels qualify for Pacific whiting vessel licenses and the sector or sectors to which the licenses apply. Vessels that have met the qualification criteria will be issued the appropriate licenses at that time. After December 31, 2008, NMFS will publish a list of vessels that qualified for Pacific whiting vessel licenses in the **Federal Register**.

(iii) If a vessel owner files an appeal from the determination under paragraph (a)(3)(ii) of this section the appeal must be filed with the Regional Administrator within 30 calendar days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible documentation demonstrating why the vessel qualifies for a Pacific whiting vessel license. The appeal of a denial of an application for a Pacific whiting vessel license will not be referred to the Council for a recommendation, nor will any appeals be accepted by NMFS after April 1, 2009.

(iv) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 calendar days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(4) *Notification to NMFS of changes to Pacific whiting vessel license information.* The owner of a vessel registered for use with a Pacific whiting vessel license must provide a written request to NMFS to change the name or names of vessel owners provided on the vessel license, or to change the licensed vessel's name. The request must detail the names of all new vessel owners, a business address for the vessel owner, business phone and fax number, tax identification number, date of birth, and/or date of incorporation for each individual and/or entity, and a copy of the vessel documentation (USCG 1270) to show proof of ownership. NMFS will reissue a new vessel license with the names of the new vessel owners and/or

vessel name information. The Pacific whiting vessel license is considered void if the name of the vessel or vessel owner is changed from that given on the license. In addition, the vessel owner must report to NMFS any change in address for the vessel owner within 15 days of that change. Although the name of an individual vessel registered for use with a Pacific whiting vessel license may be changed, the license itself may not be registered to any vessel other than the vessel to which it was originally issued, as identified by that vessel's United States Coast Guard documentation number.

6. Section 660.339 is revised to read as follows:

§ 660.339 Limited entry permit and Pacific whiting vessel license fees.

The Regional Administrator will charge fees to cover administrative expenses related to issuance of limited entry permits, and Pacific whiting vessel licenses including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

7. In § 660.373, paragraph (h) is removed, and paragraphs (i) and (j) are redesignated as (h) and (i), respectively, and paragraph (a) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

(a) *Sectors and licensing requirements.* The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year. The mothership sector is composed of motherships vessels that process whiting and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting during a calendar year. The shore-based sector is composed of vessels that harvest whiting for delivery to Pacific whiting shoreside first receivers. In order for a vessel to participate in a particular whiting fishery sector, that vessel must be registered for use with a sector-specific Pacific whiting vessel license under § 660.336.

* * * * *

[FR Doc. E8–15833 Filed 7–10–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 134

Friday, July 11, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Salmon-Challis National Forest, USDA Forest Service.

ACTION: Notice of Proposed New Fee Sites.

SUMMARY: The Salmon-Challis National Forest is planning to charge fees at eleven recreation sites. All sites have recently been reconstructed or amenities are being added to improve services and experiences. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, market assessment, and public comment. The fees listed are only proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance of these recreation sites.

Custer #1, Flat Rock Extension and Blind Creek Campgrounds are currently fee free sites. Improvements have been made including designating campsites, installing fire rings, picnic tables and new toilets in 2007. Improvements will address sanitation and safety concerns, and improve deteriorating resource conditions and recreation experiences. Mosquito Flat Reservoir, Mill Creek (Lost River RD), Broad Canyon, Lake Creek, Banner Creek, Mount Borah, Bench Creek and Big Eightmile campgrounds contain the necessary site amenities to be eligible for fee collection. A financial analysis is being completed to determine fee rates. The proposed fee to help maintain these sites would range between $5 and $10 a campsite.

DATES: New fees would begin after April 2009 and are contingent upon completion of certain improvements.

ADDRESSES: Forest Supervisor, Salmon-Challis National Forest, 1206 South Challis Street, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Patricia Callaghan, Recreation Planner, 208–756–5115. Information about proposed fee changes can also be found on the Salmon-Challis National Forest Web site: *http://www.fs.fcd.us/r4/sc/recreationlfeedemo/index.shtml.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: July 1, 2008.

Larry A. Svalberg,

Operations Staff Officer.

[FR Doc. E8–15553 Filed 7–10–08; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

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

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On April 25, May 2, May 9 and May 16, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 22324; 24219; 26363; 28429) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Cap, Garrison, Unisex, U.S. Navy
- NSN: 8405–01–539–5868—Size 6 3/8
- NSN: 8405–01–539–5869—Size 6 1/2
- NSN: 8405–01–539–5873—Size 6 5/8
- NSN: 8405–01–539–5887—Size 6 3/4
- NSN: 8405–01–539–5888—Size 6 7/8
- NSN: 8405–01–539–5889—Size 7
- NSN: 8405–01–539–5891—Size 7 1/8
- NSN: 8405–01–539–5892—Size 7 1/4
- NSN: 8405–01–539–5894—Size 7 3/8
- NSN: 8405–01–539–5895—Size 7 1/2
- NSN: 8405–01–539–5897—Size 7 5/8
- NSN: 8405–01–539–5900—Size 7 3/4
- NSN: 8405–01–539–5934—Size 7 7/8
- NSN: 8405–01–539–5937—Size 8
- NSN: 8405–01–539–5939—Size 8 1/8

NSN: 8405–01–539–5962—Size 8 1/4
NSN: 8405–01–539–5969—Size 8 3/8
NSN: 8405–01–539–6335—Size 8 1/2
NPA: Goodwill Industries of South Florida, Inc., Miami, FL.
Coverage: C-List for 25% of the requirement of the Defense Supply Center Philadelphia, Philadelphia, PA.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Services

Service Type/Location: Custodial & Grounds Maintenance.
U.S. Federal Building and Courthouse—St. Thomas, 5500 Veterans Drive, St. Thomas, U.S. Virgin Islands.
Service Type/Location: Custodial Services.
Louis Munoz Marin International Airport, TSA Occupied Spaces, Carolina, PR.
Service Type/Location: Custodial Services.
Social Security Administration Building, Plaza Sierra Cayey, Building PR3871ZZ, Cayey, PR.
NPA: The Corporate Source, Inc., New York, NY.
Contracting Activity: General Services Administration, Caribbean Property Management Center, Hato Rey, PR.
Service Type/Location: Custodial Services.
U.S. Army Reserve Center, 400 Wyoming Blvd NE., Albuquerque, NM.
NPA: Adelante Development Center, Inc., Albuquerque, NM.
Contracting Activity: 90th Regional Readiness Command, North Little Rock, AR.
Service Type/Location: Mailroom Operations.
Fort Stewart, 1042 William H. Wilson Avenue, Fort Stewart, GA.
NPA: Abilities, Inc. of Florida, Clearwater, FL.
Contracting Activity: Army Contracting Agency, Directorate of Contracting, Fort Stewart, GA.

Deletion

On May 9, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 26362) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial.
Veterans Affairs Medical Center, Seattle, WA.
NPA: Seattle Mental Health Institute, Inc., Seattle, WA.
Contracting Activity: Department of Veterans Affairs, Washington, DC.

Kimberly M. Zeich,
Director, Program Operations.

[FR Doc. E8–15781 Filed 7–10–08; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on July 29, 2008, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

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 July 22, 2008.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on June 30, 2008 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: July 8, 2008.

Yvette Springer,
Committee Liaison Officer.

[FR Doc. E8–15870 Filed 7–10–08; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–848

Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Amended Final Results of Administrative Review Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 11, 2008.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202- 482–3208.

SUPPLEMENTARY INFORMATION:

Background

This matter arose from a challenge to the results in the Department of Commerce's (the ''Department'') *Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 19546 (April

22, 2002) (''*Final Results*'') and accompanying *Issues and Decision Memorandum (''Memo'')*, covering the period of review (''POR''), September 1, 1999 August 31, 2000. Following publication of the *Final Results*, Fujian Pelagic Fishery Group Co. (''Fujian'') and Pacific Coast Fishery Corp. (''Pacific Coast''), filed a lawsuit with the United States Court of International Trade (''CIT'') challenging the Department's Final Results. In the *Final Results*, the Department determined that Fujian and Pacific Coast were not affiliated pursuant to section 771(33) of the Tariff Act of 1930, as amended (''the Act''). *See Memo* at Comment 18. Fujian and Pacific Coast challenged the Department's determination and the CIT affirmed the Department's determination that Fujian and Pacific Coast were not affiliated parties because ''Fujian had not made an investment, whether in cash or in the form of a promissory note, in Pacific Coast'' and because ''Fujian did not exercise control over Pacific Coast.'' *See Crawfish Processors Alliance, et al. v. United States*, 343 F. Supp. 2d 1242, 1269 (CIT 2004).

Fujian and Pacific Coast timely appealed the CIT's decision with the United States Court of Appeals for the Federal Circuit (''CAFC''). The only issue considered on appeal was whether Fujian and Pacific Coast were affiliated parties pursuant to section 771(33)(E) of the Act. The CAFC reversed the CIT's affirmance of the Department's determination that Fujian and Pacific Coast were not affiliated because section 771(33)(E) of the Act does not require ''proof of full payment in cash or merchandise during the review period to show affiliation'' and that Fujian and Pacific Coast ''have presented sufficient evidence to show that Fujian directly or indirectly owns at least 5% of Pacific Coast's shares.'' *See Crawfish Processors Alliance, et al. v. United States*, 477 F.3d 1375, 1384 (Fed. Cir. 2007). The CAFC remanded the case to the CIT for proceedings consistent with its opinion. Therefore, on October 30, 2007, the CIT directed the Department to recalculate the antidumping duty margin treating Fujian and Pacific Coast as affiliated parties in compliance with the CAFC's decision and mandate.

On December 11, 2007, the Department released the draft final results of redetermination for comment. No party submitted comments by the December 20, 2007, deadline. On January 24, 2008, the Department filed its final results of redetermination pursuant to remand with the CIT. *See Final Results of Redetermination Pursuant to Court Remand*, Court No. 02–00376 (January 24, 2008) (''*Final Redetermination*''), found at http://ia.ita.doc.gov/remands/07–156.pdf. In the remand redetermination, pursuant to the CIT's order, the Department considered Fujian and Pacific Coast affiliated parties under section 771(33)(E) of the Act and recalculated Fujian's dumping margin using Pacific Coast's CEP sales data. On March 5, 2008, the CIT sustained all aspects of the remand redetermination made by the Department pursuant to the CIT's remand of the *Final Results. See Crawfish Processors Alliance v. United States*, Slip Op. 08–27 (March 5, 2008).

On March 20, 2008, consistent with the decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department notified the public that the CIT's decision was not in harmony with the Department's final results. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Court Decision Not In Harmony With Final Results of Administrative Review*, 73 FR 14960 (March 20, 2008). No party appealed the CIT's decision. As there is now a final and conclusive court decision in this case, we are amending our *Final Results*.

Amended Final Results

As the litigation in this case has concluded, the Department is amending the *Final Results* to reflect the results of our remand determination. The revised dumping margin in the amended final results is as follows:

Exporter	Margin
Fujian	60.83%

The Department will instruct U.S. Customs and Border Protection (''CBP'') to liquidate entries of freshwater crawfish tail meat from the People's Republic of China during the review period at the assessment rate the Department calculated for the final results of review as amended. We intend to issue the assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

This notice is published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 3, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15811 Filed 7–10–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–351–838

Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 6, 2008, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Brazil. This review covers 15 producers/exporters of the subject merchandise to the United States. The period of review (POR) is February 1, 2006, through January 31, 2007. We are rescinding the review with respect to one company which made no shipments of the subject merchandise during the POR.

Based on our analysis of the comments received, we have made certain changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: July 11, 2008.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, 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) 482–4929 and (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 15 producers/exporters.[1] The respondents which the Department selected for individual review are Amazonas Industrias Alimenticias S.A. (''AMASA'') and Comercio de Pescado Aracatiense Ltda. (''Compescal''). The respondents which were not selected for individual review are listed in the ''Final Results of Review'' section of this notice.

On March 6, 2008, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on shrimp from Brazil. *See Certain Frozen Warmwater Shrimp from Brazil:*

[1] This figure does not include those companies for which the Department is rescinding the administrative review.

Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 73 FR 12081 (March 6, 2008) (Preliminary Results).

We invited parties to comment on our preliminary results of review. On April 7, 2008, AMASA requested a public hearing. On April 14, 2008, we received a case brief from the Louisiana Shrimp Association, an interested party in this proceeding. On April 16, 2008, we received case briefs from AMASA and the petitioner (*i.e.*, the Ad Hoc Shrimp Trade Action Committee). On April 28, we received rebuttal briefs from AMASA and the petitioner. On May 2, 2008, AMASA withdrew its request for a hearing.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[2] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Period of Review

The POR is February 1, 2006, through January 31, 2007.

Partial Rescission of Review

In the *Preliminary Results*, we preliminarily rescinded this review with respect to Qualimar Comercio Imp. E Exp. Ltda. (''Qualimar''). On September 13, 2007, Qualimar submitted a quantity and value (''Q&V'') questionnaire response stating that it had no shipments/exports of subject merchandise to the United States during the POR. Furthermore, data from U.S. Customs and Border Protection (''CBP'') show that Qualimar did not have shipments of subject merchandise during the POR. Accordingly, we are rescinding this review with respect to Qualimar.

Successor-In-Interest

As discussed in the *Preliminary Results*, on April 18, 2007, Empresa De Armazenagem Frigorifica Ltda. (Empaf) informed the Department that it is now doing business as Netuno Alimentos S.A. (Netuno).[3] On May 9, 2007, in response to the Department's request for additional information, Netuno asserted its view that it is the successor-in-interest to Empaf. Specifically, Netuno stated that there were no changes to Empaf's management, production facilities for the subject merchandise, supplier relationships, or customer base as a result of the change in corporate structure. Based on our analysis of Netuno's May 9, 2007, submission, we preliminarily found that its organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. We also found that Netuno operates as the same business entity as Empaf with respect to the production and sale of certain frozen warmwater shrimp. Thus, we preliminarily found that Netuno is the successor-in-interest to Empaf, and, as a consequence, its exports of certain frozen warmwater shrimp are subject to the antidumping duty order on shrimp from Brazil.

Since the *Preliminary Results*, no party to this proceeding has commented on this issue, and we have found no additional information that would compel us to reverse our preliminary finding. Thus, for purposes of these final results, we continue to find that Netuno is the successor-in-interest to Empaf for purposes of determining antidumping duty liability.

Facts Available

In the *Preliminary Results*, we determined that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available was appropriate as the basis for the dumping margins for the

[2] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[3] In the original investigation, we found that Empaf and Maricultura Netuno comprised a single entity. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (Dec. 23, 2004).

following producer/exporters: Acarau Pesca Distr. de Pescado Imp. E Exp. Ltda., Aquacultura Fortaleza Aquafort SA, Compescal, ITA Fish - S.W.F. Importacao e Exportacao Ltda., Orion Pesca Ltda., Santa Lavinia Comercio e Exportacao Ltda., Secom Aquicultura Comercio E Industria SA, and Tecmares Maricultura Ltda. *See Preliminary Results* at 12083.

Section 776(a) of the Act provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

In April 2007, the Department requested that all companies subject to review respond to the Department's Q&V questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 23, 2007. Because numerous companies did not respond to this initial request for information, in May and June 2007, we issued letters to these companies affording them a second and third opportunity to submit a response to the Q&V questionnaire. The above-mentioned companies again failed to respond to our requests for Q&V data. By failing to respond to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, we preliminarily found that the use of total facts available was warranted. Consistent with the *Preliminary Results*, the Department finds that the use of total facts available for Acarau Pesca Distr. de Pescado Imp. E Exp. Ltda., Aquacultura Fortaleza Aquafort SA, Compescal, ITA Fish - S.W.F. Importacao e Exportacao Ltda., Orion Pesca Ltda., Santa Lavinia Comercio e Exportacao Ltda., Secom Aquicultura Comercio E Industria SA, and Tecmares Maricultura Ltda. is appropriate for purposes of the final results, pursuant to sections 776(a)(2)(A) and (C) of the Act.

Application of Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); *see also 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 (Aug. 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (SAA). 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 (Fed. Cir. 2003) (*Nippon*). We find that Acarau Pesca Distr. de Pescado Imp. E Exp. Ltda., Aquacultura Fortaleza Aquafort SA, Compescal, ITA Fish - S.W.F. Importacao e Exportacao Ltda., Orion Pesca Ltda., Santa Lavinia Comercio e Exportacao Ltda., Secom Aquicultura Comercio E Industria SA, and Tecmares Maricultura Ltda. did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's requests for information. Therefore, an adverse inference is warranted in selecting the facts otherwise available. *See Nippon*, 337 F. 3d at 1382–83.

In the *Preliminary Results*, we assigned to the uncooperative companies an adverse facts available (AFA) rate of 68.15 percent, the preliminary margin calculated for AMASA, which, at the time, was the highest rate determined for any respondent in any segment of the proceeding (i.e., the less-than-fair-value (LTFV) investigation, the first administrative review, or the instant review). However, given the changes made to the margin calculations for AMASA since the *Preliminary Results*,[4] the rate assigned to AMASA for purposes of these final results is 48.60 percent. Therefore, in accordance with Department policy to assign the highest rate on record of the proceeding as AFA, for the final results, we have applied an AFA margin of 67.80 percent from the LTFV investigation. The Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit have consistently upheld the Department's practice in this regard. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in an LTFV investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 680 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent) and *Shanghai Taoen Int'l Tading Co., Ltd. v. United States*, 360 F Supp 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

In selecting an appropriate AFA rate, the Department considered: 1) the rates alleged in the petition (*see Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam*, 69 FR 3876, 3879 (January 27, 2004)); 2) the rates calculated in the final determination of the LTFV investigation, as amended, which ranged from 4.97 to 67.80 percent (*see Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil*, 70 FR 5143 (February 1, 2005) (*LTFV Amended Final Determination and Order*)); 3) the rates calculated in the final results of the 2004–2006 administrative review, which ranged from 4.62 to 15.41 percent (*see Certain*

[4] *See* Issues and Decision Memorandum (Decision Memo) accompanying this notice for further discussion.

Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52061 (September 12, 2007) (*2004–2006 Administrative Review*); and 4) the rate calculated for AMASA in the final results of this administrative review. As discussed further below, we find that the rates alleged in the petition no longer have probative value for purposes of this review. In addition, we find that the rate calculated for AMASA in this review, as well as the rates calculated in the 2004–2006 administrative review, are not sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we do not find that these rates are high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act). Therefore, we have assigned a rate of 67.80 percent as AFA, which is the highest margin determined for any respondent in any segment of the proceeding (*i.e.*, the LTFV investigation).[5] We consider the 67.80-percent rate to be sufficiently high so as to encourage participation in future segments of this proceeding.

Corroboration

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information used as facts available from independent sources reasonably at its disposal. The Department's regulations provide that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* 19 CFR 351.308(d); *see also* SAA. The rates alleged in the petition and information from prior segments of the proceeding constitute secondary information and, to the extent practicable, the Department will examine the reliability and relevance of the information to be used.

For purposes of the final results, we did not use either of the two highest of the three petition rates (*i.e.*, 320 percent and 349 percent) because these rates did not corroborate with independent information reasonably at our disposal, *i.e.*, the transaction-specific margins in the current administrative review. We did not use the remaining petition rate (i.e., 32 percent) because it was lower than the selected AFA rate, and as such would not accomplish the objectives of AFA, stated above. Moreover, we have an alternative that we find to be sufficiently adverse to effectuate the purpose of the AFA provision of the statute.

The reliability of the selected AFA rate was determined by the calculation of the margin for Norte Pesca, as published in the *LTFV Amended Final Determination and Order*. With respect to corroboration of a rate calculated in a segment of a proceeding, we note that, unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive dumping margins. The only source for calculated dumping margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total AFA a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See, e.g.*, *Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 44283, 44284 (July 28, 2003), and *Anhydrous Sodium Metasilicate from France: Final Results of Antidumping Duty Administrative Review*, 68 FR 60080 (October 21, 2003) (unchanged in final). Therefore, given that we are using the highest margin calculated for any respondent in any segment of the proceeding, it is not necessary to question the reliability of this rate. The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself.

However, because none of the following companies (*i.e.*, Acarau Pesca Distr. de Pescado Imp. E Exp. Ltda., Aquacultura Fortaleza Aquafort SA, ITA Fish - S.W.F. Importacao e Exportacao Ltda., Orion Pesca Ltda., Santa Lavinia Comercio e Exportacao Ltda., Secom Aquicultura Comercio E Industria SA, and Tecmares Maricultura Ltda.) submitted information to the Department or participated in a previous segment of this proceeding, we do not have information specific to these companies to consider in determining whether the 67.80-percent margin is relevant to each of them or to the current POR. Therefore, to determine whether the 67.80-percent margin is relevant in this administrative review, we compared this rate to the transaction-specific rates calculated for AMASA in this review. With respect to Compescal, which participated in the 2004–2006 administrative review, we also compared the AFA rate to the transaction-specific rates calculated for Compescal in the previous review. Based on these comparisons, we find that the selected AFA rate is relevant because it fell within the range of, or approximated, the individual transaction margins calculated for AMASA in this review and for Compescal in the previous review. *See* Memorandum to The File from Kate Johnson and Rebecca Trainor entitled ''Corroboration of Adverse Facts Available Rate for the Final Results in the 2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Brazil,'' dated July 3, 2008; *see also 2004–2006 Administrative Review and Notice of Preliminary Results of Antidumping Duty Administrative Review; Partial Rescission and Postponement of Final Results: Certain Softwood Lumber Products from Canada*, 71 FR 33964, 33968 (June 12, 2006).

The Department also considers information reasonably at its disposal to determine whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin. *See*, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin). For the instant review, we examined whether any information on the record would discredit the selected rate as reasonable facts available and have found none. Because we did not find evidence indicating that the margin selected as AFA in this review is not appropriate, we have determined that the highest margin calculated for any respondent in any segment of the proceeding (*i.e.*, 67.80 percent) is appropriate to use as AFA, and are assigning this rate to Acarau Pesca Distr. de Pescado Imp. E Exp. Ltda., Aquacultura Fortaleza Aquafort SA, Compescal, ITA Fish - S.W.F. Importacao e Exportacao Ltda., Orion Pesca Ltda., Santa Lavinia Comercio e Exportacao Ltda., Secom Aquicultura Comercio E Industria SA, and Tecmares Maricultura Ltda. in the final results of this review.

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether AMASA made

[5] This margin was based on the rate we calculated for respondent Norte Pesca S.A. in the preliminary determination of the LTFV investigation, based on information it submitted in its questionnaire responses. Although this company withdrew from the investigation after the preliminary determination, this rate was used as the AFA rate in the final determination. *See LTFV Amended Final Determination and Order*.

home market sales of the foreign like product during the POR at prices below the cost of production (COP) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the Decision Memo.

For AMASA, we found that 20 percent or more of comparison market sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B) - (D) of the Act. Therefore, for purposes of these final results, we found that AMASA made below-cost sales not in the ordinary course of trade during the POR. Consequently, we disregarded these sales and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations for AMASA. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period February 1, 2006, through January 31, 2007:

Manufacturer/Exporter	Percent Margin
Amazonas Industrias Alimenticias S.A. (''AMASA'')	48.60
Comercio de Pescado Aracatiense Ltda. (''Compescal'')	67.80

Review-Specific Average Rate Applicable to the Following Companies:

Manufacturer/Exporter	Percent Margin
Aquatica Maricultura do Brasil Ltda./Aquafeed do Brasil Ltda.	48.60
Central de Industrializacao e Distribuicao de Alimentos Ltda. (''CIDA'') and Cia Exportadora de Produtos do Mar (''Produmar'')	48.60
Ipesca - Industria de Frio e Pesca S.A.	48.60
Intermarine Servicos Nauticos Ltda.	48.60
JK Pesca Ltda.	48.60
Pesqueira Maguary Ltda.	48.60

AFA Rate Applicable to the Following Companies:

Manufacturer/Exporter	Percent Margin
Acarau Pesca Distr. de Pescado Imp. e Exp. Ltda.	67.80
Aquacultura Fortaleza Aquafort SA	67.80
ITA Fish - S.W.F. Importacao e Exportacao Ltda.	67.80
Orion Pesca Ltda.	67.80
Santa Lavinia Comercio e Exportacao Ltda.	67.80
Secom Aquicultura Comercio E Industria SA	67.80
Tecmares Maricultura Ltda.	67.80

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Because AMASA did not report the actual entered value of its U.S. sales, we have calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the estimated entered value. For the responsive companies which were not selected for individual review, we have calculated an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). *See* 19 CFR 351.106(c)(1). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. This clarification will also apply to POR entries of subject merchandise produced by companies for which we are rescinding the review based on certifications of no shipments, because these companies certified that they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the LTFV investigation if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of shrimp from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for

the most recent period; 3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.05 percent, the all-others rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: July 3, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix – Issues in Decision Memorandum

1. Selection of Adverse Facts Available Rate
2. Consideration of Grade as a Matching Criterion
3. Date of Sale for Sales to Kenkoh
4. Sales to Employees
5. Calculation of Variable and Total Costs of Manufacturing
6. Corrections Presented at Cost Verification
7. Adjustments to Costs for Reconciling Differences
8. Adjustments to AMASA's General and Administrative Expense Ratio
9. Financial Expense Ratio

[FR Doc. E8–15827 Filed 7–10–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–331–802

Certain Frozen Warmwater Shrimp from Ecuador: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 6, 2008, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Ecuador. This review covers 43 producers/exporters of the subject merchandise to the United States. The period of review (POR) is February 1, 2006, through January 31, 2007. We are rescinding the review with respect to one company because this company made no shipments of the subject merchandise during the POR.

Based on our analysis of the comments received, we have made certain changes in the margin calculations for Promarisco S.A., one of the producer/exporters selected for individual review. Therefore, the final results for Promarisco S.A. differ from the preliminary results. We have made no changes to the margin calculation of OceanInvest S.A., the other producer/exporter selected for individual review. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: July 11, 2008.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration–Room 1117, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 43 producers/exporters.[1] The respondents which the Department selected for individual review are OceanInvest, S.A. (OceanInvest) and Promarisco, S.A. (Promarisco). The respondents which were not selected for individual review are listed in the ''Final Results of Review'' section of this notice.

On March 6, 2008, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on shrimp from Ecuador. *See Certain Frozen Warmwater Shrimp from Ecuador: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12115 (March 6, 2008) (*Preliminary Results*). We invited parties to comment on those preliminary results. In April 2008, we received case briefs from the petitioner (the Ad Hoc Shrimp Trade Action Committee), the Louisiana Shrimp Alliance (an interested party in the proceeding), OceanInvest, and Promarisco, and rebuttal briefs from the petitioner, OceanInvest, and Promarisco.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild–caught (ocean harvested) or farm–raised (produced by aquaculture), head–on or head–off, shell–on or peeled, tail–on or tail–off,[2] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild–caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted

[1] This figure does not include those companies for which the Department is rescinding the administrative review. In the notice announcing the preliminary results, this figure was incorrectly reported as 45 companies.

[2] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell–on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp–based product: 1) that is produced from fresh (or thawed–from-frozen) and peeled shrimp; 2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non–shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp–based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par–fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Period of Review

The POR is February 1, 2006, through January 31, 2007.

Partial Rescission of Review

As discussed in the *Preliminary Results*, the Department received a no–shipment response from Exportadora del Oceano Pacifico OCEANPAC (Oceanpac) for which there appeared to be U.S. customs entries of subject merchandise. We requested data on the relevant entries from U.S. Customs and Border Protection (CBP) and determined that the entries were not reportable transactions for Oceanpac. *See* Memorandum to the File entitled ''Reconciliation of Respondent No Shipment Statements to CBP Data,'' dated February 6, 2008. Under these circumstances, we determine that Oceanpac satisfies the requirement under 19 CFR 351.213(d)(3) that it did not have ''entries, exports, or sales of the subject merchandise,'' and, consistent with the Department's practice, we are rescinding the review with respect to Oceanpac. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke in Part*, 70 FR 67665, 67666 (November 8, 2005).

Cost of Production

As discussed in the *Preliminary Results*, we conducted a review to determine whether OceanInvest and Promarisco made third country sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b)(1) of the Act. For Promarisco, we performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the decision memorandum accompanying this notice (the Decision Memo). For OceanInvest, we made no changes to the *Preliminary Results* calculation.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted–average COP for this period. Thus, we determined that these below–cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* Sections 773(b)(2)(B) - (D) of the Act.

Therefore, for purposes of these final results, we find that OceanInvest and Promarisco made below–cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations for Promarisco. These changes are discussed in the relevant sections of the Decision Memo. We have made no changes to the margin calculations for OceanInvest.

Final Results of Review

We determine that the following weighted–average margin percentages exist for the period February 1, 2006, through January 31, 2007:

Manufacturer/Exporter	Percent Margin
OceanInvest, S.A.	0.64
Promarisco, S.A.	0.46 (*de minimis*)

Review–Specific Average Rate Applicable to the Following Companies:[3]

Manufacturer/Exporter	Percent Margin
Agrol, S.A.	0.64
Alquimia Marina S.A.	0.64
Comar Cia Ltda	0.64
Dunci S.A.	0.64
El Rosario S.A.	0.64
Empacadora Bilbo Bilbosa	0.64
Empacadora Del Pacifico S.A.	0.64
Empacadora Dufer Cia. Ltda.	0.64

[3] This rate is based on the weighted average of the margins calculated for those companies selected for individual review, excluding *de minimis* margins or margins based entirely on adverse facts available (AFA).

Manufacturer/Exporter	Percent Margin
Empacadora Gran Mar S.A.(Empagran)	0.64
Empacadora Nacional	0.64
Empacadora y Exportadora Calvi Cia. Ltda.	0.64
Emprede	0.64
Estar C.A.	0.64
Exporklore, S.A.	0.64
Exportadora Del Oceano Oceanexa C.A.	0.64
Gondi S.A.	0.64
Industria Pesquera Santa Priscila S.A.	0.64
Inepexa S.A.	0.64
Jorge Luis Benitez Lopez	0.64
Karpicorp S.A.	0.64
Luis Loaiza Alvarez	0.64
Mardex Cia. Ltda.	0.64
Mariscos del Ecuador c. l. Marecuador	0.64
Marines C.A.	0.64
Natural Select S.A.	0.64
Negocios Industriales	0.64
Novapesca S.A.	0.64
Oceanmundo S.A.	0.64
Oceanpro	0.64
Operadora y Procesadora de Productos Marinos S.A. (Omarsa)	0.64
Oyerly S.A.	0.64
Pacfish S.A.	0.64
PCC Congelados & Frescos S.A.	0.64
Pescazul S.A.	0.64
Peslasa S.A.	0.64
Phillips Seafood	0.64
Procesadora del Rio Proriosa S.A.	0.64
Promarosa Productos	0.64
Sociedad Nacional de Galapagos C.A. (SONGA)	0.64
Tolyp S.A.	0.64
Transcity S.A.	0.64

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Regarding OceanInvest, for those sales where it reported the entered value of its U.S. sales, we have calculated importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. For those sales where OceanInvest did not report the entered value of its U.S. sales, we have calculated customer–specific per–unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer–specific or customer–specific *ad valorem* ratios based on the estimated entered value.

Regarding Promarisco, because it reported the entered value of all of its U.S. sales, we have calculated an importer–specific *ad valorem* duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. We have calculated a single importer–specific assessment rate for Promarisco, consistent with our practice in the final results of the 2004 – 2006 administrative review (*see Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review*, 72 FR 52070 (September 12, 2007)). *See also Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and Singapore: Final Results of the Antidumping Administrative Reviews, Rescission of Administrative Review in part, and Determination Not to Revoke Order in Part*, 68 FR 35623 (June 16, 2003), and accompanying Issues and Decision Memorandum at Comment 9B; and *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada*, 69 FR 75921 (December 20, 2004), and accompanying Issues and Decision Memorandum at Comment 13.

For the responsive companies which were not selected for individual review, we have calculated an assessment rate based on the weighted average of the margin rates calculated for the companies selected for individual review excluding any which are de minimis or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). *See* 19 CFR 351.106(c)(1). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. This clarification will also apply to POR entries of subject merchandise produced by companies for which we are rescinding the review based on certifications of no shipments, because these companies certified that they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate established in the LTFV investigation if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Discontinuation of Cash Deposit Requirements

On August 15, 2007, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the Uruguay Round Agreements Act (URAA), the U.S. Trade Representative, after consulting with the Department and Congress, directed the Department to implement its determination to revoke the antidumping duty order on certain frozen warmwater shrimp from Ecuador. *See Final Results of the Section 129 Determination of Certain Frozen Warmwater Shrimp from Ecuador*, 72 FR 48257 (August 23, 2007). Accordingly, the antidumping duty order on certain frozen warmwater shrimp from Ecuador was revoked effective August 15, 2007. As a result, we have instructed CBP to discontinue collection of cash deposits of antidumping duties on entries of the subject merchandise.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of

their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 3, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix – Issues in Decision Memorandum

General Comments:

Comment 1: ''Zeroing'' Methodology in Administrative Reviews

Comment 2: Selection of Mandatory Respondents

Company–Specific Comments:

Promarisco

Comment 3: Adjustment to Promarisco's Net Financial Expense Ratio

Comment 4: Use of Entry Date for Determining Promarisco's POR Sales

OceanInvest

Comment 5: Cost Reporting for Certain Value–Added Products

Comment 6: Acceptance of Billing Adjustment for Certain Third–Country Sales

Comment 7: Bonus Payment Adjustment Applicable to U.S. Sales

[FR Doc. E8–15830 Filed 7–10–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 77 1(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 35 1.213 (2007) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of July 2008 [1], interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceedings	
The People's Republic of China:	
Persulfates, A–570–847	7/1/07–6/30/08
Carbon Steel Butt-Weld Pipe Fittings, A–570–814	7/1/07–6/30/08
Saccharin, A–570–878	7/1/07–6/30/08
Finland: Carboxymethylcellulose, A–405–803	7/1/07–6/30/08
Germany: Stainless Steel Sheet and Strip in Coils, A–428–825	7/1/07–6/30/08
India: Polyethylene Terephthalate (PET) Film, A–533–824	7/1/07–6/30/08
Iran: In-Shell Pistachios, A–507–502	7/1/07–6/30/08
Italy:	
Certain Pasta, A–475–818	7/1/07–6/30/08
Stainless Steel Sheet and Strip in Coils, A–475–824	7/1/07–6/30/08
Japan:	
Clad Steel Plate, A–588–838	7/1/07–6/30/08
Stainless Steel Sheet and Strip in Coils, A–588845	7/1/07–6/30/08
Polyvinyl Alcohol, A–588–861	7/1/07–6/30/08
Mexico:	
Stainless Steel Sheet and Strip in Coils, A–201–822	7/1/07–6/30/08
Carboxymethylcellulose, A–201–834	7/1/07–6/30/08
Netherlands: Carboxymethylcellulose, A–421–811	7/1/07–6/30/08
Russia:	
Solid Urea, A–821–801	7/1/07–6/30/08
Ferrovanadium and Nitrided Vanadium, A–821–807	7/1/07–6/30/08
South Korea: Stainless Steel Sheet and Strip in Coils, A–580–834	7/1/07–6/30/08
Sweden: Carboxymethylcellulose, A–401–808	7/1/07–6/30/08
Taiwan:	
Polyethylene Terephthalate (PET) Film, A–583–837	7/1/07–6/30/08
Stainless Steel Sheet and Strip in Coils, A–583–831	7/1/07–6/30/08
Thailand: Carbon Steel butt-Weld Pipe Fittings, A–549–807	7/1/07–6/30/08
Turkey: Certain Pasta, A–489–805	7/1/07–6/30/08
Ukraine: Solid Urea, A–823–801	7/1/07–6/30/08
Countervailing Duty Proceedings	
India: Polyethylene Terephthalate (PET) Film, C–533–825	1/1/07–12/31/07

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period
Italy: Certain Pasta, C–475–819	1/1/07–12/31/07
Turkey: Certain Pasta, C–489–806	1/1/07–12/31/07
Suspension Agreements	
Russia: Certain Hot-Rolled Carbon Steel Flat Products, A–821–809	7/1/07–6/30/08

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://ia.ita.doc.gov*.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified above, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the initiation **Federal Register** notice.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of July 2008. If the Department does not receive, by the last day of July 2008, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 1, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–15511 Filed 7–10–08; 8:45 am]

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[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

Howard Hughes Medical Institute; Notice of Decision on Application for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Public Law 106–36;80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 08–026. *Applicant:* Howard Hughes Medical Institute, Chevy Chase, MD 20815. *Instrument:* Electron Microscope, Model Tecnai Spirit T12BT. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 73 FR 34704, June 18, 2008.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were

ordered. *Reasons:* The foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: July 8, 2008.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E8–15832 Filed 7–10–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI99

Endangered Species; File Nos. 13306 and 13307

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

ACTION: Issuance of permits.

SUMMARY: Notice is hereby given that Karen Holloway-Adkins, East Coast Biologists, Inc., P.O. Box 33715, Indialantic, FL, 32903 (File No. 13306) and Kristen Hart, 3205 College Ave., Davie, FL, 33314 (File No. 13307) have been issued permits to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 2, 2008, notice was published in the **Federal Register** (73 FR 17956) that a request for scientific research permits to take sea turtles had been submitted by the above-named individuals. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

File No. 13306: Ms. Holloway-Adkins will capture up to 60 green and 5 loggerhead sea turtles annually. The turtles will be weighed, measured, flipper tagged, Passive Integrated Transponder (PIT) tagged, and blood and tissue sampled. A subset of green turtles will be lavaged. The applicant will also conduct visual transect surveys. This research will characterize the turtle aggregation using the nearshore reef system of Brevard county, Florida as well as monitor the impact of local beach nourishment activities on the sea turtles and their habitat.

File No. 13307: Dr. Hart will capture up to 30 green, 20 hawksbill, and 20 loggerhead sea turtles annually. Turtles will be weighed, measured, flipper tagged, PIT tagged, blood sampled, tissue sampled, fecal sampled, and lavaged. A subset of turtles will be tagged with a satellite tag or acoustic transmitter or a combination of both. This research will address fine-scale temporal and spatial patterns of sea turtle habitat use, ecology, and genetic origin within the Dry Tortugas National Park.

Issuance of these permits, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 7, 2008.

P. Michael Payne,

Chief,Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–15835 Filed 7–10–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AV80

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Environmental Impact Statement for Amendment 30B

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

ACTION: Notice announcing the preparation of an environmental impact statement (EIS).

SUMMARY: NMFS, in cooperation with the Gulf of Mexico Fishery Management Council (Council), is preparing an EIS in accordance with the National Environmental Policy Act (NEPA) for Amendment 30B to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico. This notice is intended to inform the public of the reconsideration from preparing an environmental assessment (EA) to preparing a draft EIS for Amendment 30B.

FOR FURTHER INFORMATION CONTACT: Peter Hood; phone: (727) 824–5305; fax: (727) 824–5308; email: *Peter.Hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: On March 5, 2007 (72 FR 9734), NMFS and the Council published a Notice of Intent in the **Federal Register** to prepare a draft EIS and to announce scoping meetings regarding the actions proposed in Amendment 30. Amendment 30 was being developed to describe and analyze management alternatives to manage fishing mortality and to establish status criteria for greater amberjack, gray triggerfish, gag, and red grouper in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. Recent stock assessments completed under the Southeast Data, Assessment, and Review program indicated that management changes were warranted for these stocks.

Based on comments received during the scoping process and further analyses needed for the gag and red grouper stock assessments, Amendment 30 was split into Amendments 30A and 30B. This allowed proposed actions to revise the greater amberjack rebuilding plan, end overfishing of gray triggerfish, and rebuild the gray triggerfish stock to proceed in Amendment 30A while the status of the gag and red grouper stocks were resolved. A supplemental EIS was prepared for Amendment 30A, in part, due to significant increases in the stock biomass of greater amberjack and gray triggerfish as the two species recover from their respective overfished states. A Notice of Availability for the final supplemental EIS analyzing impacts on the human environment for Amendment 30A was published in the **Federal Register** on April 18, 2008 (73 FR 21124).

Actions to be described and analyzed in Amendment 30B include: setting gag thresholds and benchmarks; establishing gag and red grouper total allowable catch (TAC), interim

allocations, and accountability measures; ending overfishing of gag; managing gag and red grouper commercial and recreational harvests consistent with TAC; reducing grouper discard mortality; establishing seasonal-area closures; and requiring compliance with Federal fishery management regulations by federally permitted reef fish vessels when fishing in state waters. Based on further analysis of the environmental impacts of actions proposed in Amendment 30B, NMFS and the Council did not anticipate any significant impacts on the human environment and published a notice on March 7, 2008 (73 FR 12393) announcing an EA would be the appropriate NEPA document. Subsequent to this evaluation, the Council wished to examine a more extensive seasonal area closure to protect spawning aggregations of gag and other reef fish species. As a result of this and other changes, NMFS and the Council determined actions in Amendment 30B could be significant to the human environment and determined an EIS was required to further evaluate the impacts of Amendment 30B.

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

Dated: July 7, 2008.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–15802 Filed 7–10–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI31

Marine Mammals; File No. 716–1705

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Fred Sharpe, Ph.D., Alaska Whale Foundation, 4739 University Way NE, #1239, Seattle Washington 98105 has been issued an amendment to scientific research Permit No. 716–1705–00.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 6, 2008, notice was published in the **Federal Register** (73 FR 32307) that an amendment of Permit No. 716–1705–00 had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The amendment authorizes Dr. Sharpe to use a mini-helicopter to film lunge feeding humpback whales (*Megaptera novaeangliae*) in Southeast Alaska in July and August, 2008.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a supplemental environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 7, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–15834 Filed 7–10–08; 8:45 am]

BILLING CODE 3510–22–S

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, Hawaii

AGENCIES: U.S. Fish and Wildlife Service (FWS), Interior; National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of extension of the public comment period for the draft monument management plan and environmental assessment.

SUMMARY: This notice advises the public that the public comment period has been extended for the NOAA, FWS, and the State of Hawaii's Department of Land and Natural Resources (DLNR), and Office of Hawaiian Affairs' Draft Monument Management Plan (MMP) and associated environmental assessment (EA) for the Papahānaumokuākea Marine National Monument (Monument). See **SUPPLEMENTARY INFORMATION** for details.

DATES: To ensure consideration, we must receive written comments by July 23, 2008.

ADDRESSES: The Draft MMP and EA are available on the FWS and NOAA Web sites *http://www.fws.gov/pacificislands* and *http://hawaiireef.noaa.gov/*, as well as at local libraries within the State of Hawaii. 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 (must be postmarked by July 23);

Hand-delivery: Papahānaumokuākea Marine National Monument at 300 Ala Moana Blvd., Room 5–231 in Honolulu; or

E-mail: PMNM_MMP_Comments@fws.gov.

FOR FURTHER INFORMATION CONTACT: Susan White, FWS Superintendent, phone (808) 792–9480.

SUPPLEMENTARY INFORMATION: The 75-day federal public comment period for the Draft Papahānaumokuākea Marine National Monument Management Plan (73 FR 21975, April 23, 2008) has been extended for an additional 15 days, until July 23, 2008. The draft plan was released by the National Oceanic and

Atmospheric Administration, the U.S. Fish and Wildlife Service, the State of Hawaii's Department of Land and Natural Resources, and the Office of Hawaiian Affairs on April 22. During a series of ten public meetings in June, members of the public requested an extension of the comment period due to the size of the draft plan.

The 90-day federal comment period will end on July 23, 2008. Although the official State comment period occurs from June 8 through July 8 in accordance with State regulations from the Office of Environmental Quality Control, the State will review, consider and address public comments received during the entire comment period. All substantive comments received during the public comment period will be addressed in a Summary of Public Comments section of the final Monument Management Plan, which will compose Volume V of the plan.

Dated: July 8, 2008.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration.

Dated: July 8, 2008.

Gary D. Frazer,

Director, United States Fish and Wildlife Service.

[FR Doc. E8–15847 Filed 7–10–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI82

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Report 2.3 ''Aerosol properties and their impacts on climate''

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 2.3 ''Aerosol properties and their impacts on climate.''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 August 25, 2008.

ADDRESSES: The draft Synthesis and Assessment Product: 2.3 is posted on the CCSP Web site at: *http://www.climatescience.gov/Library/sap/sap2–3/default.php*

Detailed instructions for making comments on this draft report are provided on the SAP 2.3 webpage. Comments must be prepared in accordance to these instructions and must be submitted to: *2.3–aerosols@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 and climate changes 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: July 1, 2008.

William J. Brennan,

Assistant Secretary of Commerce for Oceans and Atmosphere, Director, Climate Change Science Program.

[FR Doc. E8–15800 Filed 7–10–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board; Request for Nominations

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Section 302 of Public Law 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. The Secretary of the Army appoints its 11 members. This notice is to solicit nominations for six (6) appointments or reappointments to two-year terms that will begin after March 1, 2009.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Attention: Inland Waterways Users Board Nominations Committee, 108 Army Pentagon, Washington, DC 20310–0108.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary of the Army (Civil Works), (703) 697–8986.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of Public Law 99–662. The substance of those provisions is as follows:

a. Selection. Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. Service. The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. Appointment. The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in Section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) Carriers and Shippers. The law uses the terms ''primary users and shippers.'' Primary users have been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers have been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper nor primary user.

(2) Geographical Representation. The law specifies ''various'' regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 95–502, as amended, have been aggregated into six regions. They are (1) The Upper Mississippi River and its tributaries

above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

(3) Commodity Representation. Waterway commerce has been aggregated into six commodity categories based on ''inland'' ton-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All Other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

d. Nomination. Reflecting preceding selection criteria, the current representation by the six (6) Board members whose terms will expire is one member each representing regions 3 and 6, and two members representing regions 1 and 2. Also, three of these Board members represent carriers, one represents a shipper and two represents a carrier/shipper.

Three of the six members whose terms will expire are eligible for reappointment. Nominations to replace Board members whose terms expire may be made by individuals, firms or associations. Nominations will:

(1) State the region(s) to be represented.

(2) State whether the nominee is representing carriers, shippers or both.

(3) Provide information on the nominee's personal qualifications.

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to **Federal Register** notice published on February 17, 2006 (71 FR 8568), notice published on July 7, 2006 (71 FR 38629) and notice published on February 16, 2007 (72 FR 7620) have been retained for consideration. Renomination is not required but may be desirable to indicate continued interest and provide updated information.

e. *Deadline for Nominations.* All nominations must be received at the address shown above no later than September 15, 2008.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–15774 Filed 7–10–08; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 9, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 1, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Leveraging Educational Technology to Keep America Competitive: National Teacher Technology Study.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 2,300.

Burden Hours: 750.

Abstract: The purpose of this study is to investigate the technology experiences included in pre-service teacher preparation programs, as well as how teachers use technology in the classroom. A three-phase grounded theory research design employs (1) educational technology faculty and general induction teacher surveys, (2) educational technology faculty and accomplished technology using teacher phone interviews, and (3) case studies of teacher education programs and accomplished technology-using teachers.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3726. 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, Washington, DC 20202–4537. Requests may also be electronically mailed to or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–15498 Filed 7–10–08; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 11, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., 'Upward Bound Evaluation']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 7, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Impact Aid Program Application for Section 8003 Assistance.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 504,306.

Burden Hours: 143,346.

Abstract: The U.S. Department of Education is requesting approval for the Application for Assistance under Section 8003 of Title VIII of the Elementary and Secondary Education Act (ESEA) as amended by No Child Left Behind (NCLB). This application is otherwise known as Impact Aid Basic Support Payments. Local Educational Agencies (LEAs) whose enrollments are adversely affected by Federal activities use this form to request financial assistance. Regulations for the Impact Aid Program are found at 34 CFR 222. The statute and regulations for this program require a variety of data from applicants annually to determine eligibility for the grants and the amount of grant payment under the statutory formula. The least burdensome method of collecting this required information is for each applicant to submit these data through a web-based electronic application hosted on the Department of Education's e-Grants Web site. This application was previously approved under OMB 1810–0036, along with a separate application for Section 8002, payments for Federal property, another distinct formula that requires different data from applicant LEAs. To facilitate more efficient clearance processes for both applications this year and in future years, the Department is separating these two applications into two paperwork approval packages. The Section 8002 application will be submitted under the OMB 1810–0036 number that both applications previously have been cleared under. There are no substantive changes to this application. The Department of Education is requesting renewal of its three-year clearance under a new collection number.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3656. 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, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–15853 Filed 7–10–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–256–000]

Algonquin Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed J–2 Loop Project, Request for Comments on Environmental Issues, and Notice of Site Visit

July 3, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the J–2 Loop Project, involving construction and operation of natural gas facilities by Algonquin Gas Transmission, LLC (Algonquin) in Middlesex County, Massachusetts. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will

close on August 2, 2008. Details on how to submit comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, you may be contacted by an Algonquin representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Algonquin could initiate condemnation proceedings in accordance with Massachusetts State law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need to Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

With this notice, we [1] are asking other Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Summary of the Proposed Project

Algonquin seeks authorization to construct about 2.3 miles of 14-inch-diameter pipeline and associated facilities within the cities of Medford and Somerville, Massachusetts. The project would commence at an existing meter station adjacent to the Mystic Valley Parkway in Medford and travel in a general southeast direction within road rights-of-way to its terminus at an interconnection with NSTAR Gas Company's (NSTAR) system adjacent to the McGrath Highway/railroad track overpass in Somerville. A meter station and pig [2] launcher facility would be constructed in Medford, at the existing meter station and a valve and pig receiver would be constructed at the interconnect with NSTAR.

Appendix A presents a detailed map identifying all facilities associated with this project.[3]

Land Requirements for Construction

Algonquin would temporarily disturb about 36.8 acres to construct the new pipeline and about 0.6 acres for aboveground facilities. During operation of the project, Algonquin would affect about 0.33 acres for pipeline maintenance and about 0.04 acres for aboveground facilities.

The majority of the J–2 Loop Project would be constructed within existing roadways, roadside shoulders, and paved parking areas.

The EA Process

We are preparing this EA to comply with the National Environmental Policy Act of 1969 (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, we are requesting public comments on the scope of the issues to be addressed in the EA. All comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under the following general headings:

- Geology and Soils
- Cultural Resources
- Land Use and Visual Quality
- Air Quality and Noise
- Alternatives
- Reliability and Safety

We note that the proposed pipeline would be within high-density multi-family residential areas and would require special construction procedures.

Our independent analysis of the issues will be addressed in the EA. Depending on the comments received during the scoping process, the EA may be published for distribution and mailed to federal, state, and local agencies; public interest groups; interested individuals; affected landowners; newspapers and libraries in the project area; and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1;
- Reference Docket No. CP08–256–000;
- Mail your comments so that they will be received in Washington, DC on or before August 2, 2008.

The Commission encourages electronic filing of comments. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the link to ''*Documents and Filings*'' and ''*eFiling*.'' eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your hard drive. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister*.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.'' In addition, there is a ''*Quick Comment*'' option available, which is an easy method for interested persons to submit text only comments on a project. The *Quick-Comment User Guide* can be viewed at *http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf.* Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[2] A pipeline ''pig'' is a device designed to internally clean or inspect the pipeline. A pig launcher/receiver is an aboveground facility where pigs are inserted or retrieved from the pipeline.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room at (202) 502–8371. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section at the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Dominion.

e-mail address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket or project number(s).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor, you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix B).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Site Visit

On July 15, 2008, the Office of Energy Projects' (OEP) staff will conduct a pre-certification site visit of the proposed J–2 Loop Project. Representatives of Algonquin and Massachusetts Energy Facilities Siting Board will accompany the OEP staff. We will tour the proposed project area by automobile and on foot viewing Algonquin's proposed pipeline route, route variations, and aboveground facilities that are being considered for the proposed project.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. If you are interested in attending the site visit, please meet us at 4:00 p.m. in the parking lot of the Somerville High School, 81 Highland Avenue, Somerville, MA.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. We encourage government representatives to notify their constituents of this proposed project and encourage them to comment on their areas of concern. If you do not return the form included as Appendix C, you will be removed from the Commission's environmental mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.*, CP08–256), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission such as orders, notices, and rule makings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, any public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15792 Filed 7–10–08; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1289–002; ER07–1289–003; ER07–1289–004; ER07–1289–005; Docket No. EL08–56–000 (consolidated)]

ISO New England Inc.; New Brunswick Power Transmission Corporation, New Brunswick System Operator, and Northern Maine Independent System Administrator v. ISO New England Inc.; Notice of Institution of Proceeding and Refund Effective Date

July 3, 2008.

On July 2, 2008, the Commission issued an order that instituted a proceeding in the above-referenced proceeding, pursuant to section 206 of the Federal Power Act (FPA) 16 U.S.C. 824e, concerning issues stemming from the Maine Electric Power Company Roll-in Proposal (the MEPCO Roll-in Proposal) in *ISO New England Inc.,* 124 FERC ¶ 61,013 (2008).

The refund effective date in the above-docketed proceeding, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register.**

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15790 Filed 7–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 12548–002]

Hydrodynamics, Inc.; Notice of Paper Scoping and Soliciting Scoping Comments and ERRATA to Tendering Notice

July 3, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor unconstructed project.

b. *Project No.:* 12548–002.

c. *Date filed:* April 1, 2008.

d. *Applicant:* Hydrodynamics, Inc.

e. *Name of Project:* Greenfield.

f. *Location:* On the Greenfields Main Canal, part of the Bureau of Reclamation's Sun River Irrigation Project, in Teton County, Montana, near Fairfield, Montana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Roger Kirk, Hydrodynamics, Inc., P.O. Box 1136, Bozeman, MT 59771, (406) 587–5086.

i. *FERC Contact:* Dianne Rodman, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; telephone (202) 502–6077 or by e-mail at *dianne.rodman@ferc.gov.*

j. *Deadline for filing scoping comments:* August 4, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The proposed Greenfield Project would be built at the Greenfields Main Canal's Greenfield drop structure. The applicant proposes to construct: (1) An inflatable weir spanning the width of the canal; (2) an intake structure with trash rack and radial gate or stop-log shut off; (3) a buried, 84-inch-diameter, 650-foot-long steel or polyethylene penstock; (4) a powerhouse containing one Francis or propeller (Reaction) turbine and one generator with a rated output of 600 kilowatts; (5) a tailrace about 7 feet long, returning flows to the canal; (6) a switchyard; and (7) a 0.05-mile-long, 12-kilovolt transmission line interconnecting with an existing powerline. Average annual generation would be 1.5 gigawatt hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filings/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act of 1969, as amended.[1] The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we will solicit comments, recommendations, information, and alternatives in the Scoping Document (SD).

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

o. The tendering notice issued April 14, 2008, incorrectly stated that the application for the Greenfield Project was filed on March 31, 2008. The correct filing date for the Greenfield Project application is April 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15789 Filed 7–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12540–002]

Hydrodynamics, Inc.; Notice of Paper Scoping and Soliciting Scoping Comments and Errata to Tendering Notice

July 3, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Application:* Minor unconstructed projects.

b. *Project No.:* 12540–002, 12545–002, and 12549–002.

c. *Date Filed:* March 31, 2008.

d. *Applicant:* Hydrodynamics, Inc.

e. *Name of Projects:* Woods, Johnson, and A-Drop.

f. *Location:* On the Greenfields Main Canal and the Greenfields South Canal, parts of the Bureau of Reclamation's Sun River Irrigation Project, in Cascade and Teton Counties, Montana, near Fairfield, Montana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Roger Kirk, Hydrodynamics, Inc., P.O. Box 1136, Bozeman, MT 59771, (406) 587–5086.

i. *FERC Contact:* Dianne Rodman, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; telephone (202) 502–6077 or by e-mail at *dianne.rodman@ferc.gov.*

j. *Deadline for filing scoping comments:* August 4, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. These applications are not ready for environmental analysis at this time.

l. The proposed Woods Project would be built at the Greenfields Main Canal's Woods drop structure. The applicant proposes to construct: (1) An inflatable weir spanning the full width of the canal; (2) an intake structure with trash rack and radial gate or stop-log shut off; (3) a buried, 72-inch-diameter, 750-foot-long steel or polyethylene penstock; (4) a powerhouse containing one Francis or propeller (Reaction) turbine and one generator with a rated output of 900 kilowatts (kW); (5) a tailrace about 12.5 feet long, returning flows to the canal; (6) a switchyard; and (7) a 0.1-mile-long, 69-kilovolt (kV) transmission line interconnecting with an existing powerline. Average annual generation would be 2.2 gigawatt hours (GWh).

The proposed Johnson Project would be built at the Greenfields South Canal's

[1] One EA will be prepared for the Woods Project (FERC No. P–12540), Johnson Project, (FERC No. P–12545), Greenfield Project (FERC No. P–12548) and A-Drop Project (FERC No. P–12549).

Johnson drop structure. The applicant proposes to construct: (1) An inflatable weir spanning the width of the canal; (2) an intake structure with trash rack and radial gate or stop-log shut off; (3) a buried, 60-inch-diameter, 900-foot-long steel or polyethylene penstock; (4) a powerhouse containing one Francis or propeller (Reaction) turbine and one generator with a rated output of 700 kW; (5) a tailrace about 11.25 feet long, returning flows to the canal; (6) a switchyard; (7) a 0.5-mile-long, 69-kV transmission line interconnecting with an existing powerline; and (8) a powerhouse access road. Average annual generation would be 1.7 GWh.

The proposed A-Drop Project would be built at the Greenfields Main Canal's Greenfield drop structure. The applicant proposes to construct: (1) An inflatable weir spanning the width of the canal; (2) an intake structure with trash rack and radial gate or stop-log shut off; (3) a buried, 96-inch-diameter, 570-foot-long steel or polyethylene penstock; (4) a powerhouse containing one Francis or propeller (Reaction) turbine and one generator with a rated output of 1,000 kW; (5) a tailrace returning flows to the canal; (6) a switchyard; (7) a 0.1-mile-long, 12-kV transmission line interconnecting with an existing powerline; and (8) an approximately 570-foot-long powerhouse access road. Average annual generation would be 2.5 GWh.

m. Copies of the applications are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access each of the documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. Copies are also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filings/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Scoping Process

The Commission intends to prepare an Environmental Assessment (EA) on the projects in accordance with the National Environmental Policy Act of 1969, as amended.[1] The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed actions.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, the staff will solicit comments, recommendations, information, and alternatives in the Scoping Document (SD).

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

o. The tendering notice issued April 14, 2008, incorrectly stated that the application for the A-Drop Project was filed on April 1, 2008. The correct filing date for the A-Drop Project application is March 31, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15791 Filed 7–10–08; 8:45 am]

BILLING CODE 6717–01–P

[1] One EA will be prepared for the Woods Project (FERC No. P–12540), Johnson Project, (FERC No. P–12545), Greenfield Project (FERC No. P–12548) and A-Drop Project (FERC No. P–12549).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8583–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 06/30/2008 through 07/02/2008.

Pursuant to 40 CFR 1506.9.

EIS No. 20080259, Draft EIS, AFS, WY, Spruce Gulch Bark Beetle and Fuels Reduction Project, Proposes to Implement Bark Beetle Related Salvage and Suppression Vegetative Treatments and Hazardous Fuels Abatement Treatments, Laramie Ranger District, Medicine Bow-Routt National Forests, Albany and Carbon Counties, WY, Comment Period Ends: 08/25/2008, Contact: Melissa M. Martin 307–745–2371. This document is available on the Internet at: *http://www.fs.fed.us/r2/mbr/projects/foresthealth.*

EIS No. 20080260, Draft EIS, AFS, WI, Medford Aspen Project, To Implement a Number of Vegetation and Transportation Management Activities, Medford-Park Falls Ranger District, Chequamegon-Nicolet National Forest, Taylor County, WI, Comment Period Ends: 08/25/2008, Contact: Jane Darnell 715–748–4875.

EIS No. 20080261, Draft EIS, USA, CA, PROGRAMMATIC—Brigade Combat Team Transformation Project, Restructure the 11th Armored Cavalry Regiment (ACR) to a Multi-Component (active duty/reserve) Heavy Brigade Combat Team (HBCT) and change/add several other organizations, Fort Irwin, CA, Comment Period Ends: 08/25/2008, Contact: Muhammad Bari 760–480–3410.

EIS No. 20080262, Draft EIS, SFW, NV, Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley and Pahranagat National Wildlife Refuges, Comprehensive Conservation Plan, Clark, Lincoln and Nye counties, NV, Comment Period Ends: 08/25/2008, Contact: Cynthia Martinez 702–515–5450.

EIS No. 20080263, Draft EIS, COE, CA, Three Rivers Levee Improvement Authority, proposes construct and maintain the Feather River Levee Repair Project, Segment 2, Issuing 408 Permission and 404 Permit, Yuba County, CA, Comment Period Ends: 08/25/2008, Contact: John Suazo 916–557–6719.

EIS No. 20080264, Second Final Supplement, DOE, NV, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada—Nevada Rail Transportation Corridor (DOE/EIS–0250F–S2D), Wait Period Ends: 08/11/2008, Contact: Dr. Jane R. Summerson 702–794–1493.

EIS No. 20080265, Second Final EIS (Tiering), DOE, NV, Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository (DOE/EIS–0369D) at Yucca Mountain, Nye County, NV, Wait Period Ends: 08/11/2008, Contact: Dr. Jane R. Summerson 702–794–1493.

EIS No. 20080266, Final Supplement, DOE, NV, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste, Construction, Operation, Monitoring and Eventually Closing a Geologic Repository (DOE/EIS–0250F–S1D) at Yucca Mountain, Nye County, NV, Wait Period Ends: 08/11/2008, Contact: Dr. Jane R. Summerson 702–794–1493.

EIS No. 20080267, Draft Supplement, BLM, CA, Sunrise Powerlink Transmission Line Project, New Information, Proposed Land Use Plan Amendment, Construction and Operation of a New 91-mile 500

kilovolt (kV) Electric Transmission Line from Imperial Valley Substation (in Imperial Co. near the City of El Centro) to a New Central East Substation (in Central San Diego County) Imperial and San Diego Counties, CA, Comment Period Ends: 08/25/2008, Contact: Lynda Kastoll 760–337–4400.

EIS No. 20080268, Draft Supplement, FTA, MN, Central Corridor Project, New Information on the 11 miles Light Rail Transit between downtown Minneapolis and downtown St. Paul, Minnesota, Twin Cities Metropolitan Area, MN, Comment Period Ends: 08/25/2008, Contact: Marisol Simon 312–353–2789.

Amended Notices

EIS No. 20070536, Draft EIS, AFS, 00, ~VOIDED~ National Forest System Lands in Utah Wild and Scenic River Suitability Study for 86 Eligible River Segments for Inclusion in the National Wild and Scenic River System, Ashley, Dixie, Fishlake, Manti-LaSal, Uinta, Wasatch-Cache National Forests in Utah and Portions of National Forests in Colorado and Wyoming, Comment Period Ends: 02/15/2008, Contact: Catherine Kahlow 435–783–4338.

This DEIS was inadvertently refilled and published in 12/28/2007 FR. The Correct DEIS #20070508 was published in 12/07/2007 FR.

EIS No. 20080106, Draft EIS, AFS, CO, Long Draw Reservoir Project, Re-Issue a Special-Use-Authorization to Water Supply and Storage to Allow the Continued Use of Long Draw Reservoir and Dam, Arapaho and Roosevelt National Forests and Pawnee National Grassland, Grand and Larimer Counties, CO, Comment Period Ends: 07/11/2008, Contact: Ken Tu 970–295–6623. Revision of FR Notice Published 03/28/2008: Extending Comment Period from 06/11/2008 to 07/11/2008.

Dated: July 8, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–15813 Filed 7–10–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8583–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2) (c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080077, ERP No. D–COE–K36149–CA, San Diego Creek Watershed Special Area Management Plan/Watershed Streambed Alteration Agreement Process (SAMP/WSAA Process), Protecting and Enhancing Aquatic Resource and Permitting Reasonable Economic Development, Orange County, CA.

Summary: EPA continues to have environmental concerns about impacts to resources and requested additional information on the reasonableness of the alternatives, and why specific Nationwide Permits are proposed for revocation while others would be retained. Rating EC2.

EIS No. 20080135, ERP No. D–COE–E39072–TN, PROGRAMMATIC—Hydropower Rehabilitations, Dissolved Oxygen and Minimum Flow Regimes at Wolf Creek Dam, Kentucky and Center Hill and Dale Hollow Dams, Tennessee, Implementation.

Summary: EPA expressed environmental concerns about water quality and stream flow impacts, and recommends the identification of the improvement program and schedule, monitoring protocols, and adaptive management decision-making process in the Final EIS. Rating EC2.

EIS No. 20080156, ERP No. D–NRC–E06026–GA, GENERIC—License Renewal of Nuclear Plants, Supplement 34 to NUREG–1437, Regarding Vogtle Electric Generating Plant Units 1 and 2 (VEGP) near Waynesboro, GA.

Summary: EPA expressed environmental concerns about tritium and requested additional information on actions to mitigate or lessen the release of tritium to the Savannah River. Surface water withdrawal impacts and impacts to aquatic species during drought conditions are also a concern. Rating EC1.

EIS No. 20080159, ERP No. DA–NOA–A91061–00, Atlantic Mackerel, Squid and Butterfish, Fishery Management Plan, Amendment No. 10, Develop a Rebuilding Program that Allows the Butterfish Stock to Rebuild in the Shortest Amount of Time Possible, Exclusive Economic Zone (EEZ) off the U.S. Atlantic Coast.

Summary: EPA has no objection to the proposed action. Rating LO.

EIS No. 20080180, ERP No. DC–FTA–L40205–00, South Corridor Portland-Milwaukie Light Rail Project, Proposal to Develop Light Rail Transit in Final Segment, Connecting Downtown Portland, OR, the City of Milwaukie and north Clackamas and Multnomah Counties, OR and Clark County, WA.

Summary: EPA expressed environmental concerns about water quality impacts within waterbodies that are 303(d) listed for temperature, mercury, bacteria, and other criteria. The project has the potential to disturb contaminated sites and to release hazardous substances. Rating EC2.

EIS No. 20080185, ERP No. DS–FSA–A65173–00, PROGRAMMATIC—Expansion of the Emergency Conservation Program, To Restore Farmland (Cropland, Hayland and Pastureland) to a Normal Productive State after a Natural Disaster.

Summary: EPA has no objections to the proposed action. Rating LO.

Final EISs

EIS No. 20080017, ERP No. F–COE–K39098–CA, San Clemente Dam Seismic Safety Project, Increase Dam Safety to Meet Current Design Standards, Monterey County, CA.

Summary: EPA continues to have environmental concerns about habitat impacts and steelhead recovery following dam removal. EPA supported the two dam removal alternatives and noted continuing concerns with all other alternatives.

EIS No. 20080141, ERP No. F–TVA–E08022–TN, Rutherford-Williamson-Davidson Power Supply Improvement Project, Proposes to Construct and Operate a New 500-kilovolt (kV) Rutherford Substation, a New 27-mile 500-kV Transmission Line and Two New 9- and 15 mile 161-kV Transmission Lines, Rutherford, Williamson, and Maury Counties, TN.

Summary: EPA continues to have environmental concerns about impaired waterbody and forested wetland impacts.

EIS No. 20080183, ERP No. F–FHW–F40429–00, US–131 Improvement Study, from the Indiana Toll Road (1–80/90) to a Point One Mile North of Cowling Road, U.S. Army COE Section 404 Permit, St. Joseph County, MI and Elkhart County, IN.

Summary: While EPA has no objection to the proposed action, EPA recommended that the ROD discuss monitoring wetland hydrology and coordinate seasonal restrictions on activities in the St. Joseph River riparian corridor.

EIS No. 20080196, ERP No. F–NRC–H06006–KS, GENERIC—License Renewal of Nuclear Plants Regarding Wolf Creek Generating Station, (WCGS) Unit 1. Supplement 32 to NUREG 1437, Implementation, Coffey Country, KS.

Summary: While EPA has no objections to the proposed action, EPA recommends close coordination with the U.S. Army Corps of Engineers regarding the viability of John Redmond reservoir to supply future make-up water needs.

EIS No. 20080208, ERP No. F–NRC–G09805–OK, Sequoyah Fuels Corporation Site, Proposed Reclamation Activities for the 243-hectare (600 acre) Site, (NUREG–1888) in Gore, OK.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080212, ERP No. F–BIA–L60108–WA, Cowlitz Indian Tribe Trust Acquisition and Casino Project, Take 151.87 Acres into Federal Trust and Issuing of Reservation Proclamation, and Approving the Gaming Development and Management Contract, Clack County, WA.

Summary: EPA's previous issues have been resolved; therefore, EPA has no objection to the proposed action.

EIS No. 20080216, ERP No. F–BPA–J08028–MT, Libby (FP-1) to Troy Section of BPA's Libby to Bonner Ferry 115-kilovolt Transmission Line Project, Rebuilding Transmission Line between Libby and Troy, Lincoln County, MT.

Summary: EPA expressed environmental concerns about water quality and ground disturbance impacts.

Dated: July 8, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–15842 Filed 7–10–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8689–9]

Integrated Science Assessment for Oxides of Nitrogen—Health Criteria

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of a final document entitled ''Integrated Science Assessment for Oxides of Nitrogen—Health Criteria'' (EPA/600/R–08/071). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development as part of the review of the primary (health-based) national ambient air quality standards (NAAQS) for oxides of nitrogen.

DATES: The document will be available on July 11, 2008.

ADDRESSES: The ''Integrated Science Assessment for Oxides of Nitrogen—Health Criteria'' will be available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of CD–ROM or paper copies will be available. Contact Ms. Ellen Lorang by phone (919–541–2771), fax (919–541–5078), or e-mail (*lorang.ellen@epa.gov*) to request either of these, and please provide your name, your mailing address, and the document title, ''Integrated Science Assessment for Oxides of Nitrogen—Health Criteria'' (EPA/600/R–08/071), to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dennis Kotchmar, M.D., NCEA; telephone: 919–541–4158; facsimile: 919–541–5078; or e-mail: *kotchmar.dennis@epa.gov* or Thomas Luben, PhD, NCEA; telephone: 919–541–5762; or e-mail: *luben.tom@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants that ''may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *.'' Under section 109 of the Act, EPA is then to establish national ambient air quality standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act requires subsequent periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Oxides of nitrogen are one of six principal (or ''criteria'') pollutants for which EPA has issued air quality criteria. National ambient air quality standards (NAAQS) based on those criteria have been established for nitrogen dioxide (NO_2), an indicator for gaseous nitrogen oxides. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) and supplementary annexes, formerly called an Air Quality Criteria Document (AQCD). The ISA and supplementary annexes, in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of a current NAAQS and the appropriateness of new or revised standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee mandated by the Clean Air Act and part of the EPA's Science Advisory Board (SAB), is charged with independent, expert scientific review of EPA's draft ISAs.

On December 9, 2005 (70 FR 73236), EPA formally initiated its current review of the criteria for Oxides of Nitrogen, requesting the submission of recent scientific information on specified topics. A draft of EPA's ''Integrated Review Plan for the Primary National Ambient Air Quality Standard for Nitrogen Dioxide'' was made available in February 2007 for public comment and was discussed by the Clean Air Science Advisory Committee (CASAC) via a publicly accessible teleconference consultation on May 11, 2007 (72 FR 20336). In February 2007 (72 FR 6238), a workshop was held to discuss, with invited scientific experts, initial draft materials prepared in the development of the ISA and supplementary annexes for oxides of nitrogen. The first external review draft of this ISA was released for public comment and review by the CASAC on

August 31, 2007 (72 FR 50107), and was reviewed by CASAC at a public meeting held on October 24–25, 2007. The second draft of this ISA was released for public comment and review by the CASAC in March 2008 (73 FR 11916), and was reviewed by CASAC at a public meeting held on May 1–2, 2008. EPA has considered comments by CASAC and the public in preparing this final ISA.

Dated: July 1, 2008.

Rebecca M. Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E8–15726 Filed 7–10–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8690–9]

EPA Science Advisory Board Staff Office; Notification of a Public Teleconference Meeting of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference meeting of the chartered SAB to: (1) Conduct its quality review of the SAB draft report *SAB Advisory on the EPA Ecological Research Program Multi-year Plan;* (2) have follow-up discussions of EPA's strategic research directions; and (3) complete its discussions of science that supports EPA's disaster response programs.

DATES: The meeting date is Monday, July 28, 2008, from 1 p.m. to 5 p.m. (Eastern Time).

Location: The meeting will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference meeting should contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9982; fax: (202) 233–0643; or e-mail at *miller.tom@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the EPA SAB will hold a public teleconference meeting to discuss several issues and to conduct a quality review of the SAB Panel's draft *Advisory on the EPA Ecological Research Program Multi-year Plan.*

Background: (a) SAB Quality Review of the Draft SAB Report *Advisory on the EPA Ecological Research Program Multi-year Plan.* The Chartered Science Advisory Board will conduct a quality review of the draft SAB committee report on EPA's Ecological Research Multi-Year Plan prepared by the SAB's Ecological Processes and Effects Committee (EPEC). The draft report is in response to an EPA Office of Research and Development (ORD) request that the SAB review the Agency's proposed Research Program Strategy and Multi-year Plan that focuses on research issues related to ecosystems and ecosystem services. The draft report is available on the SAB Web Site at: *http://yosemite.epa.gov/sab/sabproduct.nsf/0/EE66B20E1A20BBA18525734D005E6665?OpenDocument.*

(b) EPA Strategic Research Directions: The Science Advisory Board engaged with EPA in a continuing dialogue to evaluate and provide advice on the strategic directions for EPA's research program for the next five to fifteen years. This activity complements the annual SAB review of EPA's research budget, and permits a more critical evaluation of research programs than is possible during those research budget reviews. The SAB will continue its discussions at its July 28, 2008 meeting. Additional information on past discussions (e.g., October 3–5, 2007 meeting; see 72 FR 50105–50107) and other relevant information can be found on the EPA SAB Web site at: *http://yosemite.epa.gov/sab/sabproduct.nsf/36a1ca3f683ae57a85256ce9006a32d0/54b1d2e5f6dbb2b38525730c00624a96!OpenDocument*).

(c) Environmental Disasters. The SAB is formulating advice to EPA aimed at strengthening science underlying EPA's preparation for and response to environmental disasters. The SAB previously discussed this topic at its meetings on December 12–14, 2006 (see 71 FR 67566), June 19–20, 2007 (see 72 FR 27308) and October 3–5, 2007 (see 72 FR 50105–50107). The SAB has drafted an advisory to the Administrator as a result of these discussions. Discussions of those comments will be completed during the SAB meeting on July 28, 2008. Additional information about this topic is available on the SAB Web site at: *http://yosemite.epa.gov/sab/sabproduct.nsf/02ad90b136fc21ef85256eba00436459/75e560f8a00949fa8525714c00454e95!OpenDocument.*

Availability of Meeting Materials: The agenda and other materials in support of this meeting will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of this meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during this teleconference.

Oral Statements: In general, individuals or groups requesting time to make an oral presentation at a public SAB teleconference will be limited to three minutes, with no more than one-half hour for all speakers. At face-to-face meetings, presentations will be limited to five minutes, with no more than a total of one hour for all speakers. To be placed on the public speaker list, interested parties should contact Mr. Thomas Miller, DFO, in writing (preferably by e-mail), by July 21, 2008 at the contact information provided above. *Written Statements:* Written statements should be received in the SAB Staff Office by July 21, 2008, so that the information may be made available to the SAB for their consideration prior to this teleconference meeting. Written statements should be supplied to the DFO via e-mail to *miller.tom@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Thomas Miller at (202) 343–9982 or *miller.tom@epa.gov.* To request accommodation of a disability, please contact Mr. Miller, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 8, 2008.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–15798 Filed 7–10–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8691–1]

Meeting of the Total Coliform Rule Distribution System Advisory Committee—Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of the Federal Advisory Committee Act, the United States Environmental Protection Agency (EPA) is giving notice of a meeting of the Total Coliform Rule Distribution System Advisory Committee (TCRDSAC). The purpose of this meeting is to discuss the Total Coliform Rule (TCR) revision and information about distribution systems issues that may impact water quality.

The TCRDSAC advises and makes recommendations to the Agency on revisions to the TCR, and on what information should be collected, research conducted, and/or risk management strategies evaluated to better inform distribution system contaminant occurrence and associated public health risks.

Topics to be discussed in the meeting include options for revising the Total Coliform Rule; for example, rule construct, monitoring provisions, system categories, action levels, investigation and follow-up, public notification, and other related topics. In addition, the Committee will discuss possible recommendations for research and information collection needs concerning distribution systems.

DATES: The public meeting will be held on Wednesday, July 30, 2008 (8:30 a.m. to 6 p.m., Eastern Time (ET)) and Thursday, June 31, 2008 (8 a.m. to 3 p.m., ET). Attendees should register for the meeting by calling Kate Zimmer at (202) 965–6387 or by e-mail to *kzimmer@resolv.org* no later than July 25, 2008.

ADDRESSES: The meeting will be held at St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: For general information, contact Kate Zimmer of RESOLVE at (202) 965–6387. For technical inquiries, contact Sean Conley (*conley.sean@epa.gov,* (202) 564–1781), Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; fax number: (202) 564–3767.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Committee encourages the public's input and will take public comment starting at 5:30 p.m. on July 30, 2008, for this purpose. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals interested in presenting an oral statement may notify Crystal Rodgers-Jenkins, the Designated Federal Officer, by telephone at (202) 564–5275, no later than July 25, 2008. Any person who wishes to file a written statement can do so before or after a Committee meeting. Written statements received by July 25, 2008, will be distributed to all members before any final discussion or vote is completed. Any statements received on July 28, 2008, or after the meeting will become part of the permanent meeting file and will be forwarded to the members for their information.

Special Accommodations

For information on access or accommodations for individuals with disabilities, please contact Crystal Rodgers-Jenkins at (202) 564–5275 or by e-mail at *rodgers-jenkins.crystal@epa.gov.* Please allow at least 10 days prior to the meeting to give EPA time to process your request.

Dated: July 7, 2008.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E8–15844 Filed 7–10–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 1 p.m. on Tuesday, July 15, 2008, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda: Memorandum and resolution re: Final Guidance: Supervisory Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework.

Memorandum and resolution re: Notice of Proposed Rulemaking on Recordkeeping Requirements for Qualified Financial Contracts.

Memorandum and resolution re: Final Covered Bond Policy Statement.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet at: *http://www.vodium.com/goto/fdic/boardmeetings.asp.* This service is free and available to anyone with the following system requirements: *http://www.vodium.com/home/sysreq.html (http://www.vodium.com).* Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.macromedia.com/go/getflashplayer.* Installation questions or troubleshooting help can be found at the same link.

For optimal viewing, a high-speed Internet connection is recommended. The Board meetings videos are made available on-demand approximately one week after the event.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: July 8, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–15849 Filed 7–10–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 1:30 p.m. on Tuesday, July 15, 2008, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(4), (c)(6), (c)(8), (9)(A)(ii), and (9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: July 8, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–15850 Filed 7–10–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m. on Monday, July 14, 2008.

CHANGES IN THE MEETING: The discussion agenda title has changed from:

Final Amendments to Regulation Z (Truth in Lending) to the new title of:

Final Amendments to Regulation Z (Truth in Lending) Relating to Mortgage Lending and Proposed Conforming Amendments to Regulation C (Home Mortgage Disclosure).

FOR MORE INFORMATION PLEASE 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 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: July 8, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 08–1429 Filed 7–9–08; 8:45 am]

BILLING CODE 6210–01–P

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: July 2, 2008.

Brendan C. Kelly,

Reports Clearance Officer.

[FR Doc. E8–15501 Filed 7–10–08; 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

Proposed Project

Title: Communities Empowering Youth Evaluation Study.

OMB No. New Collection.

Description: The information collection activity proposed under this notice will obtain information about lead and partner organizations funded under the Communities Empowering Youth (CEY) program. The information collected will complement a survey (OMB No. 0970–0335) that is examining the organizational and partnership capacity-building experienced by organizations funded under the CEY program. The proposed information collection will allow in-depth examination of a select number of lead organizations and their partners. Information collection will be through on-site observations of organizations and partnerships and structured discussions with key staff, using uniform protocols. Pilot testing will be conducted at two sites to ensure that the protocols and observations are valid and reliable. On-site information collection will occur three times: Near the beginning, at the mid-point, and at the end of the three-year CEY grant period. Periodic telephone follow-ups, occurring approximately every six months, will be conducted between on-site data collection in order to clarify or update information collected earlier and to prepare for future site visits.

Respondents: Executive directors and key staff of faith based and community organizations that received three-year CEY grants beginning in 2007.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Lead Organization Executive Director	10	1	3.5	35
Lead Organization Key Staff	20	1	2.5	50
Partner Organization Executive Director	60	1	3.5	210
Partner Organization Key Staff	60	1	2.5	150

Estimated Total Annual Burden Hours: 445.

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: ACF Reports Clearance Officer. E-mail address: *OPREInfoCollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

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 ACF.

Dated: July 2, 2008.

Brendan C. Kelly,

OPRE Reports Clearance Officer.

[FR Doc. E8–15502 Filed 7–10–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2006–N–0364] (formerly Docket Nos. 2006N–0466 and FDA–2007–0650)

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 28, 2007 (72 FR 73589), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0614. The approval expires on June 30, 2011. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: July 2, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–15795 Filed 7–10–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2005–N–0464] (formerly Docket No. 2005N–0403)

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing.'' This draft guidance document establishes a Pilot Program for industry to voluntarily submit drug establishment registration and drug listing information in an electronic format that FDA can process, review, and archive. The document provides guidance on what required and FDA-recommended information related to drug establishment registration and drug listing to submit and on how to electronically prepare and submit the information to FDA.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance, including comments regarding proposed collection of information, by September 9, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Critical Path Programs (HF–18), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your requests.

The draft guidance may also be obtained by mail by calling the Office of Critical Path Programs at 301–827–1512. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance 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*.

FOR FURTHER INFORMATION CONTACT: Lonnie Smith, Office of Critical Path Programs (HF–18), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–0011.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 29, 2006 (71 FR 51276), FDA issued a proposed rule that would revise part 207 (21 CFR part 207) (hereinafter referred to as ''the 2006 proposed rule''). This rule, when finalized, will fully implement electronic drug establishment registration and drug listing. Subsequent to the publication of the proposed rule, the U.S. Congress enacted the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85) . FDAAA amended section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) (at section 510(p)) to explicitly require the electronic submission by domestic and foreign establishments of registration and listing information (including the submission of updated information) required under section 510 of the act, unless the Secretary of Health and Human Services grants a request for a waiver if use of electronic means is not reasonable for the person requesting the waiver. FDA intends to exercise enforcement discretion and does not intend to take action to enforce this electronic submission requirement, but rather intends to pilot voluntary electronic submission during a transition period. To assist in complying with this new statutory provision, and to test FDA systems for processing such submissions, FDA is announcing a voluntary Pilot Program for electronically submitting drug establishment registration and drug listing information and the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing.''

The information collected during drug establishment registration and drug listing information is fundamental to many processes FDA uses for protecting the public health, including surveillance for serious drug adverse reactions, inspection of facilities used for drug manufacturing and processing, and monitoring drug products imported into the United States. Comprehensive, complete, up-to-date information is critical for conducting these activities with efficiency and effectiveness. Electronic drug establishment registration and drug listing using computer systems to automate this process will lead to significant improvements in the timeliness and accuracy of the information over a paper-based system. This automation can be accomplished most efficiently and effectively when the information is provided in a standardized format using defined terminology.

FDA is adopting the use of extensible markup language (XML) files in a standard Structured Product Labeling (SPL)[1] format as the standard format for the exchange of drug establishment registration and drug listing information. Information in a properly created SPL file can be processed in minutes. In addition, the use of SPL files with defined terminology will facilitate the receipt of more precise and accurate information than was the case with paper submissions. Timely and accurate product information will enhance FDA's efforts to help ensure the integrity of the drug supply and protect the public health.

The draft guidance explains how to transition from submitting the required information on paper[2] to submitting the required information using the SPL standard, an electronic format that FDA can process, review, and archive. The draft guidance also describes how to voluntarily submit additional useful, but not required, information that currently is often included by industry in paper submissions. The draft guidance, along with accompanying technical documents made available on FDA's Website[3], describes how to electronically create and submit SPL files using a defined terminology for drug establishment registration and drug listing information (including labeling as specified under § 207.25) required under section 510 of the act and part 207.[4] In addition to comments on the draft guidance, FDA also is requesting comments on the adequacy and usefulness of the technical documents that are available on FDA's Web site.

With publication of the guidance, FDA is launching a voluntary Pilot Program that will enable industry to begin submitting drug establishment registration and drug listing information in electronic format. FDA plans to complete the voluntary Pilot Program and begin receiving drug establishment registration and drug listing information only electronically and in SPL format (including labeling) beginning June 1, 2009, unless a waiver is granted. Based on comments received on the draft guidance and information obtained during the voluntary Pilot Program, FDA intends to issue a final guidance before June 1, 2009.

FDA is still in the process of considering comments submitted on the 2006 proposed rule. FDA intends to revise, reissue, or revoke any final guidance as appropriate, to ensure consistency with the final rule.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the electronic submission of drug establishment registration and drug listing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

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 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

[1] SPL standard is a Health Level Seven, Inc., standard for the exchange of product information using extensible markup language (XML).

[2] Drug establishment registration and drug listing information is currently submitted in paper format using Form FDA 2656 (Registration of Drug Establishment/Labeler Code Assignment), Form FDA 2657 (Drug Product Listing), and Form FDA 2658 (Registered Establishments' Report of Private Label Distributors). These forms are currently available at *http://www.fda.gov/opacom/morechoices/fdaforms/fdaforms.html*.

[3] These technical documents are currently available at *http://www.fda.gov/oc/datacouncil/spl.html*.

[4] Under section 351(j) of the Public Health Service Act, the act and regulations issued under the act apply to biological products. However, this guidance document does not apply to establishment registration and product listing information required solely under 21 CFR parts 607, 807, and 1271.

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. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (the PRA), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information 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 a 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 on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing.

Description of Respondents: Respondents to this collection of information are foreign and domestic owners and operators of establishments that engage in the manufacture, preparation, propagation, compounding, or processing (which includes, among other things, repackaging and relabeling) of a drug or drugs[5] and that are not exempt under section 510(g) of the act or subpart B of part 207 (registrants).

A. Reporting Burden

The draft guidance describes how to electronically create and submit SPL files using defined terminology for establishment registration and drug listing information (including labeling). Most information is already required to be submitted under section 510 of the act, section 351 of the Public Health Service Act, and part 207.

Drug establishment registration and drug listing information and updates to such information, required under part 207, and certain additional recommended information are currently submitted in paper form using Form FDA 2656 (Registration of Drug Establishment/Labeler Code Assignment), Form FDA 2657 (Drug Product Listing), and Form FDA 2658 (Registered Establishments Report of Private Label Distributors) (collectively referred to as FDA Forms; 72 FR 67733, November 30, 2007).

In addition to the information collected by the FDA Forms (72 FR 67733, November 30, 2007), the draft guidance addresses electronic submission of other required information as follows:

- For registered foreign drug establishments, the name, address, and phone number of its U.S. agent (§ 207.40(c));
- The name of each importer that is known to the establishment (the U.S. company or individual in the United States that is an owner, consignee, or recipient of the foreign establishment's drug that is imported into the United States. An importer does not include the consumer or patient who ultimately purchases, receives, or is administered the drug, unless the foreign establishment ships the drug directly to the consumer or the patient) (section 510(i)(1)(A) of the act); and
- The name of each person who imports or offers for import (the name of each agent, broker, or other entity, other than a carrier, that the foreign drug establishment uses to facilitate the import of their drug into the United States) (section 510(i)(1)(A) of the act).

FDA also is recommending the voluntary submission of the following additional information, when applicable:

- To facilitate correspondence between foreign establishments and FDA, the e-mail address for the U.S. agent, and the telephone number(s) and e-mail address for the importer and person who imports or offers for import their drug;
- In providing the labeling as specified under § 207.25, for manufacturers with a Web site for voluntary reporting of adverse drug reactions, the manufacturer's telephone number and URL address that appear on the label under 21 CFR 201.57(a)(11);
- A site-specific D-U-N-S® Number[6] for each entity (e.g., the registrant, establishments, U.S. agent, importer);
- The NDC product code for the source drug that is repacked or relabeled;
- A reference drug if used as a basis for the strength of the listed drug;
- Distinctive characteristics of certain listed drugs, i.e., the flavor, the color, and image of the actual solid dosage form; and
- Registrants may indicate that they view as confidential the registrant's business relationship with an establishment, or an inactive ingredient.

In addition to the collection of information, there is additional burden for the following activities:

- Preparing a standard operating procedure (SOP) for the electronic submission of drug establishment registration and drug listing information;
- Creating the SPL file, including accessing and reviewing the technical specifications and instructional documents provided by FDA (accessible at *http://www.fda.gov/oc/datacouncil/spl.html*);
- Reviewing and selecting appropriate terms and codes used to create the SPL file (accessible at *http://www.fda.gov/oc/datacouncil/spl.html*);
- Obtaining the digital certificate used with FDA's electronic submission gateway (ESG) and uploading the SPL file for submission (accessible at *http://www.fda.gov/esg/default.htm*); and
- Requests for waivers from the electronic submission process as described in the draft guidance.

B. Burden Estimates

Reporting Burden—The estimates for the number of respondents, annual frequency per response, and total annual responses indicated in table 1 of this document are based on our current estimates of the number of registrants and the number of submissions using the FDA Forms (OMB Control No. 0910–0045). FDA estimates that it would take an additional 2 hours per response (in addition to the estimated 2.5 hours per

[5] Means both human, including biological products, and animal drugs.

[6] A D&B® D-U-N-S® Number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 100 million business worldwide. Submitting the site-specific D-U-N-S® Number for an entity would provide by reference to the number certain business information for that entity, e.g., address, parentage.

response for registering, labeler code requests, listing, and providing updates to the information approved under OMB Control No. 0910–0045) for the collection of information not currently submitted using the FDA Forms, and to create and upload the SPL file. FDA anticipates that the hours per response will decrease over time due to the flexibility of submitting information for registering multiple establishments or listing multiple drugs in one SPL file instead of submitting individual FDA Forms, and increasing familiarity with the use of the standards and terminology for creating the SPL file.

In certain cases, if it is unreasonable to expect a person to submit registration and listing information electronically, FDA may grant a waiver from the electronic format requirement. Because registrants will only need a computer and access to the Internet, FDA envisions few instances in which electronic submission of registration and listing information will not be reasonable for the person requesting the waiver and, thus, is estimating that FDA would grant one waiver annually. We estimate that a one-time burden for requesting a waiver would be an hour of time for a mid-level manager to draft, approve, and mail a letter.

Recordkeeping Burden—In table 2 of this document, FDA estimates that 3,295 (39 + 3,256) respondents would expend a one-time burden of approximately 40 hours in preparing, reviewing, and approving an SOP for creating and uploading the SPL file; and an estimated 1 hour annually to maintain the SOP as needed.

FDA estimates the information collection burden, in addition to that approved under OMB Control No. 0910–0045 as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
New registrations, including new labeler code requests	39	14.72	574	2	1,148
Annual updates of registration information	3,256	2.99	9,735	2	19,470
New drug listings	1,567	6.57	10,295	2	20,590
New listings for private label distributors	146	10.06	1,469	2	2,938
June and December updates of all drug listing information	1,677	11.21	18,799	2	37,598
Waiver requests	1	1	1	1	1
Total					81,745

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Activity	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
One-time preparation of SOP	3,295	1	3,295	40	131,800
SOP maintenance	3,295	1	3,295	1	3,295
Total					135,095

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

C. Costs Associated with Electronic Submission

There are no capital costs or operating and maintenance costs associated with the transition from paper to electronic submissions. To create an SPL file and submit it to FDA, a registrant would need the following tools: A computer, appropriate software, access to the Internet, knowledge of terminology and standards, and access to FDA's Electronic Submission Gateway (ESG).

Registrants (and most individuals) have computers and Internet access available for their use. If a business does not have an available computer or access to the Internet, free use of computers and Internet are usually available at public facilities, e.g., a community library; or they may request a waiver from submitting the information electronically.

Software is necessary to create a ''document.'' The SPL file or ''document'' may be created internally by a business with experience with SPL, or a business may use a user-friendly software (XForms)[7] available at no cost for industry use. In addition to the software, FDA also provides technical assistance, and other resources, terminology, and data standards regarding SPL files.[8]

Once the SPL file is created, the registrant would upload the file through the ESG. A digital certificate is needed to use the ESG. The digital certificate binds together the owner's name and a pair of electronic keys (a public key and a private key) that can be used to encrypt and sign documents. However, a small fee of up to $20.00 is charged for the digital certificate and the registrant may need to renew the

[7] See *http://www.fda.gov/oc/datacouncil/xforms.html.*

[8] See *http://www.fda.gov/oc/datacouncil/spl.html.*

certificate not less than annually. FDA is not calculating this small fee as cost of doing business because it is less than or equal to the biannual courier costs the registrant incurs for paper submissions.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, *http://www.fda.gov/cvm/guidance/guidance.html*, and *http://www.regulations.gov*.

Dated: July 3, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–15801 Filed 7–10–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0372]

Global Harmonization Task Force, Study Groups 1 and 5; Proposed and Final Documents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of final and proposed documents that have been prepared by Study Groups 1 and 5 of the Global Harmonization Task Force (GHTF), respectively. These documents represent a harmonized proposal and recommendation from the GHTF Study Groups that may be used by governments developing and updating their regulatory requirements for medical devices. These documents are intended to provide information only and do not describe FDA's current regulatory requirements; elements of these documents may not be consistent with current U.S. regulatory requirements. In particular, FDA seeks comments on the advantages and disadvantages of the approaches in the GHTF documents, particularly where they are not consistent with current practices for the manufacture of products in the United States.

DATES: Submit written or electronic comments on these documents by October 9, 2008. After October 9, 2008, written comments or electronic comments may be submitted at any time to the contact persons listed in this document.

ADDRESSES: Submit written requests for single copies of these documents to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the documents.

Submit written comments concerning these documents 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.reguations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For information regarding Study Group 1:Ginette Y. Michaud, Chairperson, GHTF, Study Group 1, Office of Device Evaluation,Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration,9200 Corporate Blvd., Rockville, MD 20850, 240–276–3700.

For information regarding Study Group 5:Herbert P. Lerner, GHTF, Study Group 5, Office of Device Evaluation, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3641.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has participated in a number of activities to promote the international harmonization of regulatory requirements. In September 1992, a meeting was held in Nice, France by senior regulatory officials to evaluate international harmonization. This meeting led to the development of the organization now known as the GHTF to facilitate harmonization. Subsequent meetings have been held in various locations throughout the world.

The GHTF is a voluntary group of representatives from national medical device regulatory authorities and the regulated industry. Since its inception, the GHTF has been comprised of representatives from five founding members grouped into three geographical areas: Europe, Asia-Pacific, and North America, each of which actively regulates medical devices using its own unique regulatory framework.

The objective of the GHTF is to encourage convergence at the global level of regulatory systems of medical devices to facilitate trade while preserving the right of participating members to address the protection of public health by regulatory means considered most suitable. One of the ways this objective is achieved is by identifying and developing areas of international cooperation to facilitate progressive reduction of technical and regulatory differences in systems established to regulate medical devices. In an effort to accomplish these objectives, the GHTF formed five study groups to draft documents and carry on other activities designed to facilitate global harmonization. This notice relates to documents that have been developed by two of the Study Groups (1 and 5).

Study Group 1 was initially tasked with the responsibility of identifying differences between various regulatory systems. In 1995, the group was asked to propose areas of potential harmonization for premarket device regulations and possible guidelines that could help lead to harmonization. As a result of its efforts, this group has developed final document SG1/N44:2008. SG1/N44:2008 (final document) entitled ''Role of Standards'' provides information on the use of standards by a manufacturer when designing a medical device and, subsequently, when demonstrating that the device conforms to relevant essential safety and performance criteria.

Study Group 5 was initially tasked with the responsibility of developing documents on the content and format for clinical investigation reports and on how to conduct and document a clinical evaluation. As a result of its efforts, this group has developed proposed document SG5(PD)/N37:2007. The proposed document SG5(PD)/N37:2007 entitled ''Clinical Investigations'' introduces general principles of clinical investigations of medical devices and general principles when considering the need for a clinical investigation of a medical device. This document primarily addresses the use of clinical investigations to support a marketing authorization application.

II. Significance of Guidance

These documents represent recommendations from the GHTF study groups and do not describe regulatory requirements. FDA is making these documents available so that industry and other members of the public may express their views and opinions. In particular, FDA seeks comments on the

advantages and disadvantages of the approaches in the GHTF documents, particularly where they are not consistent with current practices for the manufacture of products in the United States.

III. Electronic Access

Persons interested in obtaining a copy of these documents may do so by using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. Information on the GHTF may be accessed at *http://www.ghtf.org*. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding these documents. 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*.

Dated: July 2, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–15797 Filed 7–10–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0137] (formerly Docket No. 2000D–1383)

Guidance for Industry and Food and Drug Administration Staff; Surveillance and Detention Without Physical Examination of Condoms; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Surveillance and Detention Without Physical Examination of Condoms.'' This guidance document provides information to FDA staff and industry about FDA's strategy for addressing further imports of condoms from manufacturers/shippers whose condoms have failed to meet FDA's minimum acceptable quality criteria. The guidance and the strategy are intended to help assure that condoms imported to the United States do not have defects that could compromise their effectiveness and present a health hazard to consumers who rely on condoms for protection from sexually transmitted diseases as well as for contraception.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Surveillance and Detention Without Physical Examination of Condoms'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance 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*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: J. Michael Kuchinski, Center for Devices and Radiological Health (HFZ–332), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 240–276–0115.

SUPPLEMENTARY INFORMATION:

I. Background

Consumers use condoms as a barrier to reduce the risk of catching or spreading sexually transmitted diseases and to reduce the risk of unintended pregnancy. Defective condoms present a potentially significant hazard to health for these users.

FDA's Center for Devices and Radiological Health (CDRH) is aware that some foreign manufacturers and shippers of condoms repeatedly attempt to import condoms that fail water leak testing, indicating a level of defects that does not satisfy the acceptable quality criteria described in Compliance Policy Guide 7124.21. To address the issue of firms that repeatedly offer nonconforming condoms for import to the United States, FDA has devised a risk-based tiered process for placing condoms from identified manufacturers/shippers on an import alert, for releasing individual shipments, and for removing condoms from identified manufacturers/shippers from the import alert and consequent potential detention without physical examination. The process involves three levels of import surveillance and detention that may be applied over a 24-month import surveillance cycle.

This final guidance document supersedes the draft guidance entitled ''Surveillance and Detention Without Physical Examination of Condoms,'' which was announced in the **Federal Register** on August 14, 2000 (65 FR 49585). The comment period closed on November 13, 2000.

We received a small number of comments, and FDA has made some changes to the final guidance document based on these comments. One comment indicated that the risk of detention is greater for high-volume manufacturers because they have many shipments and many FDA analyses in a 24-month period and, therefore, a greater cumulative risk of Type 1 statistical sampling error resulting in some shipments failing analyses even though the shipments are acceptable. After analyzing the import data, FDA agrees that, in theory, such sampling errors are possible, although FDA believes that such errors are unlikely to affect most condom manufacturers because they appear to be producing condoms at a defect rate well below the acceptance criteria of the FDA test. Nevertheless, the revised document recognizes the opportunity for

manufacturers to present evidence to FDA in support of a reconsideration of their listing on the import alert if they believe for any reason that this listing is inappropriate, including as a result of statistical sampling errors or because previous defective shipments were found during a previously concluded import surveillance cycle.

Another change in the final guidance is that the 24-month surveillance period will start when a firm is placed on Level 1 rather than when a firm is removed from Level 1, as proposed in the draft guidance. This change is being implemented to simplify the process and provide a ''level playing field'' for low-volume firms that export shipments of condoms to the United States less frequently than high-volume firms and therefore generally take a longer time to obtain a number of consecutive passing entries sufficient for removal from the import alert.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''Surveillance and Detention Without Physical Examination of Condoms.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Surveillance and Detention Without Physical Examination of Condoms,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1139 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

The information collection recommendations included in this document as part of the strategy for addressing further shipments of condoms from manufacturers/shippers who repeatedly export defective condoms to the United States do not require OMB clearance under the PRA. These collections of information are excepted from the requirements of the PRA under 5 CFR 1320.4(a)(2) and (c). The guidance recommends information to be collected and submitted to FDA ''during the conduct of an administrative action, investigation, or audit involving the agency against specific individuals'' (5 CFR 1320.4(a)(2)) and ''after a case file or equivalent is opened with respect to a particular party'' (5 CFR 1320.4(c)) in order for that specific party to rebut the appearance of adulteration and consequently obtain release of a specific shipment of condoms or removal of specific condoms from listing on Import Alert.

V. 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*.

Dated: July 1, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–15765 Filed 7–10–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0186] (formerly Docket No. 2000D–1384)

Guidance for Industry and Food and Drug Administration Staff; Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves.'' This guidance document provides information to FDA staff and industry about FDA's strategy for addressing further imports of surgeons' and patient examination gloves (medical gloves) from manufacturers/shippers whose medical gloves have failed to meet FDA's minimum acceptable quality criteria. The guidance and the strategy are intended to help assure that medical gloves imported to the United States meet FDA's minimum acceptable quality criteria and do not have defects that could compromise their effectiveness and pose a health hazard to healthcare professionals and patients who rely on medical gloves for protection from blood- and fluid-borne pathogens.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send

one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance 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*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Diane Goldsberry, Center for Devices and Radiological Health (HFZ–333), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 240–276–0115.

SUPPLEMENTARY INFORMATION:

I. Background

Healthcare providers, professionals, and others use surgeons' and/or patient examination gloves (medical gloves) as a barrier against the transmission of blood- and fluid-borne pathogens. Defects in medical gloves, such as holes, can compromise the effectiveness of the glove barrier integrity and pose a potentially significant hazard to the health of users as well as patients.

FDA's Center for Devices and Radiological Health (CDRH) is aware from its import records that some foreign manufacturers and shippers repeatedly attempt to import into the United States medical gloves that fail water leak testing and therefore do not meet the acceptable quality criteria defined in 21 CFR 800.20. To address this situation, FDA has devised a risk-based tiered process for placing medical gloves from identified manufacturers/shippers on an import alert, for releasing individual shipments, and for removing medical gloves from the identified manufacturers/shippers from the import alert and consequent potential detention without physical examination. The process involves three levels of import surveillance and detention that may be applied over a 24-month import surveillance cycle.

This final guidance document supersedes the draft guidance entitled ''Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves,'' which was announced in the **Federal Register** of July 26, 2000 (65 FR 45991). The comment period closed on October 24, 2000.

We received a small number of comments, and FDA has made some changes to the final guidance document based on these comments. One comment indicated that the risk of detention is greater for ''high-volume'' manufacturers because they have many shipments and many FDA analyses in a 24-month period and therefore a greater cumulative risk of ''Type 1'' statistical sampling error resulting in some shipments failing analyses even though the shipments are acceptable. After analyzing the import data, FDA agrees that in theory such sampling errors are possible, although FDA believes that such errors are unlikely to affect most medical glove manufacturers because they appear to be producing medical gloves at a defect rate well below the acceptance criteria of the FDA test. Nevertheless, the revised document recognizes the opportunity for manufacturers to present evidence to FDA in support of a reconsideration of their listing on the import alert if they believe for any reason that this listing is inappropriate, including as a result of statistical sampling errors or because previous defective shipments were found during a previously concluded import surveillance cycle.

Another change in the final guidance is that the 24-month surveillance period will start when a firm is placed on Level 1 rather than when a firm is removed from Level 1, as was proposed in the original draft guidance. This change is being implemented to simplify the process and provide a level playing field for ''low-volume'' firms that export shipments of gloves to the United States less frequently than high-volume firms and therefore generally take a longer time to obtain a number of consecutive passing entries sufficient for removal from the import alert.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1141 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

The information collection recommendations included in this document as part of the strategy for addressing further shipments of medical gloves from manufacturers/shippers who repeatedly export defective medical gloves to the United States do not require OMB clearance under the PRA. These collections of information are excepted from the requirements of the PRA under 5 CFR 1320.4(a)(2) and (c). The guidance recommends information to be collected and submitted to FDA ''during the conduct of an administrative action, investigation, or audit involving the agency against specific individuals'' (5 CFR 1320.4(a)(2)) and ''after a case file or equivalent is opened with respect to a particular party'' (5 CFR 1320.4(c)) in order for that specific party to rebut the appearance of adulteration and consequently obtain release of a particular shipment of its medical gloves or removal of its medical gloves from listing on import alert.

V. 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*.

Dated: July 1, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–15766 Filed 7–10–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Approaches to Reduce Risk of Transfusion-Transmitted Babesiosis in the United States; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Approaches to Reduce the Risk of Transfusion-Transmitted Babesiosis in the United States.'' The purpose of the public workshop is to discuss the risk and possible approaches to minimize the incidence of transfusion-transmitted babesiosis in the United States. We are convening this workshop at the present time because FDA has observed a recent increase in the number of reports of transfusion-transmitted babesiosis, thus warranting additional discussion to address this blood safety issue. The public workshop will feature presentations and roundtable discussions led by experts from academic institutions, government, and industry.

Date and Time: The public workshop will be held on September 12, 2008, from 7:30 a.m. to 5:30 p.m.

Location: The public workshop will be held at the Lister Hill Center Auditorium, Bldg. 38A, National Institutes of Health, 8800 Rockville Pike, Bethesda, MD 20894.

Contact Person: Rhonda Dawson, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *rhonda.dawson@fda.hhs.gov*.

Registration: Mail, fax or e-mail your registration information (including name, title, firm name, address, telephone and fax numbers) to the contact person by August 25, 2008. There is no registration fee for the public workshop. Early registration is recommended because seating is limited to 175 attendees. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Rhonda Dawson (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: Babesiosis is a malaria-like illness caused by infection of erythrocytes with protozoan parasites belonging to the genus *Babesia*. Transfusion-transmitted babesiosis is caused by transfusion of blood or blood components collected from donors infected with *Babesia* parasites. During the last 40 years, more than 60 cases of transfusion-transmitted babesiosis have been recognized in the United States. In fiscal years 2006 and 2007, FDA received a total of five reports of fatal transfusion-transmitted babesiosis (primary or contributory cause of death) in the United States.

The public workshop will facilitate a scientific discussion on approaches to reduce the risk of transfusion-transmitted babesiosis in the United States. Topics to be discussed include: (1) Biology, pathogenesis, transmission and epidemiology of babesiosis; (2) risk of *Babesia* infections through transfusion of blood and blood components; (3) laboratory testing to detect *Babesia* infections; and, (4) possible approaches, including donor testing and donor deferral, to reduce the risk of transfusion-transmitted babesiosis while maintaining blood availability and safety.

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*.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: July 2, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–15799 Filed 7–10–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committee, Food Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Food Advisory Committee (FAC), Center for Food Safety and Applied Nutrition (CFSAN).

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Nominations received on or before August 11, 2008 will be given first consideration for membership on the Food Advisory Committee. Nominations received after August 11, 2008 will be considered for nomination to the committee should nominees still be needed.

ADDRESSES: All Nominations for membership should be sent electronically to *CV@FDA.HHS.GOV* or by mail to: Advisory Committee Oversight and Management Staff, 5600 Fisher Lane (HF–4), rm. 15A–12, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding all nomination questions for membership, the primary contact is Carolyn Jeletic, Center for Food Safety and Applied Nutrition, 301–436–1913, FAX: 301–436–2633, e-mail:

Carolyn.Jeletic@fda.hhs.gov. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site by using the following link: *http://www.fda.gov/oc/advisory/default.htm*.

SUPPLEMENTARY INFORMATION: FDA is requesting nomination for voting members on the Food Advisory Committee.

I. Function of the Food Advisory Committee

The committee provides advice, primarily to the Commissioner of Food and Drugs and other appropriate officials, on emerging food safety, food science, nutrition, and other food-related health issues that the FDA considers of primary importance for its food and cosmetics programs. The committee may be charged with reviewing and evaluating available data and making recommendations on matters such as those relating to: (1) Broad scientific and technical food or cosmetic related issues, (2) the safety of new foods and food ingredients, (3) labeling of foods and cosmetics, (4) nutrient needs and nutritional adequacy, and (5) safe exposure limits for food contaminants. The committee may also be asked to provide advice and make recommendations on ways of communicating to the public the potential risks associated with these issues and on approaches that might be considered for addressing the issues.

II. Criteria for Voting Members

FDA is requesting nominations of voting members with appropriate expertise in the following specialties: Microbiology, food technology, and nutrition.

III. Nomination Procedures

Pursuant to 21 CFR 14.84(d), any interested person may nominate one or more qualified persons for membership on the advisory committee. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, and their current business address and telephone number and e-mail address if available. Each nomination shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.2) and 21 CFR part 14 relating to advisory committees.

Dated: July 3, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–15839 Filed 7–10–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Self-Governance Program; Planning Cooperative Agreement

Announcement Type: New.

Funding Announcement Number: HHS–2008–IHS–TSGP–0002.

Catalog of Federal Domestic Assistance Number(s): 93.2 10.

Key Dates:

Application Deadline Date: August 15, 2008.

Review Date: August 25–26, 2008.

Earliest Anticipated Start Date: September 1, 2008.

I. Funding Opportunity Description

The purpose of the program is to award cooperative agreements that provide planning resources to Tribes interested in participating in the Tribal Self-Governance Program (TSGP) as authorized by Title V, Tribal Self-Governance Amendments of 2000 of the Indian Self-Determination and Education Assistance Act of Public Law (Pub. L.) 93–638, as amended. There is limited competition under this announcement because the authorizing legislation restricts eligibility to Tribes that meet specific criteria (Refer to Section III.1.A., Eligible Applicants in this announcement). The TSGP is designed to promote self-determination by allowing Tribes to assume more control of Indian Health Service (IHS) programs and services through compacts negotiated with the IHS. The Planning Cooperative Agreement allows a Tribe to gather information to determine the current types of Programs, Services, Functions, and Activities (PSFAs), and related funding available at the Service Unit, Area, and Headquarters levels and provide the opportunity to improve and enhance the healthcare delivery system to better meet the needs of the Tribal community. This program is described at 93.210 in the Catalog of Federal Domestic Assistance (CFDA).

II. Award Information

Type of Awards: Cooperative Agreement.

Estimated Funds Available: The total amount identified for Fiscal Year (FY) 2008 is $600,000 for approximately twelve (12) Tribes. Awards under this announcement are subject to the availability of funds.

Anticipated Number of Awards: The estimated number of awards to be funded is approximately 12.

Project Period: 12 months.

Award Amount: $50,000 per year.

Programmatic Involvement: TSGP funds will be awarded as cooperative agreements and will have substantial IHS programmatic involvement to establish a basic understanding of PSFAs and associated funding at the Service Unit, Area, and Headquarters levels.

The IHS roles and responsibilities will include:

- Providing a description of PSFAs and associated funding at all levels, including funding formulas and methodologies related to determining Tribal shares.
- Identifying IHS staff who will consult with applicants on methods currently used to manage and deliver health care.
- Providing applicants with statutes, regulations and policies that provide authority for administering IHS programs.

The grantee roles and responsibilities are critical to the success of the program and will include:

- Researching and analyzing the complex IHS budget, to gain a thorough understanding of funding distribution at all levels to determine which PSFAs the Tribe may elect to assume.
- Establishing a process by which Tribes can effectively approach the IHS to identify programs and associated funding which could be incorporated into their current programs.
- Determining the Tribe's share of each PSFA and evaluating the current level of health care services being provided to make an informed decision on new program assumption(s).

III. Eligibility Information

1. Eligible Applicants

To be eligible for a Planning Cooperative Agreement under this announcement, an applicant must meet all of the following criteria:

A. Be a federally-recognized Tribe as defined in Title V, Pub. L. 106–260, Tribal Self-Governance Amendments of 2000, of the Indian Self-Determination and Education Assistance Act (the Act), Pub. L. 93–638, as amended. However, Alaska Native Villages or Alaska Native Village Corporations are not eligible if they are located within the area served

by an Alaska Native regional health entity already participating in compact status (25 U.S.C. 458aaa-2(e)). Those Tribes not represented by a self-governance Tribal consortium compact, within their area, may still be considered to participate in the TSGP.

2. Cost Sharing or Matching

The Tribal Self-Governance Planning Cooperative Agreement announcement does not require matching funds or cost sharing to participate in the competitive grant process.

3. Other Requirements

The following documentation is required (if applicable):

A. This program is described at 93.210 in the CFDA.

B. Tribal Resolution—Submit a Tribal resolution from the governing body authorizing the submission of the application for the Tribal Self-Governance Planning Cooperative Agreement. Tribal Consortia applying for a Tribal Self-Governance Planning Cooperative Agreement shall submit Tribal Council Resolutions from each Tribe in the consortium. Draft resolutions, submitted with the application, are acceptable in lieu of an official signed resolution. However, an official signed Tribal resolution must be received by the Division of Grants Operations (DGO), Attn: John Hoffman, 801 Thompson Avenue, TMP 360, Rockville, MD 20852, by Monday, August 25, 2008. If an official signed resolution is not received by Monday, August 25, 2008, the application will be considered incomplete and will be returned without consideration.

C. Demonstrate, for three fiscal years, financial stability and financial management capability, which is defined as no uncorrected significant and/or material audit exceptions in the required annual audit of the Indian Tribe's self-determination contracts or self-governance funding agreements with any Federal agency. Applicants are required to submit a current version of the organization's audit report. The applicants may scan the documents and attach them to the electronic application. If the applicant determines that the audit reports are too lengthy, the applicants may submit them separately via regular mail by the due date, August 15, 2008. Applicants, sending in audits via regular mail, must submit two copies of the audits for three previous fiscal years under separate cover directly to the Division of Grants Operations, Attn: John Hoffman, 801 Thompson Avenue, TMP 360, Rockville, MD 20852, referencing the Funding Opportunity Number, HHS–2008–IHS–TSGP–0002, as prescribed by Pub. L. 98–502, the Single Audit Act, as amended (see OMB Circular A–133, revised June 24, 1997, Audits of States, Local Governments, and Non-Profit Organizations), for the three previous fiscal years. If this documentation is not received by August 15, 2008, the application will be considered as incomplete and will be returned to the applicant without further consideration.

D. If application budgets exceed the stated dollar amount that is outlined within this announcement, the application will be returned to the applicant without further consideration.

IV. Application and Submission Information

1. Applicant package and detailed instructions for this announcement may be found in Grants.gov (*http://www.grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/gogp_funding.asp.*

Information regarding the electronic application process may be directed to Michelle G. Bulls, at (301) 443–6290.

Information regarding this announcement may also be found on the Office of Tribal Self-Governance Web site at: *http://www.ihs.gov/NonMedicalPrograms/SelfGovernance/index.cfm?module=planning_negotiation.*

2. *Content and Form of Application Submission:*

- Be single spaced.
- Be typewritten.
- Have consecutively numbered pages.
- Use black type not smaller than 12 characters per one inch.
- Be printed on one side only of standard size 8½'' x 11'' paper.
- Contain a narrative that does not exceed seven typed pages that includes the other submission requirements below. The seven page narrative does not include the work plan, standard forms, Tribal resolutions or letters of support (if necessary), table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements

All Federal-wide public policies apply to IHS grants with exception of the Lobbying and Discrimination public policy. Include Letter of Intent requirements under Public Policy Requirements.

3. *Submission Dates and Times:* Applications must be submitted electronically through Grants.gov by 12 midnight Eastern Standard Time (EST). If technical challenges arise and the applicant is unable to successfully complete the electronic application process, the applicant should contact Michelle G. Bulls, Grants Policy Staff (GPS), fifteen days prior to the application deadline and advise of the difficulties that your organization is experiencing. The grantee must obtain prior approval, in writing (e-mails are acceptable) allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies may be sent to the appropriate grants contact that is listed in Section IV.1. above. Applications not submitted through Grants.gov, without an approved waiver, may be returned to the applicant without review or consideration. Late applications will not be accepted for processing, will be returned to the applicant, and will not be considered for funding.

4. *Intergovernmental Review:* Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. *Funding Restrictions:* A. Tribes are only eligible to be awarded one Tribal Self-Governance Planning Cooperative Agreement award.

B. Each planning cooperative agreement shall not exceed $50,000. The available funds are inclusive of direct and appropriate indirect costs.

C. The available funds are inclusive of direct and indirect costs.

D. IHS will not acknowledge receipt of applications.

6. *Other Submission Requirements:*

The application must comply with the following:

A. Table of Contents.

B. Abstract (one page)—Summarizes the project.

C. Narrative (no more than 7 pages) and should include the following:

(1) Background information on the Tribe.

(2) Proposed scope of work, objectives, and activities that provide a description of what will be accomplished including a one-page Time Frame Chart.

D. Budget narrative and justification.

E. Tribal Resolution.

F. Appendices to include:

(1) Resumes or position descriptions of key staff.

(2) Contractors/Consultants resumes or qualifications and scope of work.

(3) Current Indirect Cost Agreement.

(4) Organizational Chart (Optional).

Electronic Submission—The preferred method for receipt of applications is electronic submission through Grants.gov. However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at 1–800–518–4726 or *support@grants.gov.* The Contact

Center hours of operation are Monday-Friday from 7 a.m. to 9 p.m. EST. If you require additional assistance please call (301) 443–6290 and identify the need for assistance regarding your Grants.gov application. Your call will be transferred to the appropriate grants staff member. The applicant must seek assistance at least fifteen days prior to the application deadline. Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or requesting timely assistance with technical issues will not be a candidate for paper applications.

To submit an application electronically, please use the *http://www.Grants.gov* and select ''Apply for Grants'' link on the home page. Download a copy of the application package on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

- Under the new IHS application submission requirements, paper applications are not the preferred method. However, if you have technical problems submitting your application on-line, please directly contact Grants.gov Customer Support at: *http://www.grants.gov/CustomerSupport.*
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from GPS must be obtained.
- If it is determined that a formal waiver is necessary, the applicant must submit a request, in writing (e-mails are acceptable), to *Michelle.Bulls@ihs.gov* that includes a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application package must be downloaded by the applicant from Grants.gov and sent directly to John Hoffman, Division of Grants Operations (DGO), 801 Thompson Avenue, TMP 360, Rockville, MD 20852 by the due date, August 15, 2008.
- Upon entering the Grants.gov site, there is information available outlining the requirements to the applicant regarding electronic submission of an application through Grants.gov, as well as the hours of operation. We strongly encourage all applicants not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.
- To use Grants.gov, you, as the applicant, must have a Data Universal Numbering System (DUNS) Number and register in the CCR. You should allow a minimum often days working days to complete CCR registration. See below on how to apply.
- You must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.
- Your application must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The IHS DGO will retrieve your application from Grants.gov. The IHS DGO will not notify applicants that the application has been received.
- You may access the electronic application for this program on *http://www.Grants.gov.*
- You may search for the downloadable application package by either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.
- The applicant must provide the Funding Opportunity Number: HHS–2008–IHS–TSGP–0002.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to obtain a DUNS number from Dun and Bradstreet to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR Registration Worksheet located on *http://www.grants.gov/CCRRegister.* More detailed information regarding these registration processes can be found at *http://www.grants.gov.*

V. Application Review Information

1. Criteria

A. Goals and Objectives of the Project (30 Points)

Are the goals and objectives measurable; are they consistent with the purpose of the program and the needs of the people to be served, and are they achievable as demonstrated by the proposed time frame chart?

B. Methodology (20 Points)

Describe fully and clearly the methodology and activities that will be used to accomplish the goals and objectives of the project.

C. Management of Health Program(s) (10 Points)

Does the applicant propose an improved approach to managing the health program(s) and state/demonstrate how the delivery of quality health services will be maintained under self-governance?

D. Organizational Capabilities and Qualifications (25 Points)

Describe the organizational structure of the Tribe and their ability to manage the proposed project. Include resumes or position descriptions of key staff showing requisite experience and expertise and, where applicable, include resumes and scope of work for consultants that demonstrate experience and expertise relevant to the project.

E. Budget and Budget Justification (15 Points)

Submit a line-item budget with a narrative justification for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative.

2. Review and Selection Process

In addition to the above criteria/requirements, applications are considered according to the following:

A. Application Submission

(1) The applicant and proposed project type is eligible in accordance with this cooperative agreement announcement.

(2) The applicant has not previously received a Tribal Self-Governance Planning Cooperative Agreement award.

(3) Abstract, narrative, budget, required forms, appendices and other material submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation.

B. Competitive Review of Eligible Applications

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by the Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed in Section V.1. The criteria are used to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TSGP funding is not sufficient to support all approved applications. Applications recommended for approval, having a score of 60 or above by the ORC are forwarded to the DGO for cost analysis and further recommendation. The program official forwards the recommended approval list to the IHS Director for final review and approval. Applications scoring below 60 points will be disapproved.

Note: In making final selections, the IHS Director will consider the ranking factor and the status of the applicant's three previous years' single audit reports. The comments from the ORC will be advisory only. The IHS Director will make the final decision on awards.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by the DGO and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document. Applicants who are approved but unfunded or disapproved based on their Objective Review score will receive a copy of the Final Executive Summary which identifies the weaknesses and strengths of the application submitted.

2. Administrative Requirements

Grants are administrated in accordance with the following documents:

- This Program Announcement.
- 45 CFR Part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments,'' or 45 CFR Part 74, ''Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations.''
- Grants Policy Guidance: HHS Grants Policy Statement, January 2007.
- Cost Principles: OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments'' (Title 2 Part 225).
- Administrative Requirements: OMB Circular A–122, ''Non-Profit Organizations'' (Title 2 Part 230).
- Audit Requirements: OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part 11–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate is provided to DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *http://rates.psc.gov/* and the Department of Interior (National Business Center) *http://www.nbc.gov/acquisition/ics/icshorme.html.* If your organization has questions regarding the indirect cost policy, please contact the DGO at 301–443–5204.

4. Reporting

A. Progress Report. Program progress reports are required semi-annually. These reports must be submitted within 30 days of the end of the half year and will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Report. Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting. The final SF–269 must be verified from the grantee's records on how the value was derived. Grantees must submit reports in a reasonable period of time.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) the imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

5. Telecommunication for the hearing impaired is available at: TTY 301–443–6394.

VII. Agency Contact(s)

1. Questions on the programmatic issues may be directed to: Matt Johnson, Policy Analyst Office of Tribal Self-Governance Telephone No.: 301–443–7821 Fax No.: 301–443–1050 E-mail: *matthew.johnson@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: John Hoffman, Grants Management Specialist Division of Grants Operations Telephone No.: 301–443–5204 Fax No.: 301–443–9602 E-mail: *john.hoffman2@ihs.gov.*

VIII. Other Information

The Public Health Service (PHS) strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and

promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Dated: July 2, 2008.

Robert G. McSwain,

Director, Indian Health Service.

[FR Doc. E8–15629 Filed 7–10–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI-Patient Oriented Research (K23, 24, and 25's) Career Enhancement Awards.

Date: July 21–22, 2008.

Time: 7:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Mark Roltsch, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892–7924, 301–435–0287, *roltschm@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Small Research Grants (R03's).

Date: July 21–22, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keary A Cope, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, (301) 435–2222, *copeka@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Mentored Clinical Scientist Development and Independent Scientist Awards.

Date: July 22–23, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Rina Das, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892–7924, 301–435–0297, *dasr2@nhlbi.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: June 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–15374 Filed 7–10–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention National Advisory Council will meet on July 29 and July 30, 2008.

A portion of the meeting will be open and will include discussion of the Center's policy issues, and current administrative, legislative and program developments.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, and in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the CSAP National Advisory Council Designated Federal Official, Tia Haynes (see contact information below), to make arrangements to attend, to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Committee members may be obtained either by accessing the SAMHSA Committee's Web site at *http://www.samhsa.gov/council/csap/csapnac.aspx* as soon as possible after the meeting, or by contacting Ms. Haynes. The transcript for the open portion of the meeting will also be available on the SAMHSA Committee's Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration Center for Substance Abuse Prevention National Advisory Council

Date/Time/Type: July 29, 2008, 9 a.m. to 4:30 p.m.: Open. July 30, 2008. From: 9 a.m. to 9:30 a.m.: Open. From: 9:30 a.m. to 12 p.m.: Closed.

Place: 1 Choke Cherry Road, Sugarloaf and Seneca Conference Rooms, Rockville, Maryland 20857.

For Further Information Contact: Tia Haynes, Designated Federal Official, SAMHSA/CSAP National Advisory Council, 1 Choke Cherry Road, Room 4–1066, Rockville, MD 20857, Telephone: (240) 276–2436; FAX: (240) 276–2430, E-mail: *tia.haynes@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E8–15756 Filed 7–10–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet on July 31, 2008 from 1 p.m. to 3 p.m. via teleconference.

The meeting will include discussion and evaluation of grant applications reviewed by Initial Review Groups. Therefore, the meeting will be closed to

the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site at *www.nac.samhsa.gov,* or by contacting CSAT National Advisory Council's Designated Federal Official, Ms. Cynthia Graham (see contact information below).

Committee Name: SAMHSA Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: July 31, 2008, from 1 p.m. to 3 p.m.: Closed.

Place: SAMHSA Building, 1 Choke Cherry Road, VTC Room, L–1057, Rockville, Maryland 20857.

Contact: Cynthia Graham, M.S., Designated Federal Official, SAMHSA CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, Maryland 20857, Telephone: (240) 276–1692, Fax: (240) 276–16890, E-mail: *cynthia.graham@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E8–15757 Filed 7–10–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Emergency Submission to OMB, Comment Request Action: 30-Day Notice of Information Collection Under Review; IDENT/IAFIS Interoperability Assessment

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following emergency information collection, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The purpose of this notice is to allow 30 days for public comments. Comments are encouraged and will be accepted for thirty days until August 11, 2008. This process is conducted in accordance with 5 CFR 1320.10.

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 OMB Desk Officer, for the United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Emergency Request for Information Collection Approval.

(2) *Title of the Form/Collection:* IDENT/IAFIS Interoperability Assessment.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number; United States Immigration and Customs Enforcement.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local Correctional Facilities. 8 U.S.C. 1231 (a) gives The Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) authority to remove criminal aliens who have been ordered as such. The U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) is improving community safety by transforming the way the federal government cooperates with state and local law enforcement agencies to identify, detain, and remove all criminal aliens held in custody. Secure Communities (SC) will revolutionize immigration enforcement by using technology to share information between law enforcement agencies and by applying risk-based methodologies to focus resources on assisting all local communities remove high-risk criminal aliens.

In order to implement Secure Communities, ICE must collect detailed business requirements and input from its state and local law enforcement partners. ICE will interview law enforcement officials at over 3,500 state and local jails across the United States as part of the Secure Communities Initiative. The collection of information involves the use of information technology permitting electronic submissions of responses through the use of an online survey. This survey will determine the fingerprint procedures and technological capabilities of state and local jails governance, as well as basic jail booking statistics. This information will be used in order to prioritize local sites and deliver the implementation strategy of the Secure Communities Initiative.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,500 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,750 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Lee Shirkey, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 353–2266.

Dated: July 8, 2008.

Lee Shirkey,

Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E8–15846 Filed 7–10–08; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0180; 40136–1265–0000–S3]

Delta and Breton National Wildlife Refuges, Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive

Conservation Plan and Environmental Assessment (Draft CCP/EA) for Delta National Wildlife Refuge in Plaquemines Parish, Louisiana, and Breton National Wildlife Refuge in St. Bernard and Plaquemines Parishes, Louisiana, is available for distribution. This document was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. The Draft CCP/EA describes the Service's proposal for management of the refuge for 15 years.

DATES: Written comments must be received at the postal address listed below no later than August 11, 2008.

ADDRESSES: To provide written comments or to obtain a copy of the Draft CCP/EA, please write to: Mr. Jack Bohannan, 61389 Highway 434, Lacombe, LA 70445. A copy of the Draft CCP/EA is available on both compact diskette and hard copy. You may also access and download a copy of the Draft CCP/EA at the Service's Internet Site: *http://southeast.fws.gov/planning/.*

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bohannan; Telephone: 985/882–2026.

SUPPLEMENTARY INFORMATION:

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.

Background:

Significant issues addressed in the Draft CCP/EA include managing threatened and endangered species, species of concern, and other species of federal responsibility; conserving habitats and restoring wetland habitats specific to the riverine and marine environments; providing and improving refuge visitor programs; increasing public outreach; and providing environmental education programs.

Three management alternatives were considered for Delta Refuge. Alternative A would continue current management with no new actions to improve or enhance existing programs. Alternative B would focus on expanding public use activities to the fullest extent possible, including duplicating programs and opportunities offered at the adjacent wildlife management area. Alternative C, the proposed alternative, would emphasize managing natural resources based on maintaining and improving wetland habitats with improved restoration techniques; providing quality public use programs and wildlife-dependent recreational activities; and expanding the outreach program.

Three management alternatives were also considered for Breton Refuge. Alternative A would continue the present management practices with no changes or improvements. Alternative B would focus on leaving the islands to the natural processes and weather events with no active management actions. Alternative C, the proposed alternative, would emphasize working with partners to restore island habitat with large-scale projects, if considered feasible; improving outreach; and providing environmental education relating to the barrier islands to local schools.

Delta Refuge, consisting of 48,799 acres of wetlands at the mouth of the Mississippi River, was established on November 19, 1935, by Executive Order 7229.

Breton Refuge, the second oldest national wildlife refuge in the United States, is a barrier island chain in Breton and Chandeleur Sounds in the Gulf of Mexico. It was established on October 4, 1903, by Executive Order 7938, signed by President Theodore Roosevelt.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dates: August 16, 2007.

Cynthia K. Dohner,

Acting Regional Director.

Editorial Note: This document was received at the Office of the Federal Register on July 7, 2008.

[FR Doc. E8–15762 Filed 7–10–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0184; 40136–1265–0000–S3]

Swanquarter National Wildlife Refuge, Hyde County, NC; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service, published a **Federal Register** notice announcing the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Swanquarter National Wildlife Refuge (NWR) for public review and comment. This notice contained an error in the e-mail address we provided for public review and comment. We now correct the e-mail address.

SUPPLEMENTARY INFORMATION: On July 3, 2008, we published a notice announcing the availability of a Draft CCP/EA for Swanquarter NWR for public review and comment (73 FR 38242). This notice contained an error in the e-mail address we provided for the public to use to send us comments on the Draft CCP/EA.

In notice document E8–15117, on page 38242 of the issue of July 3, 2008, make the following correction:

On page 38242, in the second column, the **ADDRESSES** section should read:

ADDRESSES: Requests for copies of the Draft CCP/EA should be addressed to: Bruce Freske, Refuge Manager, Swanquarter National Wildlife Refuge, 38 Mattamuskeet Road, Swan Quarter, NC 27885. The Draft CCP/EA may also be accessed and downloaded from the Service's Internet Site: *http://southeast.fws.gov/planning.*

Comments on the Draft CCP/EA may be submitted to the above address or via electronic mail to *Bruce_Freske@fws.gov.*

Dated: July 8, 2008.

Sara Prigan,

Federal Register Liaison.

[FR Doc. E8–15917 Filed 7–10–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2008–N0064; 80230–1265–0000–S3]

Desert National Wildlife Refuge Complex, Clark, Lincoln, and Nye Counties, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments: draft comprehensive conservation plan/environmental impact statement.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a Draft Comprehensive Conservation Plan/Environmental Impact Statement (CCP/EIS) for the Desert National Wildlife Refuge Complex for public review and comment. The Desert National Wildlife

Refuge Complex is composed of Ash Meadows National Wildlife Refuge, Desert National Wildlife Refuge, Moapa Valley National Wildlife Refuge and Pahranagat National Wildlife Refuge. The CCP/EIS, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, describes how the Service will manage the Refuges for the next 15 years. Draft compatibility determinations for several existing and proposed public uses are also available for review and public comment with the Draft CCP/EIS.

DATES: Written comments must be received at the address below on or before September 9, 2008.

ADDRESSES: For more information on obtaining documents and submitting comments, see ''Review and Comment'' under **SUPPLEMENTARY INFORMATION**. For public meeting location see ''Public Meetings.''

FOR FURTHER INFORMATION CONTACT: Cynthia Martinez, Project Leader, U.S. Fish and Wildlife Service, 4701 North Torrey Pines, Las Vegas, NV 89130, phone (702) 515–5450 or Mark Pelz, Chief, Refuge Planning, 2800 Cottage Way, W–1832, Sacramento, CA 95825, phone (916) 414–6504.

SUPPLEMENTARY INFORMATION:

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year 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 and photography, environmental education and interpretation.

We initiated the CCP/EIS for the Desert National Wildlife Refuge Complex in August 2002. At that time and throughout the process, we requested, considered, and incorporated public scoping comments in numerous ways. Our public outreach has included a **Federal Register** notice of intent published on August 21, 2002, agency and Tribal scoping meetings, five public workshops, planning updates, and a CCP Web page. We received over 400 scoping comments during the 60-day public comment period.

Background

Ash Meadows Refuge was established in 1984 under the authority of the Endangered Species Act of 1973, as amended. It comprises 23,000 acres of spring-fed wetlands, mesquite bosques, and desert uplands that provide habitat for at least 24 plants and animal species found nowhere else in the world. The Refuge is located 90 miles northwest of Las Vegas and 30 miles west of Pahrump.

Desert Refuge was originally established in 1936 by Executive Order No. 7373 and subsequently modified by Public Land Order 4079, for the protection, enhancement and maintenance of wildlife resources including bighorn sheep. Located just north of Las Vegas, Nevada, the 1.6 million acre refuge is the largest National Wildlife Refuge in the lower 48 states.

The Moapa Valley Refuge was established September 10, 1979, under the authority of the Endangered Species Act of 1969, as amended, to secure habitat for the endangered Moapa dace. The Refuge is located on 116 acres in northeastern Clark County. Due to its small size, fragile habitats, on-going habitat restoration work, and unsafe structures, the Refuge is currently closed to the general public.

The Pahranagat Refuge was established in 1963, under the authority of the Migratory Bird Conservation Act, as amended, to protect habitat for migrating birds in the Pahranagat Valley. The 5,382-acre refuge consists of marshes, meadows, lakes, and upland desert habitat. It provides nesting, resting, and feeding areas for waterfowl, shorebirds, wading birds, and song birds including the endangered southwestern willow flycatcher.

Alternatives

The Draft CCP/EIS identifies and evaluates three alternatives for managing Ash Meadows and Moapa Valley Refuges and four alternatives for managing Desert and Pahranagat Refuges for the next 15 years. The alternative for each Refuge that appears to best meet the refuge purposes is identified as the preferred alternative. The preferred alternatives were identified based on the analysis presented in the Draft CCP/EIS, which may be modified following the completion of the public comment period based on comments received from other agencies, Tribal governments, non-governmental organizations, or individuals.

Alternatives for Ash Meadows National Wildlife Refuge

Under Alternative A, the no action alternative, we would continue to manage the Refuge as we have in the past. We would implement habitat restoration plans that have already been completed. No major changes in habitat management would occur. The existing wildlife observation, photography, environmental education, and interpretation programs would remain unchanged.

Under Alternative B, we would plan and implement springhead, channel, and landscape restoration on about two thirds of the Refuge. Surveys and monitoring for special status species would be expanded as would efforts to control invasive plants and animals. Environmental education, interpretation and wildlife observation opportunities would be improved and expanded and a new visitor contact station and headquarters facility would be constructed.

Under the preferred alternative, Alternative C, we would seek to restore springheads, channels and floodplains throughout the Refuge. Surveys and monitoring, habitat protection, pest management, and research would also be substantially expanded. Environmental education, interpretation, and wildlife observation programs would be similar to but slightly less than Alternative B.

Alternatives for the Desert National Wildlife Refuge

Under Alternative A, the no action alternative, we would continue current management for bighorn sheep and other species. We would also continue to offer limited opportunities for wildlife observation and photography, environmental education, and interpretation at Corn Creek. Existing backcountry recreation opportunities would continue to be offered including bighorn sheep hunting, hiking, camping, horseback riding, and backpacking. In addition, under this and all other alternatives, we would design and construct a visitor center and administrative offices at Corn Creek and continue to protect the wilderness character of the 1.4 million acre proposed Desert Wilderness.

Under Alternative B, wildlife management programs would be similar to Alternative A, with minor improvements, including expanded surveys for bighorn sheep and installation of post and cable fencing along the southern boundary. This

alternative would also include a substantial expansion in visitor services over Alternative A, including a new environmental education program, improved roads, a new auto tour route, and new wildlife viewing trails.

Under the preferred alternative, Alternative C, we would expand inventory and monitoring for bighorn sheep, special status species, and vegetation and wildlife communities throughout the Refuge. Under this alternative, we would also use prescribed fire and naturally ignited fires in Refuge plant communities where appropriate to restore vegetation characteristics representative of a natural fire regime. Alternative C would also include fencing along the eastern boundary as well as the permanent closure of illegal roads and rehabilitation of damaged habitat along the southern and eastern boundaries. Visitor services under this alternative would be the same as under Alternative B except no auto tour route or wildlife viewing trails would be developed.

Under Alternative D, the wildlife management and inventory and monitoring programs would be similar to Alternative C. However, under this alternative, visitor services would be scaled back from the other alternatives. For example, the visitor center would only be staffed on weekends during the off-peak seasons and there would be no road improvements on the Refuge.

Alternatives for Moapa Valley National Wildlife Refuge

Under Alternative A, the no action alternative, we would continue to manage the Refuge as we have in the recent past. Springhead and channel restoration work and visitor facilities on the Plummer Unit would be completed. The limited inventory and monitoring program would also continue. However, the Refuge would remain closed to the public, except by special arrangement.

Under Alternative B, wildlife management programs would be similar to Alternative A, with minor improvements, including expanded surveys for sensitive species and their habitats, and strategies for removing nonnative aquatic species. We would also restore native vegetation along the springheads and channels on the Pederson Unit. This alternative would also include a substantial expansion in visitor services over Alternative A, including opening the Refuge on weekends and improved visitor facilities.

Under the preferred alternative, Alternative C, wildlife management would be similar to Alternative B but would include increased monitoring and the development of a long term inventory and monitoring plan for sensitive species. In addition, we would restore the springheads and channels and associated native vegetation on the Apcar unit. Under Alternative C, we would expand the Refuge acquisition boundary by 1,503 acres and pursue acquisition of the lands within the boundary to protect habitat for Moapa dace and other sensitive species. Under this alternative, the Refuge would be open to visitors every day, the environmental education program would be expanded, and additional trails would be constructed.

Alternatives for Pahranagat National Wildlife Refuge

Under Alternative A, the no action alternative, we would continue to manage Pahranagat Refuge as we have in the recent past. The in-progress hydrology studies would be completed and a wetland habitat management plan would be developed and implemented. Riparian habitat would be maintained for the southwestern willow flycatcher and other migratory birds. Under this alternative, we would maintain the fishing, hunting, wildlife observation, and environmental education and interpretation opportunities on the Refuge. The campground would be maintained in its current state.

Under Alternative B, we would expand wildlife management and visitor services on the Refuge. We would develop 40 acres of foraging habitat for sandhill cranes and waterfowl. Wildlife surveys and efforts to control invasive plants would be expanded and a new refugium for the Pahranagat roundtail chub would be developed. The visitor contact station would be expanded and a new interpretive kiosk would be developed. In addition, we would make a small reduction in the hunt area to reduce potential conflicts with other refuge uses. The campground would also be maintained, but fees would be charged and the maximum length of stay would be reduced from fourteen to seven days.

Under Alternative C, management would be similar to Alternative B, with the following exceptions. We would restore 200 acres of riparian habitat between Upper Pahranagat Lake and Middle Marsh and develop and implement restoration plans for degraded springs on the Refuge. In addition, a new visitor contact station, interpretive walking trail, and photo blind would also be developed. Under this alternative, we would convert the campground to a day use area.

Under the preferred alternative, Alternative D, management would be similar to Alternative C, except we would seek to acquire additional water rights for the Refuge to provide more flexibility in wetland management. Also, we would restore an additional 5–10 acres of riparian habitat and expand the surveying and monitoring programs under this alternative. Visitor services would be similar to Alternative C except we would convert the campground to a walk-in day use area.

Public Meetings

The locations, dates, and times of public meetings will be listed in a planning update distributed to the project mailing list and posted on the Refuge Complex Web site at *http://www.fws.gov/desertcomplex/.*

Review and Comment

Copies of the Draft CCP/EIS may be obtained by writing to the U.S. Fish and Wildlife Service, Attn: Mark Pelz, CA/NV Refuge Planning Office, 2800 Cottage Way, W–1832, Sacramento, CA 95825–1846. Copies of the Draft CCP/EIS may be viewed at this address or at the Desert National Wildlife Refuge Complex, 4701 North Torrey Pines, Las Vegas, NV 89130. The Draft CCP/EIS will also be available for viewing and downloading online at *http://www.fws.gov/desertcomplex/publicreview.htm.*

Comments on the Draft CCP/EIS should be addressed to: Mark Pelz, Chief, Refuge Planning, 2800 Cottage Way, W–1832, Sacramento, CA 95825–1846. Comments may also be faxed to (916) 414–6497 or if you choose to submit comments via electronic mail, visit *http://www.desertcomplex.fws.gov* and use the ''Guest Mailbox'' provided at that site.

At the end of the review and comment period for this Draft CCP/EIS, comments will be analyzed by the Service and addressed in the Final CCP/EIS. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 2, 2008.

Ken McDermond,

Acting Regional Director, California and Nevada Region, Sacramento, California.

[FR Doc. E8–15631 Filed 7–10–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–21984, F–22876, F–22889, F–22882, F–21914, F–21885, F–21950; AK–962–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Bering Straits Native Corporation for lands located in the vicinity of Council and Shaktoolik, Alaska. Notice of the decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 11, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E8–15782 Filed 7–10–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–47658, CA–670–5101 ER B204]

Notice of Availability of the Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement for the Proposed Sunrise Powerlink Project

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM), together with the California Public Utilities Commission (CPUC), in compliance with the California Environmental Quality Act (CEQA, Pub. Res. Code § 21000 *et seq.*), has prepared a Recirculated Draft EIR/Supplemental Draft EIS (RDEIR/SDEIS) to augment the analysis for the Sunrise Powerlink Project proposed by San Diego Gas & Electric Company (SDG&E).

DATES: In order to comply with NEPA regulations at 40 CFR 1502.9(c)(4), comments on the RDEIR/SDEIS must be postmarked or received within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. You may submit comments by U.S. mail, electronic mail, or fax. Only written comments may be submitted. There will be no opportunity to make oral comments. Comments on the RDEIR/SDEIS may only address the topics included in this document, not the contents of the original complete Draft EIR/EIS.

In addition, an informational workshop will be held during the comment period to help the public understand the RDEIR/SDEIS and to explain how to participate in the CPUC and BLM's decision-making processes. The workshop will be announced at least 15 days in advance through local news media, public notices, mailings, and agency Web sites.

ADDRESSES: *By Mail:* Please use first-class postage and be sure to include your name and return address. Send written comments to CPUC/BLM c/o Aspen Environmental Group, 235 Montgomery Street, Suite 935, San Francisco, CA 94104. *By Electronic Mail:* E-mail communications are welcome; but, please remember to include your name and return address in the e-mail message. E-mail messages should be sent to *sunrise@aspeneg.com. By Fax:* You may fax your comments to (866) 711–3106. Please remember to include your name and return address in the fax, write legibly, and use black or blue ink.

FOR FURTHER INFORMATION CONTACT: Information concerning the BLM/NEPA process may be obtained from Lynda Kastoll, Project Manager, BLM, 1661 S. 4th Street, El Centro, CA 92243; telephone (760) 337–4421; e-mail *lkastoll@ca.blm.gov.* Information concerning the CPUC/CEQA process may be obtained from Billie Blanchard, Project Manager, CPUC, 505 Van Ness Ave., San Francisco, CA 94102; telephone (415) 703–2068; e-mail at *BCB@cpuc.ca.gov.*

The RDEIR/SDEIS will be available for review at numerous area libraries and on the project Web site: *http://www.cpuc.ca.gov/environment/info/aspen/sunrise/sunrise.htm.* A compact disc (CD) containing the document may be requested by phone, fax at (866) 711–3106, or by e-mail at *sunrise@aspeneg.com.*

SUPPLEMENTARY INFORMATION: SDG&E proposes to construct a new 91-mile, 500-kilovolt (kV) electric transmission line from the Imperial Valley Substation (in Imperial County, near the City of El Centro) to a new Central East Substation (in central San Diego County, southwest of the intersection of County Highways S22 and S2) and a new 59-mile, 230-kV line that includes both overhead and underground segments from the new Central East Substation to SDG&E's existing Peñasquitos Substation (in the City of San Diego). Portions of the proposed 500-kV transmission line would traverse approximately 35 miles of federal lands managed by the BLM within the California Desert Conservation Area in Imperial County, and approximately 1 mile of BLM-administered land in San Diego County. The remainder of the proposed project would cross lands owned by various entities including the State of California, local governments, and private parties.

On January 3, 2008, the CPUC and BLM published a Draft EIR/EIS on the Sunrise Powerlink Project. The Draft EIR/EIS contained 7500+ pages in six volumes. It included an analysis of the proposed project's effects, as well as an analysis of future possible transmission lines and ''connected actions'' that are likely to be built if the Sunrise Powerlink Project is built. The Draft EIR/EIS also identified alternatives to the proposed project (including the No Action Alternative) and evaluated their expected environmental impacts.

A 90-day comment period on the Draft EIR/EIS ended on April 11, 2008. Nine workshops and five public participation hearings were held during the comment period, and over 2,500 pages of written comments were submitted. After the comment period, two additional public participation hearing were held on May 12, 2008.

Under CEQA, recirculation is required when significant new information changes the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect. New information may include changes in the project or environmental setting as well as additional data or other information. Under the regulations implementing NEPA (40 CFR 1502.9(c)(2)(ii), a supplement to an EIS is required when there are significant new circumstances or information relevant to the environmental concerns related to the proposed project or its impacts. In this case, the new information involves changes to the ''connected actions'' analyzed in the Draft EIR/EIS and route revisions (''reroutes'') proposed by SDG&E in comments on the Draft EIR/EIS. The RDEIR/SDEIS includes the following components:

1. *Revision of components of the Environmentally Superior Alternatives for northern and southern transmission lines.* Because of Tribal opposition, the Interstate 8 Alternative now bypasses the Campo Reservation. Without Tribal approval it was also necessary to modify the Southern Environmentally Superior Route to avoid all tribal lands, following the BCD Alternative and BCD South Option. The Northern Environmentally Superior Route has been modified to add consideration of an additional underground segment in the Santa Ysabel Valley.

2. *New and Revised Analysis of the La Rumorosa Wind Project.* In December 2007, Sempra Generation submitted to the U.S. Department of Energy an Application for Presidential Permit, proposing a 1,250 megawatt (MW) wind project in Mexico that would include the construction of transmission lines into the United States, and a new substation located northeast of the town of Jacumba, California. The Draft EIR/EIS, in its evaluation of ''connected actions'' and ''indirect effects'', analyzed a 250 MW wind project in Mexico that included the construction of a transmission line and a ''Jacumba Substation.'' However, the wind project considered in the Draft EIR/EIS was much smaller than the actual project as described by Sempra. As a result, the RDEIR/SDEIS presents new ''connected action'' and ''indirect effects'' analysis of the Sempra project.

3. *Description and Analysis of Transmission Line Route Revisions.* In comments on the Draft EIR/EIS, SDG&E proposed modifications to several segments of the Proposed and Alternative transmission line routes. Some of these reroutes would affect new landowners, change the potential effect on already-affected landowners, or otherwise change the environmental impact described in the Draft EIR/EIS. The RDEIR/SDEIS describes 13 reroutes.

The CPUC and BLM evaluated all comments on the Draft EIR/EIS and determined that other requests for a recirculated/supplemental document did meet the requirements defined above. The Final EIR/EIS will respond to each comment requesting recirculation, explaining why this determination was made.

An informational workshop will be held to help the public understand the RDEIR/SDEIS, and to explain how to participate in the CPUC and BLM decision-making processes. The informal workshop is an opportunity to speak with and ask questions of CPUC and BLM representatives and some of the specialists who prepared the RDEIR/SDEIS. A brief presentation will summarize the EIR/EIS process, the information presented in the RDEIR/SDEIS, and the decision making-process. Presentation notes will be available on the project Web site for those unable to attend. While written comments may be submitted during the workshop, there will be no facilities to record oral comments.

Comments received may be published as part of the EIR/EIS process. 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.

At the end of the 45-day comment period on the RDEIR/SDEIS, the CPUC and BLM will prepare a Final EIR/EIS. The Final EIR/EIS will respond to all comments received on the Draft EIR/EIS and on the RDEIR/SDEIS.

Tom Pogacnik,

Deputy State Director.

[FR Doc. E8–15943 Filed 7–10–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310PP–ARAC]

Notice of Public Meeting, BLM-Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held August 12, 2008, at the Wiseman Community Center, Wiseman, Alaska; Milepost 189 of the Dalton Highway. The meeting, which will provide an opportunity for residents of the Dalton Highway to meet Resource Advisory Council members and discuss local topics, will start at 2:30 p.m. and end at 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Sharon Wilson, BLM-Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–4418 or e-mail *Sharon_Wilson@blm.gov*.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, BLM District Managers will give updates on district activities and the status of resource management planning, discuss local issues introduced by residents of the area and receive public comment on BLM-related matters.

Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited, so please be prepared to submit written comments if necessary. 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.

Individuals who plan to attend and need special assistance, such as sign

language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: July 7, 2008.

Thomas P. Lonnie,

State Director.

[FR Doc. E8–15772 Filed 7–10–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information: Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved collection of information (OMB #1024–0018).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before September 9, 2008.

ADDRESSES: Send comments to Paul Loether, Chief, National Register of Historic Places and National Historic Landmarks Program, 1201 Eye Street, NW. (2280), 8th Floor, Washington, DC 20005; or via phone at 202/354–2003; or via fax at 202/371–2229; or via e-mail at *Paul_Loetber@nps.gov*. Also, you may send comments to Leonard E. Stowe, NPS Information Collection Clearance Officer, 1849 C St., NW. (2605), Washington, DC 20240; or via e-mail at *leonard_stowe@nps.gov*. All responses to this Notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

To Request a Draft of Proposed Collection of Information Contact: Lisa Deline, NPS Historian, National Register of Historic Places, 1201 Eye St., NW. (2280), Washington, DC 20005; or via phone at 202/354–2239; or via fax at 202/371–2229; or via e-mail at *3lisa_deline@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Lisa Deline, NPS Historian, National Register of Historic Places, 1201 Eye St., NW. (2280), Floor, Washington, DC 20005; or via phone at 202/354–2239; or via fax at 202/371–2229; or via e-mail at *lisa_deline@nps.pov*. You are entitled to a copy of the entire ICR package free of charge once the package is submitted to OMB for review. You can access this ICR at *http://www.reginfo.gov/public/*.

SUPPLEMENTARY INFORMATION:

Title: 36 CFR 60 and 63: National Register of Historic Places Registration Form; Continuation Sheet; National Register Multiple Property Documentation Form.

Form(s): NPS 10–900 (registration form), 10–900–a (continuation sheet), 10–900–b (multiple property documentation form).

OMB Control Number: 1024–0018.

Expiration Date: 01/31/2009.

Type of Request: Extension of a currently approved collection of information.

Description of Need: The National Historic Preservation Act of 1966 requires the Secretary of the Interior to maintain and expand the National Register of Historic Places, and to establish criteria and guidelines for including properties in the National Register. The National Register of Historic Places Registration Form documents properties nominated for listing in the National Register and demonstrates that they meet the criteria established for inclusion. The documentation is used to assist in preserving and protecting the properties and for heritage education and interpretation. National Register properties must be considered in the planning for federal or federally assisted projects. National Register listing is required for eligibility for the federal rehabilitation tax incentives. The primary purpose of the ICR is to nominate properties for listing in the National Register of Historic Places, the official list of the nation's cultural resources worthy of preservation, which Public Law requires that the Secretary of the Interior maintain and expand. Properties are listed in the National Register upon nomination by State, Federal and Tribal Historic Preservations Officers. The National Register of Historic Places Registration Form documents properties nominated for listing in the National Register and demonstrates that they meet the criteria established for inclusion. The documentation is used to assist in preserving and protecting the properties and for heritage education in interpretation. National Register properties and those eligible for listing must be considered in the planning for Federal or federally assisted projects, and National Register listing is required for eligibility for the Federal Rehabilitation Tax incentives. The forms provide the historic documentation on which decisions for listing and eligibility are based. The obligation to respond is required to obtain or retain benefits.

Description of respondents: The affected public are State, tribal, and local governments, businesses, non-profit organizations, and individuals. Nominations to the National Register of Historic Places are voluntary.

Estimated average number of respondents: 1,513.

Estimated average number of responses: 1,513.

Estimated average time burden per respondent: Depending on which form is used, the average burden per response may very considerably because of many complex factors. In general, to fulfill minimum program requirements describing the nominated property and demonstrating its eligibility under the criteria, the average burden hours range from 18 hours for a nomination proposed under an existing Multiple Property Submission (MPS), to 36 hours for a new proposed individual nomination, to 120 hours for a newly proposed MPS. Continuation Sheets (10–900-a) are used as space for additional information for both the individual nomination form and the multiple property form, as needed. As such the calculation of burden hours per response for the continuation sheet has been included in the above average calculations for the National Register of Historic Places Registration Form (10–900), and the National Register Multiple Property Documentation Form (10–900-b).

Frequency of response: Once per respondent.

Estimated total annual reporting burden: 52,824 hours broken down as follows: 196 nominations submitted under existing MPS @ 18 hrs. each = 3,528 hours; 1,186 newly proposed individual nominations @ 36 hrs. each = 42,696 hours; 55 new proposed MPS @ 120 hrs. each = 6,600 hours.

Comments are invited on: (1) the practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While

you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 2, 2008.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. E8–15590 Filed 7–10–08; 8:45 am]

BILLING CODE 4312–51–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: The Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, the National Park Service (NPS) invites public comments on an extension of a currently approved collection of information (OMB #1024–0126).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before September 9, 2008.

ADDRESSES: Send comments to: Jo A. Pendry, NPS Concession Program Manager, 1849 C Street, NW. (2410), Washington, DC 20240; or via phone at 202/513–7156; or via fax at 202/371–2090; or via e-mail at *jo_pendry@nps.gov*. Also, you may send comments to Leonard E. Stowe, NPS Information Collection Clearance Officer, 1849 C St., NW. (2605), Washington, DC 20240; or via e-mail at *leonard_stowe@nps.gov*. All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

To Request a Draft of Proposed Collection of Information Contact: Jo A. Pendry, NPS Concession Program Manager, 1849 C St., NW. (2410), Washington, DC 20240; or via phone at 202/513–7156; or via fax at 202/371–2090; or via email at *jo_pendry@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Erica Chavis, NPS Concessions Specialist, 1849 C St., NW (2410), Washington, DC 20240; or via phone at 202/513–7144; or via e-mail at *erica_chavis@nps.gov*. You are entitled to a copy of the entire ICR package free of charge once the package is submitted to OMB for review. You can access this ICR at *http://www.reginfo.gov/public/*.

SUPPLEMENTARY INFORMATION:

Title: Proposed Sale of Concession Operations (36 CFR part 51, subpart J).

Bureau Form Number (s): None.

OMB Control Number: 1024–0126.

Expiration Date: April 30, 2009.

Type of Request: Extension of a currently approved collection of information.

Description of Need: The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park System. Concession authorizations may be assigned, sold, transferred or encumbered by the concessioner subject to prior written approval of the NPS. The NPS requires that certain information be submitted for review prior to the consummation of any sale, transfer, assignment, or encumbrance.

16 U.S.C. 3 provides that no contract, lease, permit or privilege granted for the purpose of providing accommodations for visitors to the national parks shall be assigned or transferred by such grantees, permittees, or licenses without the approval of the NPS, first obtained in writing. It further provides that the NPS may authorize concessioners to execute mortgages and issue bonds, shares of stock, and other evidences or interest in or indebtedness upon their rights, properties and franchises, for the purposes of installing, enlarging, or improving plants and equipment and extending facilities for the accommodation of the public within national parks and monuments. 16 U.S.C. 20(3) also provides that the possessory interest of a concessioner may be assigned, transferred, encumbered, or relinquished. Regulations at 36 CFR, part 51, require that certain information be submitted for review by the NPS prior to the consummation of any sale, transfer, assignment or encumbrance.

The information requested is used to determine whether or not the proposed transaction will result in decreased services to the public, the lack of a reasonable opportunity for profit over the remaining term of the authorization, or rates in excess of existing approved rates to the public. In addition, pursuant to the regulations at 36 CFR, Part 51, the value of rights for intangible assets such as the concession contract, right of preference in renewal, user days, or low fees belong to the Government. If any portion of the purchase price is attributable either directly or indirectly to such assets, the transaction may not be approved. The amount and type of information to be submitted varies with the type and complexity of the proposed transaction. Without such information, the NPS would be unable to determine whether approval of the proposed transaction would be adequate. Concessioners' obligation to respond is required to retain or obtain benefits.

Automated data collection: No automated data collection will take place.

Description of respondents: Businesses or other for-profit, individuals or households, not-for-profit institutions.

Estimate average number of respondents: 20.

Estimated average time burden per respondent: 80 hours.

Estimated average number of responses: 20.

Frequency of response: Once per respondent.

Estimated total annual reporting burden: 1,600 hours.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 10, 2008.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. E8–15592 Filed 7–10–08; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Safe Drinking Water Act

Notice is hereby given that on June 30, 2008, a proposed Consent Decree (the ''Decree'') in *United States* v. *Town of Newburgh, New York,* Civil Action

No. 08 Civ. 5902 (SCR) was lodged with the United States District Court for the Southern District of New York.

In a complaint, filed simultaneously with the Decree, the United States alleged that, between 2005 and 2007, the drinking water system owned and operated by the Town of Newburgh (the ''Town'') violated the Safe Drinking Water Act, 42 U.S.C. 300f, *et seq.,* and its implementing regulations in several respects. First, the United States alleged that the Town repeatedly exceeded maximum contaminant levels for certain disinfectant byproducts, namely haloacetic acids. The United States further alleged that the Town failed to comply with an Administrative Order issued by the United States Environmental Protection Agency (''EPA'') requiring the Town to monitor drinking water quality and report the monitoring results to the Orange County Department of Health. The lawsuit also charged that the Town had failed to provide the required notice to the public on each occasion that the Town's drinking water exceeded the maximum contaminant levels for disinfectant byproducts.

Pursuant to the Decree, the Town shall construct a water treatment facility to filter the drinking water it draws from the Delaware Aqueduct, the Town's principal water source. The Decree requires the Town to complete construction of the facility by May 1, 2013, pursuant to a schedule of 29 interim construction milestones.

The Decree further requires the Town to implement a number of interim measures to protect the quality of its drinking water until the Town has fully complied with the long term construction of the water treatment facility. For example, the Decree mandates ongoing monitoring of the water that the Town obtains from the Delaware Aqueduct for contaminants, as well as monthly reporting of the monitoring data to EPA, the State of New York and Orange County. Under the Decree, the Town's water must also meet water quality standards applicable to water systems that are not required to install treatment facilities.

The Town will pay a $100,000 civil monetary penalty to the United States pursuant to the Decree. The Town must also implement three environmental projects to improve the water quality in and around the Town. Specifically, the Town will purchase and maintain vacant undeveloped real properties around the Chadwick Lake Reservoir, an alternate drinking water source for the Town, in order to protect the watershed. The Town will also connect residential and commercial properties in the Town along North Carpenter Avenue and West Stone Street to the City of Newburgh's sanitary sewer system. This project will prevent waste in septic systems from discharging directly into the ground and, in some cases, running above ground to other water bodies in the area, such as Orange Lake and tributaries to the Hudson River. In addition, the Town agreed to replace existing catch basins connected to pipes that discharge into Orange Lake with new catch basins equipped to prevent sediment and floatable debris from flowing into the lake. The value of these supplemental environmental projects is estimated at $912,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Town of Newburgh, New York,* D.J. Ref. 90–5–1–1–08838.

The Decree may be examined at the Office of the United States Attorney, 86 Chambers Street, 3rd Floor, New York, New York 10007, and at U.S. EPA Region 2, Office of Regional Counsel, 290 Broadway, New York, New York 10007–1866. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–15806 Filed 7–10–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Settlement Agreement

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given of a proposed settlement agreement in In re Jack R. Bennett, to obtain injunctive relief and impose civil penalties against Jack R. Bennett for alleged violations of Clean Water Act sections 301(a) and 404, 33 U.S.C. 1311, 13411, by discharging fill material without a permit into wetlands adjacent to the Neuse River in Goldsboro, North Carolina.

The proposed Settlement Agreement resolves these allegations by requiring Jack R. Bennett to restore the impacted area and to pay a civil penalty. The Department of Justice will accept written comments relating to this proposed Settlement Agreement for thirty (30) days from the date of publication of this Notice. Please address comments to Neal I. Fowler, Assistant United States Attorney, United States Attorney's Office, Terry Sanford Federal Building, 310 New Bern Avenue, Suite 800, Raleigh, North Carolina 27601–1461, and refer to *In re Jack R. Bennett,* United States District Court for the Eastern District of North Carolina, DJ # 90–5–1–1–18297.

The proposed Settlement may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Stephen Samuels,

Assistant Chief Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. E8–15504 Filed 7–10–08; 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—Cable Television Laboratories, Inc.

Notice is hereby given that, on May 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''), Cable Television Laboratories, Inc. (''CableLabs''), 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, Cable Cable, Inc., Fenelon Falls,

Ontario, CANADA, has been added as a party 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 CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs 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 September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on May 7, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 17, 2008 (73 FR 34327).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–15555 Filed 7–10–08; 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—Interchangeable Virtual Instruments Foundation, Inc

Notice is hereby given that, on June 2, 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'') Interchangeable Virtual Instruments Foundation, 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, TTi Ltd., Huntington, Cambridgeshire, UNITED KINGDOM has been added as a party 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 Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, 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 July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on December 21, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 8, 2008 (73 FR 7592).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–15557 Filed 7–10–08; 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—International Association for Continuing Education and Training

Notice is hereby given that, on May 22, 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''), International Association for Continuing Education and Training (''IACET'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: International Association for Continuing Education and Training, McLean, VA. The nature and scope of IACET's standards development activities are: To create standards for the development and delivery of non-credit continuing education and training for consistency in procedural requirements related to such development and delivery.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–15566 Filed 7–10–08; 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—National Floor Safety Institute

Notice is hereby given that, on May 22, 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''), National Floor Safety Institute (''NFSI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Floor Safety Institute, Southlake, TX. The nature and scope of NFSI's standards development activities are: Develop safety standards intended to provide preventative measures in all manner of pedestrian ambulatory safety in regards to slips, trips and falls.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–15554 Filed 7–10–08; 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—PXI Systems Alliance, Inc

Notice is hereby given that, on June 4, 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''), PXI Systems Alliance, 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, Averna, Montreal, Quebec, CANADA has been added as a party to this venture. Also, National Technical

Systems, Albuquerque, NM; and Amida Technology, Inc., Chung Ho, Taipei, TAIWAN 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 PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, 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 March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on March 25, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 9, 2008 (73 FR 26413).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–15556 Filed 7–10–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Rhode Island

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB Program for Rhode Island.

The following change has occurred since the publication of the last notice regarding the State's EB status:

• Effective June 22, 2008, Rhode Island's 3-month seasonally adjusted total unemployment rate rose to the 6.5 percent threshold and exceeded 110 percent of the corresponding rate in the prior year. This causes the State to be triggered ''on'' to an EB period beginning July 6, 2008.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their state workforce agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 27th day of June, 2008.

Brent R. Orrell,

Deputy Assistant Secretary of Labor for Employment and Training.

[FR Doc. E8–15807 Filed 7–10–08; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0022]

Coke Oven Emissions Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified by the Coke Oven Emissions Standard (29 CFR 1910.1029).

DATES: Comments must be submitted (postmarked, sent, or received) by September 9, 2008.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0022, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2008–0022). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and

OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements in the Coke Oven Emissions Standard provide protection for employees from the adverse health effects associated with exposure to coke oven emissions. In this regard, the Coke Oven Emissions Standard requires employers to monitor employees' exposure to coke oven emissions, monitor employee health, and provide employees with information about their exposures and the health effects of exposure to coke oven emissions.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to extend the information collection requirements contained in the Coke Oven Emissions Standard (29 CFR 1910.1029). The Agency is requesting to increase its current burden hour total from 51,756 hours to 52,701 for a total increase of 945 hours. The adjustment is primarily the result of identifying three additional coke oven batteries. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Coke Oven Emissions Standard (29 CFR 1910.1029).

OMB Number: 1218–0128.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes (.08 hour) to provide information to the examining physician to 1 hour to conduct exposure monitoring.

Estimated Total Burden Hours: 52,701.

Estimated Cost (Operation and Maintenance): $815,488.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0022). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on July 7, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–15769 Filed 7–10–08; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–054)]

National Environmental Policy Act; Disposition of Space Shuttle Program's Real and Personal Property

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216, Subpart 1216.3), NASA has made a Finding of No Significant Impact (FONSI) with respect to the disposition of the Space Shuttle Program's (SSP's) real and personal property using a structured process consisting of a coordinated series of actions. Under Presidential direction, NASA will cease operations of its SSP by 2010. A number of assets will be dispositioned during the transition and retirement (T&R) activities. NASA proposes to implement a structured process for the disposition of the SSP real and personal property consisting of a coordinated series of actions. SSP T&R activities would include potential retirement, transfer, and disposal of property. SSP property disposition activities would extend for several years beyond 2010. On January 14, 2004, President George W. Bush presented his Vision for U.S. Space

Exploration (hereinafter ''the Vision'') to the nation. Congress expressly endorsed the President's exploration initiative and provided additional direction for the initiative in the NASA Authorization Act of 2005. In announcing the Vision, the President directed NASA to use the Space Shuttle to fulfill its obligation to complete assembly of the International Space Station and then retire the Space Shuttle by 2010. Under Presidential direction, NASA will cease operations of its SSP activities at all locations, including Kennedy Space Center (KSC), Florida; Johnson Space Center (JSC), Ellington Field (EF), and El Paso Forward Operating Location (EPFOL), Texas; Stennis Space Center (SSC), Mississippi; Michoud Assembly Facility (MAF), Louisiana; Marshall Space Flight Center (MSFC), Alabama; White Sands Test Facility (WSTF), New Mexico; Dryden Flight Research Center (DFRC) and Palmdale (Air Force Plant 42, Site 1), California; and the associated contractor facilities. The cessation of SSP operations will necessitate the disposition of all program-related assets. Public comments received on the Draft Programmatic Environmental Assessment (PEA) during the public review period conducted from February 27, 2008, through March 28, 2008, are provided along with responses in Appendix E of the Final PEA.

DATES: July 11, 2008.

ADDRESSES: The Final PEA may be reviewed at the following location:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546–0001 (202–358–0168).

It also may be examined at the following locations by contacting the pertinent Freedom of Information Act Office:

(b) NASA, George C. Marshall Space Flight Center, Huntsville, AL 35812 (256–544–1837); and

(c) NASA, John F. Kennedy Space Center, FL 32899 (321–867–2745).

Hard copies of the Final PEA also may be viewed at other NASA Centers (see **SUPPLEMENTARY INFORMATION** below). Limited hard copies of the Final PEA are available, on a first request basis, by contacting Donna L. Holland at the address or telephone number indicated herein. The Final PEA will be available for viewing online at the following address: *http://www.nasa.gov/mission_pages/shuttle/main/pea.html*.

FOR FURTHER INFORMATION CONTACT: *General:* Ms. Monica Vest, Government Community Relations Dept., NASA MSFC, CS30, Marshall Space Flight Center, AL 35812, Phone: (256) 544–5560, mail: *Monica.M.Vest@nasa.gov.*

Technical: Ms. Donna L. Holland, Environmental Engineering Office, NASA MSFC, AS10, Marshall Space Flight Center, AL 35812, Phone: (256) 544–7201, e-mail: *Donna.L.Holland@nasa.gov.*

SUPPLEMENTARY INFORMATION: NASA has reviewed the Final PEA prepared for the disposition of the SSP's real and personal property and has determined that it represents an accurate and adequate analysis of the scope and level of associated environmental impacts. The Final PEA is hereby incorporated by reference in this FONSI.

Under NASA's Proposed Action, SSP transition and property disposal activities would be expected to occur at the following NASA sites:

—Dryden Flight Research Center, Edwards Air Force Base, California.
—George C. Marshall Space Flight Center, Huntsville, Alabama.
—John F. Kennedy Space Center, Brevard County, Florida.
—John C. Stennis Space Center, Hancock County, Mississippi.
—Johnson Space Center El Paso Forward Operating Location, El Paso, Texas.
—Johnson Space Center Ellington Field, Houston, Texas.
—Johnson Space Center White Sands Test Facility (and the U.S. Army's White Sands Missile Range), Las Cruces, New Mexico.
—Lyndon B. Johnson Space Center, Houston, Texas.
—Langley Research Center, Hampton, Virginia.
—Michoud Assembly Facility, New Orleans, Louisiana.
—Palmdale Air Force Plant 42, Site 1, Palmdale, California.

The Final PEA may be viewed at the following NASA locations by contacting the pertinent Freedom of Information Act Office in writing or by telephoning:

(a) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–3273);

(b) NASA, Dryden Flight Research Center, Edwards, CA 93523 (661–276–2704);

(c) NASA, Glenn Research Center at Lewis Field, Cleveland, OH 44135 (1–866–404–3642);

(d) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–4721);

(e) NASA, John C. Stennis Space Center, MS 39529 (228–688–2118);

(g) NASA, Lyndon B. Johnson Space Center, Houston, TX 77058 (281–483–8612);

(h) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497);

(i) NASA, Michoud Assembly Facility, New Orleans, LA 70189 (504–257–2629); and

(j) NASA, White Sands Test Facility, Las Cruces, NM 88004 (505–524–5024).

In addition the Final PEA may be examined at:

(k) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109.

Alternatives that were evaluated include the: (1) No-Action Alternative; and (2) the Proposed Action Alternative. Under the No-Action Alternative, NASA would not implement the proposed comprehensive and coordinated effort to disposition SSP property under a structured and centralized SSP process. Instead, the disposition of SSP property would occur on a Center-by-Center and item-by-item basis in the normal course of NASA's ongoing facility and program management. Under the Proposed Action (which is also NASA's Preferred Alternative), NASA would conduct disposition actions for real and personal property using a structured process consisting of a coordinated series of actions in accordance with 41 CFR, Chapter 101, ''Federal Property Management Regulations;'' Subchapter H, ''Utilization and Disposal;'' Federal Acquisition Regulation (FAR) Part 45; 48 CFR Part 45, ''Government Property''; and NASA FAR Supplement Part 1845, 48 CFR 1845, ''Government Property''.

When the SSP disposes of or transfers real or personal property, the responsible NASA Center will evaluate the property using Federal and NASA property management regulations and guidance.

The notice of availability of the Draft PEA was published in the **Federal Register** on February 28, 2008. Notice also was published in local newspapers serving communities near NASA Centers and installations primarily involved in SSP. NASA received 20 comments on the Draft PEA. Environmental concerns were expressed in the context of general interest and support, historic and cultural property disposition, and natural resource management. These comments are addressed in the Final PEA, and were considered along with responses in reaching NASA's decision.

The analyses of environmental impacts due to activities associated with the disposition of shuttle property revealed minimal to no impact on environmental resources with the exception of the effect on historical resources. The impact to historic resources was found to be moderate, but adverse. The moderate impact is due to the potential for demolition or modification of buildings that will no

longer be needed after the retirement of the SSP. NASA believes that the ultimate impact will be moderate because, before any final decision is made about demolishing or modifying any facility, NASA will conduct an appropriate level of environmental and cultural resource analysis. If any such properties are listed in or eligible for listing in the National Register of Historic Places, NASA will take no action that would affect any such property until the National Historic Preservation Act Section 106 process is complete.

On the basis of the evaluations documented in the SSP T&R Final PEA, the environmental impacts associated with the proposed action would not individually or cumulatively have a significant impact on the quality of the human environment. An Environmental Impact Statement need not and will not be prepared, and NASA is issuing this Finding of No Significant Impact.

William H. Gerstenmaier,

Associate Administrator for Space Operations.

[FR Doc. E8–15751 Filed 7–10–08; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–29462]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact Related to the Approval for the Department of the Navy To Issue an Amendment to a Materials Permit for the Unrestricted Release of Building 5 at the Naval Air Warfare Center Weapons Division in China Lake, CA, Under Byproduct Materials License No. 45–23645–01NA

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Orysia Masnyk Bailey, Health Physicist, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (864) 427–1032; fax number (610) 680–3497; or by e-mail: *omm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering allowing the Department of the Navy (Navy) to issue an amendment to a materials permit which is governed by the Navy's Master Materials License No. 45–23645–01NA pursuant to 10 CFR Part 30. The NRC approval would authorize the Navy to release, for unrestricted use, Building 5 (the Facility), located at the Naval Air Warfare Center Weapons Division in China Lake, California. The Navy requested this action in a letter dated February 8, 2008. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The proposed action will be taken following the publication of this FONSI and EA in the **Federal Register**.

Background

The materials permit for the Facility (NRMP No. 04–68307–WINP) was issued on August 7, 2003, and authorized the use of carbon-14 for preparation of radio-labeled derivatives of an energetic material for analysis by offsite laboratories. Additionally, bottles of thorium-232 oxide powder and uranium dioxide (limited to amounts of 15 grams and 100 grams, respectively) were also stored at the Facility.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Navy's February 8, 2008, request to release Building 5 at the Naval Air Warfare Center Weapons Division (NAWC) in China Lake, California (the Facility) for unrestricted use and the termination of its materials permit.

NAWC China Lake is a 1.1 million acre (1735 square mile) military reservation in the upper Mojave Desert of south central California. It is divided into two major ranges, the North and South Ranges. The Facility is located on the North Range. The carbon-14 work area was confined to a corner of Room 1613 within the Facility, with dimensions of approximately 10 feet by 13 feet. The work area contained a table, a bench counter containing a sink, an adjoining bench counter, a fume hood, and a table. Room 1613 is approximately 18 feet by 30 feet by 15 feet high in the carbon-14 work area and 20 feet high on the opposite side of the room.

In November 2005, the Navy ceased licensed activities at the Facility and initiated decontamination of Room 1613. Scoping surveys were performed in March 2004, April 2005, and September 2006. Based on the Navy's historical knowledge of the site and the results of the scoping surveys, the Navy determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Navy was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures were consistent with those approved for routine operations. The Navy conducted Facility surveys in September 2007, and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for permit termination.

Need for the Proposed Action

The Navy is requesting approval of this permitting action because it has ceased conducting licensed activities at the Facility and seeks its unrestricted use and the termination of its materials permit.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted in the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Carbon-14 and thorium-232. Prior to performing the final status survey, the Navy conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Navy conducted a final status survey in September 2007. This survey covered building and work area surfaces in the Facility. The final status survey report was submitted by letter dated February 8, 2008. For the carbon-14, the Navy elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Navy used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Navy's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable

(ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Navy's final status survey results are acceptable.

For the thorium-232, the Navy elected to demonstrate compliance with the radiological criteria for unrestricted release as defined in 10 CFR 20.1402 by developing a DCGL for thorium of 450 disintegrations per minute gross alpha activity per 100 square-centimeters area (α dpm/100cm^2) for the Facility. The past history of the Facility suggests that use of a surface criterion is appropriate. The Navy developed their final DCGL by utilizing the DANDD code and its default industrial scenario to calculate the ''default'' DCGL for thorium. The Navy then utilized the suggested resuspension factor in NUREG–1720, ''Re-evaluation of the Indoor Resuspension Factor for the Screening Analysis of the Building Occupancy Scenario for NRC's License Termination Rule—Draft Report'' to calculate a site-specific DCGL. The Navy developed a ratio of the default resuspension value in the code and the re-evaluated value from draft NUREG–1720 and multiplied the ''default'' DCGL for thorium by this ratio to result in a site-specific 450 α dpm/100 cm$^{2\ DCGL}$ for thorium. The Navy thus determined the maximum amount of residual radioactivity on building surfaces, equipment, and materials that will satisfy the NRC requirement in Subpart E of 10 CFR Part 20 for unrestricted release. The NRC reviewed the Navy's methodology and proposed DCGL, and concluded that the proposed DCGL is acceptable for use as release criteria for the Facility. The Navy's final status survey results were below this DCGL, and are thus acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material in the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the permit is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity in the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Navy's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for permit termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the California Radiological Health Branch for review on April 21, 2008. On April 21, 2008, the California Radiological Health Branch responded by e-mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

NUREG–1757, (Consolidated NMSS Decommissioning Guidance;''

1. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
2. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations
3. For Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities,''
5. NUREG–1720, ''Re-evaluation of the Indoor Resuspension Factor for the Screening Analysis of the Building Occupancy Scenario for NRC's License Termination Rule—Draft Report,
6. NRC License No. 45–23645–01NA inspection and licensing records,
7. Department of the Navy, Termination of Naval Radioactive Materials Permit No. 04–68937–W1NP Issued to Naval Air Warfare Center Weapons Division, China Lake, dated October 27, 2006 (ML063190505),
8. Department of the Navy, Request Assistance in Preparing an Environmental Assessment to Release Building 5, Michelson Laboratory, Room 1613, Naval Air Warfare Center

Weapons Division, China Lake to Unrestricted Use, dated February 8, 2008 (ML080650464), and

9. New World Technology, Final Status Survey Report, Building 5, Michelson Laboratory, Room 1613, Naval Air Warfare Center Weapons Division, China Lake, CA, dated November 16, 2007 (ML080650470, ML080650474, and ML080650481).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 1st day of July 2008.

For the Nuclear Regulatory Commission.

Marie Miller,

Chief, Materials Security and Industrial Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E8–15793 Filed 7–10–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 6.5, Revision 1.

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6373 or e-mail to *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 6.5, ''General Safety Standards for Installations Using Nonmedical Sealed Gamma-Ray Sources,'' was issued with a temporary identification as Draft Regulatory Guide DG–6006. This guide directs the reader to the type of information acceptable to the NRC staff to approve the initial transfer of devices containing byproduct material to persons generally licensed under Title 10, Section 31.5, ''Certain Detecting, Measuring, Gauging, or Controlling Devices, and Certain Devices for Producing Light or an Ionized Atmosphere,'' of the *Code of Federal Regulations* (10 CFR 31.5) or equivalent regulations of an Agreement State.

The requirements for transferring gamma-ray sources to general licensees appear in 10 CFR 32.51, ''Byproduct Material Contained in Devices for Use Under § 31.5; Requirements for License to Manufacturer, or Initially Transfer''. One method of complying with the requirements of 10 CFR 32.51 appears in NUREG–1556, Volume 3, ''Consolidated Guidance about Materials Licenses: Applications for Sealed Source and Device Evaluation and Registration.''

This regulatory guide endorses the description of the information to be submitted in the application for the initial transfer and installation of sealed gamma-ray sources contained in the current revision of Volume 3 of NUREG–1556 as a method acceptable to the NRC staff.

II. Further Information

In January 2008, DG–6006 was published with a public comment period of 60 days from the issuance of the guide. No comments were received and the public comment period closed on April 18, 2008. Electronic copies of Regulatory Guide 6.5, Revision 1 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr@nrc.gov.*

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Dated at Rockville, Maryland, this 3rd day of July, 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–15787 Filed 7–10–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 10.5, Revision 2.

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6373 or e-mail to *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 10.5, ''Applications for a Type A License of Broad Scope,'' was issued with a temporary identification as Draft Regulatory Guide DG–0015. This guide directs the reader to the type of information needed by the NRC staff to evaluate an application for a Type A license of broad scope for byproduct material. Title 10, Part 33, ''Specific Domestic Licenses of Broad Scope for Byproduct Material,'' of the Code of Federal Regulations (10 CFR Part 33) regulates this type of license.

This regulatory guide endorses the methods and procedures contained in the current revision of NUREG–1556, Volume 11, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Licenses of Broad Scope,'' as a process that the NRC staff finds acceptable for meeting the

regulatory requirements of 10 CFR Part 33.

Volume 11 of NUREG–1556 is not intended to be used alone. Because broad-scope licensees may be involved in many different program areas (*e.g.*, medicine, research and development, manufacturing and distribution), Volume 11 frequently refers the user to other more program-specific guidance documents in the NUREG–1556 series. A single document containing all of the guidance that might be required by a broad-scope licensee or an applicant for a broad-scope license would be unwieldy and may become obsolete as guidance in the individual program areas is revised. Volume 11 of NUREG–1556 takes a more risk-informed, performance-based approach to the information needed to support an application for a specific license of broad scope. Applicants should consider the entire NUREG–1556 series when preparing broad-scope license applications. NRC staff will use applicable portions of the complete NUREG–1556 series when reviewing applications.

II. Further Information

In January 2008, DG–0015 was published with a public comment period of 60 days from the issuance of the guide. No comments were received and the public comment period closed on April 18, 2008. Electronic copies of Regulatory Guide 10.5, Revision 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr@nrc.gov.*

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Dated at Rockville, Maryland, this 3rd day of July, 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–15788 Filed 7–10–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 6.1, Revision 2.

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6373 or e-mail to *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued revisions to existing guides in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 6.1, ''Leak Testing Radioactive Brachytherapy Sources,'' was issued with a temporary identification as Draft Regulatory Guide DG–6003. This guide directs the reader to methods and procedures acceptable to the staff of the NRC for leak testing radioactive brachytherapy sources. Possession and use of brachytherapy sources is an activity requiring a license pursuant to Title 10, section 30.3, ''Activities Requiring License,'' of the *Code of Federal Regulations* (10 CFR 30.3). The requirements in 10 CFR 35.67, ''Requirements for Possession of Sealed Sources and Brachytherapy Sources,'' state in part, that the sources are to be periodically leak tested and that the test be capable of detecting the presence of 185 becquerel (Bq) (0.005 microcurie (μCi)) of radioactive material in the sample. The regulations also require that the source be immediately withdrawn from use if the test reveals the presence of 185 Bq (0.005 μCi) or more of removable contamination.

This regulatory guide endorses the methods and procedures for leak testing radioactive brachytherapy sources contained in the current revisions of NUREG–1556, Volume 3, ''Consolidated Guidance about Materials Licenses: Applications for Sealed Source and Device Evaluation and Registration'' and NUREG–1556, Volume 9, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Medical Use Licenses'' as a process that the NRC staff has found to be acceptable for meeting the regulatory requirements.

II. Further Information

In January 2008, DG–6003 was published with a public comment period of 60 days from the issuance of the guide. No comments were received and the public comment period closed April 18, 2008. Electronic copies of Regulatory Guide 6.1, Revision 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr@nrc.gov.*

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Dated at Rockville, Maryland, this 3rd day of July, 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–15794 Filed 7–10–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 10.2, Revision 2.

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6373 or e-mail to *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 10.2, ''Guidance to Academic Institutions Applying for Specific Byproduct Material Licenses of Limited Scope,'' was issued with a temporary identification as Draft Regulatory Guide DG–0013. This guide directs the reader to the type of information sought by the NRC staff to evaluate an application from an academic institution for specific licenses of limited scope for the possession and use of byproduct material. It does not apply to applications for specific licenses of broad scope, licenses for source or special nuclear materials, or licenses for kilocurie irradiation sources. This guide identifies the general principles that the NRC staff will consider in evaluating an applicant's proposed radiation safety measures.

Title 10, Part 30, ''Rules of General Applicability to Domestic Licensing of Byproduct Material,'' of the *Code of Federal Regulations* (10 CFR Part 30) provides the regulatory framework for a limited-scope byproduct material license. Other regulations pertaining to this type of license appear in 10 CFR Part 19, ''Notices, Instructions and Reports to Workers: Inspection and Investigations'' and 10 CFR Part 20, ''Standards for Protection Against Radiation.'' The applicant should carefully study the regulations and submit all information requested.

This regulatory guide endorses the methods and procedures for limited scope byproduct material licensing contained in the current revision of NUREG–1556, Volume 7, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Academic, Research, and Development, and Other Licenses of Limited Scope,'' as a process that the NRC staff has found acceptable for meeting the regulatory requirements.

Since the publication of Revision 1 of Regulatory Guide 10.2 in December 1976, the NRC has revised the requirements for byproduct material licenses to implement a risk-informed, performance-based approach to regulation. Volume 7 of NUREG–1556 incorporates this revised approach.

II. Further Information

In January 2008, DG–0013 was published with a public comment period of 60 days from the issuance of the guide. No comments were received and the public comment period closed on April 18, 2008. Electronic copies of Regulatory Guide 10.2, Revision 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr@nrc.gov.*

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Dated at Rockville, Maryland, this 3rd day of July, 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–15786 Filed 7–10–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–391]

In the Matter of Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 2); Order

Tennessee Valley Authority (TVA, the permittee) is the current holder of Construction Permit No. CPPR–92, issued by the Atomic Energy Commission on January 23, 1973, for construction of the Watts Bar Nuclear Plant (WBN), Unit 2. Construction Permit CPPR–91 for construction of WBN Unit 1 was also issued on January 23, 1973, and Facility Operating License NPF–90 was issued for operation of Unit 1 on February 7, 1996. WBN Unit 2 is currently partially completed. These facilities are at the permittee's site on the west branch of the Tennessee River, approximately 50 miles northeast of Chattanooga, Tennessee.

On May 8, 2008, TVA filed a request pursuant to Section 50.55(b) of Title 10 of the Code of Federal Regulations (10 CFR 50.55(b)) for an extension of the construction permit completion date for WBN Unit 2 to March 31, 2013. This request superseded an earlier letter dated March 6, 2008. TVA requested this extension to the WBN Unit 2 construction permit for the following reasons, as stated in its application:

> In a Record of Decision published in the **Federal Register** on August 15, 2007 (72 Fed. Reg. 45859), TVA stated that proceeding with the completion and operation of WBN Unit 2 is the best decision for TVA and the Tennessee Valley in terms of power supply, power price, generation mix, return on investment, use of existing assets, and avoidance of environmental impacts. TVA's Record of Decision explained, as mentioned above, the three-fold benefits of assuring future power supplies without environmental effects resulting from operation of fossil fuel generating plants (including increased emissions) avoiding even larger capital outlays associated with totally new construction, and avoiding the environmental impacts resulting from siting and constructing new power generating facilities elsewhere.

The NRC staff has prepared an Environmental Assessment and Finding of No Significant Impact, which was published in the **Federal Register** on June 27, 2008 (73 FR 36577). Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment.

For further details regarding this action, see TVA's May 8, 2008, application, and the NRC staff's letter and safety evaluation of the requested extension dated July 7, 2008. Documents may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), and are accessible through the ADAMS Electronic Reading Room link at the NRC Web site, *http://www.nrc.gov.*

Any person adversely affected by this Order may request a hearing on this Order within 60 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for an extension of time must be directed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, and must include a statement of good cause for the extension. Requirements for hearing requests are found in 10 CFR 2.309.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, any motion or other document filed in the proceeding prior

to the submission of a request for hearing, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least ten (10) days prior to the filing deadline the requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, has a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, the Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submission.

If a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

The scope of this order extending the construction completion date and any proceeding hereunder is limited to direct challenges to the permit holder's asserted reasons that show good cause justification for the extension.

Attorney for the permit holder: Maureen H. Dunn, Executive Vice President and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902.

It is hereby ordered that the latest completion date for Construction Permit No. CPPR–92 is extended from December 31, 2010, to March 31, 2013.

Dated at Rockville, Maryland, this 7th day of July 2008.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E8–15796 Filed 7–10–08; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2008–1; Order No. 83]

Administrative Practice and Procedure, Postal Service; Correction

AGENCY: Postal Regulatory Commission.

ACTION: Notice; correction.

SUMMARY: The Postal Regulatory Commission published a document in the **Federal Register** on June 25, 2008 seeking comments on a plan for service performance measurement and reporting systems for market dominant products. The document contained several errors the Commission wishes to correct.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

Correction

In **SUPPLEMENTARY INFORMATION**, page 36138, Table 2, correct the row beginning with ''Standard Mail'' to delete subscript 7 in column 6, and the row beginning with ''Package Services'' to delete subscript 8 in column 3, and in footnote 1, change ''Table 1'' to ''Table 2'' and delete the word ''mail'' to read:

TABLE 2.—POSTAL SERVICE MEASUREMENT APPROACH AT FULL ROLLOUT [1] MEASUREMENT APPROACH BY MAIL SEGMENT

	Single-piece			Presort		
	Letters	Flats	Parcels	Letters	Flats	Parcels
First-Class Mail	EXFC	EXFC	Start: Acceptance scan. Stop: Delivery Confirmation delivery scan.	Start: Documented Arrival Time at Postal facility. Stop: External reporting.	EXFC as Proxy [2]	Start: Documented Arrival Time at Postal facility. Stop: Delivery Confirmation delivery scan.
Single-Piece First-Class Mail International.	IMMS [3]	EXFC as proxy [4]	Single-Piece First-Class Mail parcels as proxy [5].	N/A	N/A	N/A.
Periodicals [6]	N/A	N/A	N/A	Start: Documented Arrival Time at Postal facility. Stop: External reporting.	Start: Documented Arrival Time at Postal facility. Stop: External reporting.	N/A. N/A.
Standard Mail	N/A	N/A	N/A	Start: Documented Arrival Time at Postal facility. Stop: External reporting.	Start: Documented Arrival Time at Postal facility. Stop: External reporting.	Start: Documented Arrival Time at Postal facility. Stop: Delivery Confirmation delivery scan.
Package Services	N/A	N/A	Start: Acceptance scan. Stop: Delivery Confirmation delivery scan.	N/A	Start: Documented Arrival Time at Postal facility. Stop: External reporting.	Start: Documented Arrival Time at Postal facility. Stop: Delivery Confirmation delivery scan.

[1] Special Services are not included in Table 2 as they have different methods to ''start-the-clock'' and ''stop-the-clock'' from the market-dominant products.

[2] The Postal Service will use the External First-Class Mail Measurement System (EXFC) measurement for single-piece flats as a proxy for Presort First-Class Mail flats due to the very small volume of Presort flats.

[3] The International Mail Measurement System (IMMS) is an external measurement system for which an independent measurement contractor seeds mail into the mailstream.

[4] The EXFC measurement for domestic single-piece First-Class Mail flats will serve as a proxy for single-piece First-Class Mail International flats due to the small volume in the latter category. After clearing customs, single-piece First-Class Mail International flats enter the domestic mailstream and are handled with domestic single-piece First-Class Mail flats.

[5] The Postal Service will use the measurement for domestic single-piece First-Class Mail parcels as a proxy for single-piece First-Class Mail International parcels.

[6] Two mailer-operated external systems, Red Tag and Time Inc.'s DelTrak, will be used for Periodicals measurement during FY 2009, as the Postal Service transitions to a long-term internal solution.

In **SUPPLEMENTARY INFORMATION**, on page 36140, Table 3, in the row captioned ''Overall Mailstream'' under the column captioned ''Letters (percent)'', change the number ''17'' to read ''17.2''.

TABLE 3.—FIRST-CLASS MAIL VOLUME

	Single-piece			Presort			
	Letters (percent)	Flats (percent)	Parcels (percent)	Letters (percent)	Flats (percent)	Parcels (percent)	Total (percent)
First-Class Mail	38.0	3.3	0.4	57.1	1.0	0.2	100
Overall Mailstream	17.2	1.5	0.2	25.8	0.4	0.1	45.2

In **SUPPLEMENTARY INFORMATION**, on page 36142, Table 4, change ''South Carolina District'' to read ''Greater South Carolina District'' and change all instances of ''xx'' to read ''xx.x''.

TABLE 4.—QUARTERLY PERFORMANCE FOR SINGLE-PIECE FIRST-CLASS MAIL; SAMPLE QUARTERLY REPORT FORMAT FOR SINGLE-PIECE FIRST-CLASS MAIL

District	Overnight (% On-time)	Two-day (% On-time)	Three-day/ four-day/ five-day (% On-time)
Capital Metro Area	xx.x	xx.x	xx.x
Baltimore District	xx.x	xx.x	xx.x
Capital District	xx.x	xx.x	xx.x
Greater South Carolina District	xx.x	xx.x	xx.x
Greensboro District	xx.x	xx.x	xx.x
Mid-Carolinas District	xx.x	xx.x	xx.x
No. Virginia District	xx.x	xx.x	xx.x
Richmond District	xx.x	xx.x	xx.x

In **SUPPLEMENTARY INFORMATION**, on page 36142, Table 5, change ''South Carolina District'' to read ''Greater South Carolina District'' and change all instances of ''xx'' to read ''xx.x''.

TABLE 5.—QUARTERLY PERFORMANCE FOR SINGLE-PIECE FIRST-CLASS MAIL SERVICE VARIANCE; SAMPLE QUARTERLY REPORT FORMAT WITH SERVICE VARIANCE FOR SINGLE-PIECE FIRST-CLASS MAIL

District	Overnight			Two-day			Three-day/four-day/five-day		
	Within + 1-day (percent)	Within + 2-days (percent)	Within + 3-days (percent)	Within + 1-day (percent)	Within + 2-days (percent)	Within + 3-days (percent)	Within + 1-day (percent)	Within + 2-days (percent)	Within + 3-days (percent)
Capital Metro Area	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Baltimore District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Capital District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Greater South Carolina District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Greensboro District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Mid-Carolinas District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
No. Virginia District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Richmond District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x

In **SUPPLEMENTARY INFORMATION**, on page 36142 in the third column, add a paragraph to read, ''The Annual Compliance Report format for First-Class Mail is as follows:''.

In **SUPPLEMENTARY INFORMATION**, on page 36142, Table 6, change all instances of ''xx'' to read ''xx.x''.

TABLE 6.—ANNUAL COMPLIANCE REPORT; SAMPLE ANNUAL REPORT FORMAT FOR FIRST-CLASS MAIL

Mail Class	Target (percent)	Percent on-time
First-Class Mail:		
Single-Piece Overnight	xx.x	xx.x
Single-Piece Two-Day	xx.x	xx.x
Single-Piece Three-Day/Four-Day	xx.x	xx.x
Presort Overnight	xx.x	xx.x
Presort Two-Day	xx.x	xx.x
Presort Three-Day/Four-Day	xx.x	xx.x

In **SUPPLEMENTARY INFORMATION**, on page 36144, Table 8, in the column captioned ''Area'' add a row for ''Southwest Area'' following the row ''Western Area''.

TABLE 8.—QUARTERLY PERFORMANCE FOR SINGLE-PIECE INTERNATIONAL MAIL SERVICE VARIANCE; SAMPLE QUARTERLY REPORT FORMAT WITH THE SERVICE VARIANCE FOR SINGLE-PIECE FIRST-CLASS MAIL INTERNATIONAL

Area	Inbound			Outbound		
	Within + 1-day (percent)	Within + 2-day (percent)	Within + 3-day (percent)	Within + 1-day (percent)	Within + 2-day (percent)	Within + 3-day (percent)
Northeast Area	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x

TABLE 8.—QUARTERLY PERFORMANCE FOR SINGLE-PIECE INTERNATIONAL MAIL SERVICE VARIANCE; SAMPLE QUARTERLY REPORT FORMAT WITH THE SERVICE VARIANCE FOR SINGLE-PIECE FIRST-CLASS MAIL INTERNATIONAL—Continued

Area	Inbound			Outbound		
	Within + 1-day (percent)	Within + 2-day (percent)	Within + 3-day (percent)	Within + 1-day (percent)	Within + 2-day (percent)	Within + 3-day (percent)
New York Metro Area	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Eastern Area	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Capital Metro Area	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Southeast Area	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Great Lakes Area	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Western Area	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Southwest Area	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Pacific Area	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
National	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x

In **SUPPLEMENTARY INFORMATION**, on page 36146, Table 12, add a table footnote following the table title to read, ''Destination Entry includes Destination Bulk Mail Center, Destination Area Distribution Center, Destination Sectional Center Facility, and Destination Delivery Unit.''

TABLE 12.—QUARTERLY PERFORMANCE FOR STANDARD MAIL SERVICE VARIANCE; SAMPLE QUARTERLY REPORT FORMAT FOR STANDARD MAIL SERVICE VARIANCE [1]

District	Destination entry			End-to-end		
	Within + 1-day (percent)	Within + 2-days (percent)	Within + 3-days (percent)	Within + 1-day (percent)	Within + 2-days (percent)	Within + 3-days (percent)
Capital Metro Area	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Baltimore District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Capital District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Greater South Carolina District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Greensboro District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Mid-Carolinas District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
No. Virginia District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x
Richmond District	xx.x	xx.x	xx.x	xx.x	xx.x	xx.x

[1] Destination Entry includes Destination Bulk Mail Center, Destination Area Distribution Center, Destination Sectional Center Facility, and Destination Delivery Unit.

In **SUPPLEMENTARY INFORMATION**, on page 36148, Table 16, change ''Letters, Flats, and Parcels'' to read ''Letters and Flats''.

TABLE 16.—ANNUAL COMPLIANCE REPORT; SAMPLE ANNUAL REPORT FORMAT FOR PERIODICALS

Mail Class	Target (percent)	Percent on-time
Periodicals		
Letters and Flats	xx.x	xx.x

In **SUPPLEMENTARY INFORMATION**, on page 36149, Table 19, add the heading ''District'' to the first column to read:

TABLE 19.—QUARTERLY PERFORMANCE FOR PACKAGE SERVICES SERVICE VARIANCE; SAMPLE QUARTERLY REPORT FORMAT WITH SERVICE VARIANCE FOR PACKAGE SERVICES PARCELS

District	Within + 1-day (percent)	Within + 2-days (percent)	Within + 3-days (percent)
Capital Metro Area	xx.x	xx.x	xx.x
Baltimore District	xx.x	xx.x	xx.x
Capital District	xx.x	xx.x	xx.x
Greater South Carolina District	xx.x	xx.x	xx.x
Greensboro District	xx.x	xx.x	xx.x
Mid-Carolinas District	xx.x	xx.x	xx.x

TABLE 19.—QUARTERLY PERFORMANCE FOR PACKAGE SERVICES SERVICE VARIANCE; SAMPLE QUARTERLY REPORT FORMAT WITH SERVICE VARIANCE FOR PACKAGE SERVICES PARCELS—Continued

District	Within + 1-day (percent)	Within + 2-days (percent)	Within + 3-days (percent)
No. Virginia District	xx.x	xx.x	xx.x
Richmond District	xx.x	xx.x	xx.x

In **SUPPLEMENTARY INFORMATION**, on page 36156, Table 25, delete superscript 1 from the table title.

TABLE 25.—DOMESTIC DESTINATION ENTRY MAIL

Mail class	End-to-end flow range (days) [1]			
	DDU (days)	SCF (days)	ADC (days)	BMC (days)
Periodicals	1	1	1–2	[2]1–2
Standard Mail	2	3	.....	5
Package Services	1	2	.....	3

[1] *See* 72 FR 72216 (December 19, 2007) for Alaska, Hawaii, Puerto Rico, Guam, and U.S. Virgin Islands.
[2] Only applies to Periodicals receiving the DBMC Container rate.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–15785 Filed 7–10–08; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58094; File No. SR–CBOE–2008–70]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Short Term Option Series Pilot Program

July 3, 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 July 2, 2008, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the period for its Short Term Option Series pilot program (''Pilot Program'') through July 12, 2009. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

On July 12, 2005, the Commission approved the Pilot Program.[5] The Pilot Program allows CBOE to list and trade Short Term Option Series, which would expire one week after the date on which a series is opened.

The Exchange has selected the following four options classes to participant in the Pilot Program: S&P 500 Index options (SPX), S&P 100 Index American-style options (OEX), Mini-S&P 500 Index options (XSP), and S&P 100 Index European-style options (XEO). CBOE believes the Pilot Program has been successful and well received by its members and the investing public. Thus, CBOE proposes to extend the Pilot Program through July 12, 2009.

In support of the proposed rule change, and as required by the Pilot

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A)(iii).
[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR–CBOE–2004–63) (''Pilot Program Approval Order''). The Pilot Program has since been extended and is currently scheduled to expire on July 12, 2008. *See* Securities Exchange Act Release Nos. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (SR–CBOE–2006–48) (extending the Pilot Program through July 12, 2007) and 56050 (July 11, 2007), 72 FR 39472 (July 18, 2007) (SR–CBOE–2007–76) (extending the Pilot Program through July 12, 2008); *see also* Securities Exchange Act Release No. 54338 (August 21, 2006), 71 FR 50952 (August 28, 2006) (SR–CBOE–2006–49) (order approving an amendment to the Pilot Program that increased the number of series that may be listed for a class selected to participant in the Pilot Program from five series to seven series).

Program Approval Order, the Exchange is submitting to the Commission a Pilot Program report (the ''Report'') detailing the Exchange's experience with the Pilot Program. Specifically, the Report contains data and written analysis regarding the four options classes included in the Pilot Program. The Report is being submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand to extend the Pilot Program another year based on the information provided in the Report. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any capacity-related problems with respect to Short Term Option Series. The Exchange also represents that it has the necessary system capacity to support the option series listed under the Pilot Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act [6] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extension of the Pilot Program will result in a continuing benefit to investors, by allowing them additional means to manage their risk exposures and carry out their investment objectives, and will allow the Exchange to further study investor interest in Short Term Option Series.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78s(b)(1).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest and will promote competition because such waiver will allow CBOE to continue the existing Pilot Program without interruption.[11] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2008–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–70. 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 No. SR–CBOE–2008–70 and should be submitted on or before August 1, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15758 Filed 7–10–08; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58101; File No. SR–NASDAQ–2008–033]

Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto Related to Submission of Non-Tape Reports

July 3, 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 18, 2008, The NASDAQ Stock Market, LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On July 3, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing a rule change to: (1) Offer functionality allowing the submission of non-tape riskless principal reports using Nasdaq's Automated Confirmation Transaction Service (''ACT''); (2) allow the collection and transfer of fees among Nasdaq members using such submissions, as well as for step-outs; and (3) expand the use of step-outs to include journal entry position movement.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3]

7038. Step-Outs and Sales Fee Transfers

(a) A Nasdaq member may enter a non-tape, non-clearing submission into the Automated Confirmation Transaction Service (''ACT'') for the purpose of transferring all or a portion of the obligation to pay a Rule 7002 Sales Fee or similar fee of another self-regulatory organization that is associated with a previously executed trade to one or more other Nasdaq members.

(b) A Nasdaq member may enter a non-tape, clearing-only submission into ACT for the purpose of [:

(i) Transferring all or a portion of the member's position in a previously executed trade to one or more other Nasdaq members on whose behalf the trade was executed;

(ii) Transferring all or a portion of the member's position in an account of the member at one clearing broker to an account of the member at another clearing broker] *transferring securities from one member to another, provided that the transfer does not constitute a transaction in securities that is otherwise subject to reporting that has not, in fact, been previously and separately reported as a transaction.* When submitting a non-tape, clearing-only submission that is used to transfer a position from one member to another member, the submitting member may also indicate that the obligation to pay a Sales Fee or similar fee associated with the position should be transferred.

(c) When ACT is used to transfer a position *along with a Sales Fee or similar fee,* all parties to the transfer must be Nasdaq members and [must] *may* be party to an agreement authorizing the transferring party to enter into locked-in trades on its behalf. When ACT is used to transfer Sales Fees or similar fees [without the transfer of the underlying shares] *without an accompanying transfer of a securities position,* the clearing firms for the trades in question must be part[y]*ies* to an agreement authorizing such transfers between themselves and/or the firms on whose behalf they clear trades.

(d) A Nasdaq member is prohibited from using a non-tape, clearing-only *ACT* submission [entered into ACT] for the purpose of [reporting a trade execution] *effecting a transaction required to be trade reported or reporting a trade for regulatory purposes. Submission of non-tape, clearing, or non-tape, non-clearing records into ACT by Nasdaq members does not satisfy any obligation such members may have to report transactions as required by the applicable rules of other self-regulatory organizations.*

(e)–(f) No Change.

* * * * *

7042. Non-Tape Riskless Submissions

Nasdaq members may make non-tape submissions into the Automated Confirmation Transaction Service (''ACT'') to facilitate riskless transactions taking place on national securities exchanges, or over-the-counter, as follows:

(a) For riskless transactions in which a member, after having received an order to buy a security, purchases the security at the same price to satisfy the order to buy or, after having received an order to sell, sells the security at the same price to satisfy the order to sell, the member may submit, for the offsetting ''riskless'' portion of the transaction either:

i. A clearing-only report with a capacity indicator of ''riskless principal,'' ''agency,'' or ''intra-broker'' if a clearing report is necessary to clear the transaction; or

ii. A non-tape, non-clearing report with a capacity indicator of ''riskless principal,'' ''agency'' or ''intra-broker'' if a clearing report is not necessary to clear the transaction.

(b) Nothing in this Rule shall relieve any member or other party from its obligation to fully and properly report transactions as required by the applicable rules of other self-regulatory organizations.

* * * * *

7043. Inclusion of Transaction Fees in Clearing Reports Submitted to ACT

(a) Nasdaq members may agree in advance to transfer a transaction fee charged by one member to another member on a transaction effected on an exchange or otherwise through the submission of a clearing report to the Automated Confirmation Transaction Service (''ACT''). Such report, inclusive of the transaction fee, will be submitted to the National Securities Clearing Corporation for processing. To facilitate the transfer of the transaction fee, the report submitted to ACT shall provide, in addition to all other information required to be submitted, a total per share or contract price amount, inclusive of the transaction fee. Such reports shall only submitted where there exists a written agreement between the members permitting the submission of fee-inclusive clearing reports between them. Nothing in this paragraph shall relieve a member from its obligations under Nasdaq rules and the federal securities laws. The ability to transfer transaction fees as described above shall be limited to transactions and/or submissions made pursuant to Rule 7038 or 7042.

(b) The fee for submission of the above shall be $0.03 per side.

* * * * *

(b) Not applicable.

(c) Not applicable.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.nasdaqtrader.com*), at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaq.complinet.com.*

Nasdaq's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing a rule change to: (1) Allow Nasdaq members to submit non-tape, riskless reports using Nasdaq's Automated Confirmation Transaction Service (''ACT''); (2) allow Nasdaq members to use ACT to collect and transfer fees in connection with non-tape, riskless principal submissions and step-outs; and (3) broaden the scope of permitted step-outs.

Non-Tape Riskless Submission

Nasdaq proposes to establish a functionality that will allow Nasdaq exchange member submission of non-tape, riskless reports (including the non-tape portion of a riskless transaction taking place on other national securities exchanges or over-the-counter) to ACT.[4] These reports are intended to facilitate the transfer of information between parties to the transactions; make electronically available trade record information in the system to parties; and, if requested, the ultimate transmission of the transfer records to an appropriate clearing agency.

In defining what constitutes a riskless transfer, Nasdaq has determined to follow the general standard for riskless principal transactions articulated in Financial Industry Regulatory Authority (''FINRA'') Rule 4632(d)(3)(B) and require that the Nasdaq member have had an order in hand, and have given the party providing the order the same price as the Nasdaq member obtained in the public marketplace, prior to the submission of post-trade riskless transfer entry, either as principal or agent, into ACT. These riskless submissions into ACT are voluntary and do not replace any separate reporting obligation that may also be applicable. Under the proposal, Nasdaq members will be allowed to submit records for riskless transfers using the following capacities: ''Riskless Principal'' where the member acted as principal on the open market trade or trades related to the riskless submission; ''Agent'' where the member acted as agent on the open market trade or trades related to the riskless submission; and ''Intra-Broker'' where the transfer is occurring strictly within a member Firm.

In FINRA Notice to Members 2007–38, that SRO allowed, among other things, the submission of certain non-tape reports to represent the offsetting riskless portion of a previously executed public market trade while restricting its members' ability to submit such non-tape reports to a FINRA facility if the public trade report was not also reported to a FINRA facility. The only exception to this prohibition was if the non-tape report was submitted to reflect the offsetting portion of a riskless principal transaction or an agency transaction where a firm acts as agent on behalf of another member firm. As such, FINRA's rule prevents firms from using a market's (FINRA's) functionality to facilitate riskless securities transfers between two broker units of a single member.[5] Nasdaq, however, believes that using non-tape reports in such a manner is desirable and proposes offering an ''Intra-Broker'' non-tape reporting capacity submission for use in these circumstances. For example, Firm ABCD and ABCQ are entities of ABC Brokerage, but two completely different business units. ABCD uses ABCQ's systems to access liquidity in the marketplace. In the market, ABCQ is the broker against which clearing of the public market trade is submitted. ABCD and ABCQ clear separately. ABCQ needs to get the shares to ABCD. It's not a trade, and because they're the same broker from a member perspective, they can't move the shares as a riskless transfer under FINRA's rules. In this situation, use of the ''Intra-Broker'' capacity through Nasdaq's ACT system would be available.

The riskless reports may be used for clearing, non-clearing, QSR, and Give-Ups. Nasdaq will continue to honor Attachment 2's and Uniform Trade Reporting Agreements on file with it or the FINRA/Nasdaq TRF. When used with clearing, or otherwise specifically requested, the reports shall also be included in Nasdaq Risk Management calculations. Submission of non-tape, clearing, or non-tape, non-clearing records into ACT by Nasdaq members will not satisfy any obligation the member may otherwise have to report or represent the same transactions under the rules of any other self-regulatory organization.

Transaction Fees

Current trade-reporting rules of other SROs allow transaction fees to be included in clearing reports. Nasdaq proposes to establish similar rules for transaction fees to be included in clearing reports that are submitted in connection with non-tape, riskless principal submissions and step-outs. Under the proposal, Nasdaq members may also seek to impose or transfer to another Nasdaq member such transaction fees in the clearing reports that Nasdaq forwards to the National Securities Clearing Corporation (''NSCC'') for trade clearance. Nasdaq will impose a $0.03 per-side fee for each such clearing report. Nasdaq notes that under NASD Rule 7002B, FINRA/Nasdaq TRF participants are charged a fee of $0.03 per side for submission of a clearing report to transfer a transaction fee charged by one FINRA member to another.

Step-Outs

Although not defined by rule, a step-out is transfer of all or a portion of a broker-dealer's securities position to another broker-dealer that does not constitute a trade.[6]

[4] ACT is a technology asset of Nasdaq. Prior to the commencement of operation of the Trade Reporting Facility (now the FINRA/Nasdaq TRF) and the start of Nasdaq's operation as a national securities exchange in August 2006, it was common for industry participants to refer to 'reporting trades to ACT.' Now, ACT technology serves multiple SROs/markets and provides an electronic system through which certain trades, transfers, and instructions can be reported or communicated. Among other functions, ACT connects to DTCC's continuous net settlement and trade comparison systems for equities, with all clearing submissions being marked to accurately reflect the executing market. ACT responds to all entries with rejects or acknowledgements, stores all records submitted to it, and provides both step-out and sales fee transfer capabilities to users.

[5] In effect, FINRA's position prohibits a firm from moving riskless share potions to itself. Consolidation through merger and acquisition is common in the securities industry, and there are environments where, due to lack of integration, it would be preferable for firms to move shares between elements of the same broker by submitting appropriate non-tape share transfer reports to and through a third-party system (like ACT) rather than in-house systems—if they exist.

[6] For example, one broker might buy a block of securities on behalf of several other broker-dealer customers. That broker ''steps-out'' of the initial trade to transfer all or a portion of its position to its broker-dealer customers. In this situation, the block transaction effected in a securities market will

Continued

This filing builds upon Nasdaq's previous attempts to provide useful step-out parameters for its members. Nasdaq initially offered step-out capability in 2007 in light of FINRA rules that restricted step-outs to those portions of trades that were originally executed by and reported to FINRA facilities.[7] Nasdaq viewed this requirement as overly restrictive because certain broker-dealers wished to engage in step-outs but either did not have systems in place to capture the venue of the original trade execution and/or may have executed various portions of the underlying trade in non-FINRA facilities, thereby preventing them from being able to comply with the FINRA requirements. Accordingly, Nasdaq allowed step-out capability with respect to any trade that a Nasdaq member was a party to regardless of the market on which the trade was executed.[8]

Nasdaq amended its step-out rules again in 2007 to specify that an authorizing agreement is required between clearing firm members when they seek to transfer certain sales fees but not the underlying shares; no authorizing agreement is required when Nasdaq members conduct step-outs when such transfers are accompanied by a transfer of the underlying shares only.[9]

In this filing, Nasdaq proposes to further broaden its step-out parameters. First, Nasdaq would expand the scope of step outs to include all securities transfers from one Nasdaq member to another provided that the transfer does not constitute a reportable trade. Thus, under the proposed rule, the step-out could not only be used to allocate securities positions originating from a previously executed trade[10] or to transfer securities from one clearing member to another clearing member for accounting purposes[11] but also, for example, for stock loan purposes to service a short position.[12]

Second, Nasdaq proposes to eliminate the authorizing agreement requirement when Nasdaq members use ACT to effect a step-out along with a sales or similar fee. Nasdaq states that step-outs are already completed pursuant to formal agreements among Nasdaq members or through ACT's comparison processes, which renders the current Nasdaq requirement unnecessarily duplicative. Nasdaq points out that the transaction comparison process requires the implicit acquiescence of both parties for the ACT system to complete the step-out transaction. In other words, a member will retain an opportunity to manually reject or reverse the step-out and fee transfer arrangement if it disagrees with their terms when presented to it even after it is initially affirmed. As support for this proposed rule change, Nasdaq states that it determined through discussions with its member firms that many firms preferred to handle step-outs on a match/compare basis, *i.e.* manually, even when they had a fee agreement between them and that it was an unnecessary burden for firms to sign separate agreements to move Section 31 fees associated with step-out submissions to ACT since this functionality already was in place on ACT.

This proposed rule change would not change the requirement of a formal sales fee transfer agreement between firms that wish to use ACT to move sales fees without an accompanying transfer of securities. Nasdaq believes that it is important to retain the requirement that the parties to a fee transfer have a written agreement specifically permitting such fee transfers because a sales fee transfer that moves no shares is not a step-out and therefore there are no specific share movements for firms to readily identify as being associated with the fee transfer.

Finally, Nasdaq proposes to clarify Nasdaq members' reporting requirements associated with step-out submissions to ACT. Nasdaq proposes to amend Rule 7038(d) by adding language that would state that (1) members may not submit step-outs into ACT for the purpose of ''effecting'' (instead of ''reporting a trade execution'') a transaction required to be trade reported; and (2) submitting step-outs into ACT does not satisfy any other SRO's requirements that members might have to report transactions.

Nasdaq believes that the above proposals enhance the ability of Nasdaq members to transfer securities positions and their associated fees in an efficient and transparent manner.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Sections 6(b)(4) and (5) of the Act,[14] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that enhancing its step-out and fee transfer functionality benefits its members by enhancing the efficiency and transparency of their post-trade operations. Nasdaq's proposed fees are reasonable and comparable to other fees for reporting submissions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

contain instructions for NSCC to allocate certain positions to the stepped-out broker's customers. In another form of a step-out that occurs outside a securities exchange, a broker uses a clearing-only report through ACT to transfer some or all of its securities position from an account at one clearing broker to an account at another clearing broker, for its own internal accounting purposes.

[7] *See* Securities Exchange Act Release No. 56345 (Aug. 31, 2007), 72 FR 51880 (Sep. 11, 2007).

[8] The step-out report submitted to ACT under this rule change was marked as a Nasdaq Exchange entry so as to clearly distinguish it from an NASD/Nasdaq TRF entry, which also is reported through ACT. Also under this rule change, the parties to a step-out under Nasdaq rules must all be Nasdaq members and must be parties to an agreement such as the NASD's new Uniform Trade Reporting Facility Service Bureau/Executing Broker Agreement under which the broker transferring the position has received authorization from the transferee broker to act on its behalf.

[9] *See* Securities Exchange Act Release No. 56929 (Dec. 7, 2007), 72 FR 71176 (Dec. 14, 2007).

[10] *See* Nasdaq Rule 7038(b)(i).

[11] *See* Nasdaq Rule 7038(b)(ii).

[12] *See* Proposed Rule 7038(b).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4) and (5).

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2008–033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NASDAQ–2008–033. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–033 and should be submitted on or before August 1, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15759 Filed 7–10–08; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11288 and #11289]

Wisconsin Disaster Number WI–00013

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1768–DR), dated 06/14/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/05/2008 and continuing.

Effective Date: 06/26/2008.

Physical Loan Application Deadline Date: 08/13/2008.

EIDL Loan Application Deadline Date: 03/13/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Wisconsin, dated 06/14/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Adams, Calumet, Green Lake, Jefferson, La Crosse, Walworth.

Contiguous Counties: (Economic Injury Loans Only):

Minnesota: Winona.

Wisconsin: Brown, Portage, Trempealeau, Jackson, Wood.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15267 Filed 7–10–08; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to OMB-approved information collections and extensions (no change) of existing OMB-approved information collections.

SSA is soliciting comments on the accuracy of the Agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, e-mail address: *OIRA_Submission@omb.eop.gov*;

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, e-mail address: *OPLM.RCO@ssa.gov*.

I. The information collections listed below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. Therefore, your comments would be most helpful if you submit them to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Disability Update Report—20 CFR 404.1589–.1595, 416.988–.996—0960–0511.* SSA periodically reviews current disability benefits recipients' cases to determine if these beneficiaries should continue to receive disability payments. In cases where these reviews indicate beneficiaries might have experienced a medical improvement, SSA must investigate further. The Agency uses form SSA–455/SSA–455–OCR–SM, the Disability Update Report, for this purpose. Specifically, SSA uses the information it gathers on this form to determine if (1) There is enough

evidence to warrant referring the beneficiary for a full medical Continuing Disability Review (CDR); (2) the beneficiary's impairment has not changed enough to warrant a CDR; or (3) there are unresolved work-related issues for the beneficiary. The respondents are Title II and Title XVI disability payment recipients.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 880,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 220,000 hours.

2. *Help America Vote Act (HAVA)—0960–0706.* H.R. 3295, the Help America Vote Act (HAVA) of 2002, mandates that States verify the identities of newly registered voters. When newly registered voters do not have drivers' licenses or State-issued ID cards, they must supply the last four digits of their Social Security Numbers (SSNs) to their local State election agencies for verification. The election agencies forward this information to their State Motor Vehicle Administration (MVA) that inputs the data into the American Association of Motor Vehicle Administrations, a central consolidation system that routes the voter data to SSA's Help America Vote Verification system. Once SSA's HAVV system has confirmed the identity of the voter, the information will be returned along the same route (in reverse) until it reaches the State election agency. The official respondents for this collection are the State MVAs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2,352,204.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 78,407 hours.

3. *National Direct Deposit Initiative—31 CFR 210—0960–0711.* Many SSA benefits recipients choose to receive their payments via the Direct Deposit Program, in which SSA transfers funds directly to recipients' accounts at a financial institution (FI). However, many Title II payment recipients still receive their payments through traditional paper checks. In an effort to encourage these beneficiaries to change from paper checks to the Direct Deposit Program, SSA is collaborating with the Department of the Treasury and several FIs to implement the National Direct Deposit Initiative. In this program, SSA will work with FIs to determine which of the target Title II beneficiaries have accounts at the participating banks. The banks will then send forms to these beneficiaries encouraging them to enroll in the Direct Deposit Program. The respondents are the participating FIs and Title II beneficiaries currently receiving their payments via check.

Type of Request: Extension of an OMB-approved information collection.

Type of respondent	Information collection requirement	Number of respondents	Frequency of response	Average burden response (minutes)	Estimated annual burden (hours)	Cost requirement	Estimated cost burden per respondent	Total annual cost burden
Title II Payment Recipients.	Direct Deposit Enrollment Form.	100,000	1	2	3,333	N/A	N/A	N/A
Financial Institutions (banks).	Data screening/ matching activities; SSA's data management requirements.	10	1	240	40	Printing/ mailing of 100,000 enrollment forms.	$1,039	$10,390
Totals	.....	110,000	.....	.....	3,373	.....	.....	10,390

Total Estimated Annual Burden (hours): 3,373 hours.

Total Estimated Annual Cost Burden ($): $10,390.

4. *Authorization to Disclose Information to Social Security Administration—20 CFR 404.1512 & 20 CFR 416.912—0960–0623.* SSA must obtain sufficient medical evidence to make eligibility determinations for Social Security disability benefits and SSI payments. For SSA to obtain medical evidence, an applicant must authorize his or her medical source(s) to release the information to SSA. The applicant may use form SSA–827 to provide consent for the release of information. Generally, the State DDS completes the form(s) based on information provided by the applicant, and sends the form(s) to the designated medical source(s). The respondents are applicants for Title II benefits and Title XVI payments.

Type of Request: Revision of an OMB-approved information collection.

Total respondents	Number of reports by each respondent	Total annual responses	Estimated number of minutes per response	Total burden hours
Reading, Signing, and Dating the 1st SSA–827 (10 minutes)				
3,853,928	1	3,853,928	10	642,321
Signing and Dating Three Additional SSA–827s				
3,853,928	3	11,561,784	1	192,696
Reading the Explanation of the SSA–827 on the Internet				
586,232	1	586,232	3	29,312

Collectively:

Number of Respondents: 3,853,928.

Frequency of Response (Average per case): 4.

Average Burden per Response: 13 minutes to complete all 4 forms.

Average Burden to Read Internet Instructions: 3 minutes.

Estimated Annual Burden for Reading Internet Explanation: 29,312.

Estimated Annual Burden to read instructions and complete the form: 864,329 hours.

5. *Review of the Disability Hearing Officer's Reconsidered Determinations Before It Is Issued—20 CFR 404.913–404.918, 404.1512–404.1515, 404.1589, 416.912–416.915, 416.989, 416.1413–416.1418, 404.918(d) and 416.1418(d)—0960–0709.* When SSA approves a claimant for Social Security Disability Benefits, it periodically conducts a Continuing Disability Review (CDR), during which the Agency reviews the claimant's status to see if his/her condition has improved to the point where the claimant is capable of working. If SSA notifies a claimant that the Agency will cease paying his/her benefits, he/she may appeal that determination. The first appeal gives the claimant the opportunity for a full evidentiary hearing before a Disability Hearing Officer (DHO). A federal component reviews a small sample of the DHOs' determinations. It is rare for the reviewing component to reverse a DHO determination favorable to the claimant. Before SSA can effect the unfavorable determination, the claimant has 10 days to provide a written statement explaining why SSA should not stop his/her payments. That written statement is the information collected in this process. In the last three years, we experienced an average of eight instances where the reviewing unit reversed the DHO determination. Respondents are CDR claimants whose benefits are going to cease.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 8.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 8 hours.

II. SSA has submitted the information collections listed below. Your comments on the information collections will be most useful if OMB and SSA receive them within 30 days from the date of this publication. You can request a copy of the information collections by e-mail, *OPLM.RCO@ssa.gov,* fax 410–965–6400, or by calling the SSA Reports Clearance Officer at 410–965–0454.

1. Youth Transition Process Demonstration Evaluation Data Collection—0960–0687

Background

The purpose of the Youth Transition Demonstration (YTD) project is to help young people with disabilities make the transition from school to work. While participating in the project, youth can continue to work and/or continue their education because SSA waives certain disability program rules and offers services to youth who are receiving disability benefits or have a high probability of receiving them. SSA will fully implement YTD projects in 10 sites across the country. The evaluation will produce empirical evidence on the effects of the waivers and project services including educational attainment, employment, earnings, and receipt of benefits by youth with disabilities but also on the Social Security Trust Fund and federal income tax revenues. This type of project is authorized by Sections 1110 and 234 of the Social Security Act.

Project Description

Given the importance of estimating YTD effects as accurately as possible, we will evaluate the project using rigorous analytic methods based on randomly assigning youth to a treatment or control group. We will conduct several data collections. These include (1) Baseline interviews with youth and their parents or guardians prior to random assignment; (2) follow-up interviews at 12 and 36 months after random assignment; (3) interviews and/or roundtable discussions with local program administrators, program supervisors, and service delivery staff; and (4) focus groups of youths, their parents, and service providers. The respondents are youths with disabilities enrolled in the project; their parents or guardians; program staff; and service providers.

Type of Request: Revision of an existing OMB clearance.

Data collection year	Collection	Number of respondents	Responses per respondent	Average burden per response (hours)	Total response burden (hours)
2008	Baseline	2,531	1	0.55	1,392
	Informed consent	2,531	1	0.083	210
	12 month follow-up	1,502	1	0.83	1,247
	In-depth interviews	120	1	0.42	50
	Focus group	60	1	1.5	90
	Program staff/service provider	32	1	1	32
Total 2008					3,021

Dated: July 7, 2008.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E8–15752 Filed 7–10–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6286]

Determination Pursuant to Section 686 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008

Pursuant to the authority vested in me by the laws of the United States, including Section 686(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161) (the ''Act''), I hereby determine that waiving the requirements of subsection (a) of Section 686 of the Act is important to the national interests of the United States, and I hereby so waive.

This Determination shall be published in the **Federal Register** and copies shall be provided to the appropriate committees of the Congress.

Dated: June 25, 2008.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E8–15862 Filed 7–10–08; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice: 6284]

Exchange Visitor Program—Termination of Flight Training Programs

ACTION: Statement of Policy.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Deputy Assistant Secretary, Office of Private Sector Exchange, Bureau of Educational and Cultural Affairs, U.S. Department of State, SA–44, 301 4th St., SW., Room 734, Washington, DC 20547. E-mail: *jexchanges@state.gov*; FAX: 202–203–5087.

SUMMARY: Since 1949 the Department of State (Department) has designated private sector and governmental entities to conduct training programs for eligible foreign nationals. For the past twenty years, such programs have included flight training activities. Currently, eight organizations facilitate the entry into the United States of approximately 350 foreign nationals annually for the purpose of flight training under the aegis of the Exchange Visitor Program and its J-visa. Regulations dealing specifically with flight training programs appear at 22 CFR 62.22(o).

These eight Department of State designated flight schools are also certified by the Department of Homeland Security (DHS) to issue the Form I–20, which is needed to obtain an M visa. Regulations governing the M visa appear at 8 CFR 214.2(m). DHS is also responsible for the security-related screening of all alien flight training candidates. Regulations governing flight training candidate screening appear at 49 CFR 1552. In January 2006, the Department issued a Statement of Policy on J–1 Flight Training Programs (71 FR 3913, January 24, 2006) providing notice that it would henceforth not designate any new J visa flight training program sponsors; nor would it allow currently-designated flight training programs to expand their programs, pending a determination as to which Federal agency ultimately would assume sole responsibility for administering and monitoring these programs.

In April 2006, the Department published proposed modifications to its regulations governing the Exchange Visitor Program's trainee category, including flight training. In response to this proposed rule and by letter dated May 30, 2006, the Office of Advocacy of the Small Business Administration opined, that if adopted, the Department's proposed modifications to 22 CFR 62.22(o), could have significant impact on a substantial number of small entities, in particular, flight training schools that sponsor alien flight candidates entering the United States on the J visa. Given this comment, the Department did not modify then existing flight training regulations when it adopted its Interim Final rule (72 FR 33669, June 19, 2007).

In December 2007, the Department published a Final Rule (72 FR 72245, December 20, 2007) that permits the termination of designated programs that the Department determines no longer further its public diplomacy mission or compromises the national security of the United States (22 CFR 62.62). In adopting this provision, the Department explained that the Exchange Visitor Program is the cornerstone of the Department's public diplomacy efforts and integral to the furtherance of the President's Constitutional prerogatives in conducting foreign affairs (72 FR 62112). Pursuant to this regulatory authority, the Department hereby determines that all flight training programs no longer further the public diplomacy mission of the Department, and accordingly, effective June 1, 2010, the Department will terminate the Exchange Visitor Program sponsor designations of all eight sponsors of flight training programs.

The Department's decision to eliminate flight training from the Exchange Visitor Program is based on thorough consideration and deliberation. As explained in its January 2006 Statement of Policy, the Department does not have the expertise and resources to monitor fully flight training programs and ensure their compliance with the national security concerns that underlie the Patriot Act (Pub. L. 107–56). Further, the Aviation and Transportation Security Act of 2001 (49 U.S.C. 44939), assigns to the Attorney General discretion to request a wide variety of information from alien flight candidates in order to determine whether such flight candidates present a threat to aviation or national security. In light of this statutory directive, DHS issued an Interim Final Rule on September 20, 2004, assigning full responsibility for the screening of alien flight training candidates to DHS. Finally, all Department designated flight training sponsors are certified by the Department of Homeland Security to issue the Form I–20 and thereby permit foreign nationals to participate in flight training programs under the M visa. As all eight existing Department of State designated sponsors may continue, without interruption, the administration of flight training programs for foreign nationals, the Department believes that concerns raised by the Office of Advocacy of the Small Business Administration are outweighed by the security interests of the Government. The Department's position is sound given the expertise of DHS to administer and monitor such programs, efficiencies of government operation, and the security issues inherent in flight training.

The flight training sponsors will continue to have obligations to their exchange visitors pursuant to 22 CFR 62.63: they must fulfill their responsibilities to all exchange visitors who are in the United States at the time of their program termination until the individual's exchange program is completed. Also, sponsors must notify prospective exchange visitors who have not yet entered the United States that the program has been terminated. Such sponsors will have access to SEVIS to manage their existing program participants, but will not be able to initiate new programs after December 31, 2009.

Dated: June 30, 2008.

Stanley S. Colvin,

Deputy Assistant Secretary, Office of Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E8–15454 Filed 7–10–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number: OST–95–179 and OST–95–623]

Notice of Request for Extension of a Previously Approved Collection

AGENCY: Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received on or before September 9, 2008.

ADDRESSES: You may submit a comment (identified by DOT Docket Numbers

OST–95–179 and OST–95–623) by any of the following methods:

- *Web site: http://regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–001.
- *Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Wednesday and Federal Holidays.

Instructions: All comments must include the agency name and Docket Numbers OST–95–179 and OST–95–623. Note that all comments received will be posted without change to *http://regulations.gov*, including and personal information provided. You should know that anyone is able to search the electronic from 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.).

Docket: For access to the docket to read background documents or comments, go to *http://regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 a.m., Monday through Friday, except Wednesday and federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket OST–95–179 and OST–95–623''. The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT.

FOR FURTHER INFORMATION CONTACT: Aleta Best, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, 20590, (202) 493–0797.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Codesharing.

OMB Control Number: 2105–0537.

Expiration Date: November 30, 2008.

Type of Request: Extension of a previously approved collection.

Abstract: Codesharing is the name given to a common airline industry marketing practice where, by mutual agreement between cooperating carriers, at least one of the airline designator codes used on a flight is different from that of the airline operating the aircraft. In one version, two or more airlines each use their own designator codes on the same aircraft operation. Although only one airline operates the flight, each airline in a codesharing arrangement may hold out, market, and sell the flight as its own in published schedules. Codesharing also refers to other arrangements, such as when a code on a passenger's ticket is not that of the operator of the flight, but where the operator does not also hold out the service in its own name. Such codesharing arrangements are common between commuter air carriers and their larger affiliates, and the number of arrangements between U.S. air carriers and foreign air carriers has also been increasing. Arrangements falling into this category are similar to leases of aircraft with crew (wet leases).

The Department recognizes the strong preference of air travelers for on-line service (service by a single carrier) on connecting flights over interline service (service by multiple carriers). Codesharing arrangements are, in part, a marketing response to this demand for on-line service. Often, codesharing partners offer services similar to those available for on-line connections with the goal of offering ''seamless'' service (*i.e.,* service where the transfers from flight to flight or airline to airline are facilitated). For example, they may locate gates near each other to make connections more convenient or coordinate baggage handling to give greater assurance that baggage will be properly handled.

Codesharing arrangements can help airlines operate more efficiently because they can reduce costs by providing a joint service with one aircraft rather than operating separate services with two aircraft. Particularly in thin markets, this efficiency can lead to increased price and service options for consumers or enable the use of equipment sized appropriately for the market. Therefore, the Department recognizes that codesharing, as well as long-term wet leases, can offer significant economic benefits.

Although codesharing and wet-lease arrangements can offer significant consumer benefits, they can also be misleading unless consumers know that the transportation they are considering for purchase will not be provided by the airline whose designator code is shown on the ticket, schedule, or itinerary and unless they know the identity of the airline on which they will be flying. The growth in the use of codesharing, wet-leasing, and similar marketing tools, particularly in international air transportation, had given the Department concern about whether the then-current disclosure rules (14 CFR 399.88) protected the public interest adequately and led the Department to adopt specific regulations requiring the disclosure of code-sharing arrangements and long-term wet leases on March 15, 1999. (14 CFR part 257)

These regulations required U.S. airlines, foreign airlines and travel agents doing business in the United States, to notify passengers of the existence of code-sharing or long-term wet lease arrangements. It also required U.S. airlines, foreign airlines and travel agents to tell prospective consumers, in all oral communications before booking transportation, that the transporting airline is not the airline whose designator code will appear on travel documents and identify the transporting airline by its corporate name and any other name under which that service is held out to the public.

Respondents: All U.S. air carriers, foreign air carriers, computer reservations systems (CRSs), and travel agents doing business in the United States, and the traveling public.

Estimated Total Annual Burden: Annual reporting burden for this data collection is estimated at 653,183 hours for all travel agents and airline ticket agents and 653,183 hours for air travelers, based on 15 seconds per phone call and an average of 1.5 phone calls per trip, for the approximately 33% of codeshare itineraries that involve personal contact. Most of this data collection (third party notification) is accomplished through highly automated computerized systems.

Estimated Number of Respondents: 16,000, excluding travelers.

Estimated Time per Response: At 15 seconds per call and an average of 1.5 calls per trip, a total of 22.5 seconds per respondent or traveler, for the approximately 33% of codeshare itineraries that involve personal contact.

Comments are invited on: (a) Whether this collection of information (third party notification) is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the

collection of information on the respondents, including through the use of automated techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC.

Todd M. Homan,

Director, Office of Aviation Analysis.

[FR Doc. E8–15783 Filed 7–10–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Approval of Finding of No Significant Impact (FONSI) on a Short Form Environmental Assessment (EA); Chicago/Rockford International Airport, Rockford, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Approval of Documents.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the approval of a Finding of No Significant Impact (FONSI) on an Environmental Assessment for proposed Federal actions at Chicago/Rockford International Airport, Rockford, Illinois. The FONSI specifies that the proposed federal actions and local development projects are consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act of 1969 and will not significantly affect the quality of the environment.

A description of the proposed Federal actions is: (a) To issue an environmental finding to allow approval of the Airport Layout Plan (ALP) for the development items listed below.

The items in the local airport development project are to: Acquire approximately 18 acres of vacant land, in fee simple title, in the Runway 25 Approach and Runway Protection Zone.

Copies of the environmental decision and the Short Form EA are available for public information review during regular business hours at the following locations:

1. Chicago/Rockford International Airport, 60 Airport Drive, Rockford, IL 61109.

2. Division of Aeronautics—Illinois Department of Transportation, One Langhorne Bond Drive, Capital Airport, Springfield, IL 62707.

3. Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Amy B. Hanson, Environmental Protection Specialist, Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Ms. Hanson can be contacted at (847) 294–7354 (voice), (847) 294–7046 (facsimile) or by e-mail at *amy.hanson@faa.gov.*

Issued in Des Plaines, Illinois, on June 19, 2008.

James G. Keefer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. E8–15551 Filed 7–10–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement and Hold Scoping Meeting; Gnoss Field, Novato, Marin County, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent and notice of scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for the proposed extension of a runway, corresponding taxiway extension, associated levee construction and realignment of drainage, and reprogramming of the GPS Instrument Approach for the extended runway. To ensure that all significant issues related to the proposed action are identified, a public scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: Barry Franklin, Environmental Protection Specialist, San Francisco Airports District Office, Federal Aviation Administration, Western-Pacific Region, 831 Mitten Road, Room 210, Burlingame, California 94010–1303, Telephone: (650) 876–2778, extension 614.

SUPPLEMENTARY INFORMATION: The Lead Agency for the preparation of the EIS is the FAA. The FAA will prepare an EIS to evaluate the following development alternatives and the No Action Alternative as described below. The EIS will determine all environmental impacts, such as and not limited to, noise impacts, impacts on air and water quality, wetlands, ecological resources, floodplains, historic resources, hazardous wastes, socioeconomics, and economic factors.

Alternative One—Sponsor's Proposed Project

Runway 13/31 would be extended 1,100 feet to the north from 3,300 linear feet to 4,400 linear feet. This length would maintain the airport's ability to accommodate current and projected airport operations.

To compliment the runway extension, the corresponding taxiway for Runway 13/31 would be extended to the north from 3,300 linear feet to 4,400 linear feet. There would be associated levee construction and major realignment of drainage in order to protect the runway extension against flooding. The GPS instrument approach for Runway 13/31 would be reprogrammed to accommodate the extension of the runway.

Alternative Two

Runway 13/31 would be extended 1,100 feet to the south from 3,300 linear feet to 4,400 linear feet. This length would maintain the airport's ability to accommodate current and projected airport operations.

To compliment the runway extension, the corresponding taxiway for Runway 13/31 would be extended to the south from 3,300 linear feet to 4,400 linear feet. There would be associated levee construction and major realignment of drainage in order to protect the runway extension against flooding. The GPS instrument approach for Runway 13/31 would be reprogrammed to accommodate the extension of the runway.

Alternative Three

Runway 13/31 would be extended to the north and to the south to bring the runway length from 3,300 linear feet to 4,400 linear feet. This length would maintain the airport's ability to accommodate current and projected airport operations.

To compliment the runway extension, the corresponding taxiway for Runway 13/31 would be extended to the north and to the south to bring the total taxiway length from 3,300 linear feet to 4,400 linear feet. There would be associated levee construction and major realignment of drainage in order to protect the runway extension against flooding. The GPS instrument approach for Runway 13/31 would be reprogrammed to accommodate the extension of the runway.

Alternative Four—No Action Alternative

Under this alternative the existing airport would be retained with no improvements. The county would not change the infrastructure of the existing airport and no extensions or associated improvements would be constructed.

In addition to this Notice of Intent, the County of Marin, California is issuing a Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR), per California Environmental Quality Act (CEQA) of 1970 Guidelines. The FAA's EIS and the County's EIR will be produced concurrently.

Public Scoping Meeting: To ensure that the full range of issues related to the proposed project are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. A public scoping meeting will be conducted to identify any significant issues associated with the proposed project.

One (1) Public Scoping meeting for the general public will be held on August 14, 2008, at the Marin Humane Society Auditorium, 171 Bel Marin Keys Blvd, Novato, California. The meeting will be held from 6:30 p.m. to 8:30 p.m. Pacific Daylight Time (PDT). The FAA and the County will be accepting comments on the scope of both the EIS and EIR at that scoping meeting.

Written comments concerning the scope of the EIS and EIR may be mailed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT** above, and must be received no later than 5 p.m. PDT, August 29, 2008.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on June 27, 2008.

Mark A. McClardy,

Manager, Airports Division, Western—Pacific Region, AWP–600.

[FR Doc. E8–15209 Filed 7–10–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request to Release Airport Property at the Hondo Municipal Airport, Hondo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Hondo Municipal Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before August 11, 2008.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Mr. Robert Herrera, City Manager, at the following address: 1600 Avenue M, Hondo, Texas 78861.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cooks Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5608, e-mail: *Steven.Cooks@faa.gov,* Fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Hondo Municipal Airport under the provisions of the AIR 21.

The following is a brief overview of the request:

The City of Hondo requests the release of 30.785 acres of non-aeronautical airport property. The total acreage consists of two tracts. One is a 25.783 acre tract and the second tract is a 5.002 acre tract, for a total of 30.785 acres. The land was acquired by Deed without Warranty from the United States on July 16, 1948. The property to be released will be sold to allow for future development of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Hondo Municipal Airport, telephone number (830) 426–3378.

Issued in Fort Worth, Texas on July 1, 2008.

James Michael Nicely,

Acting Manager, Airports Division.

[FR Doc. E8–15552 Filed 7–10–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review for Meadows Field Airport, Bakersfield, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Meadows Field Airport under the provisions of 49 U.S.C. 47501 *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR Part 150 by County of Kern, California. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Meadows Field Airport were in compliance with applicable requirements, effective January 16, 2008, 73 FR 9401. The proposed noise compatibility program will be approved or disapproved on or before December 19, 2008.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is June 23, 2008. The public comment period ends August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Federal Aviation Administration, Los Angeles Airports District Office, P.O. Box 92007, Los Angeles, California 90009–2007, Telephone: 310–725–3637. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Meadows Field Airport which will be approved or disapproved on or before December 19, 2008. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Meadows Field Airport, effective on June 23, 2008. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to FAR Part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 19, 2008.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. AD comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, Planning and Environmental Division, APP–400, 800 Independence Avenue, SW., Room 621, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region Office, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, Los Angeles Airports District Office, 15000 Aviation Boulevard, Room 3000, Hawthorne, California 90261.

Mr. Jack Gotcher, Meadows Field Airport, 3701 Wings Way, Suite 300, Bakersfield, California 93308.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on June 23, 2008.

Mark A. McClardy,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. E8–15550 Filed 7–10–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Anchorage, Alaska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed Seward Highway to Glenn Highway (Highway-to-Highway) project in Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Michael Vanderhoof, Division Environmental Coordinator, Federal Highway Administration, Alaska Division, 709 West 9th Street, Room 851, Juneau, AK 99802, Phone: 907–586–7464; Fax: 907–586–7420; e-mail: *michael.vanderhoof@dot.gov* or Jerry Ruehle, Central Region Environmental Coordinator; Alaska Department of Transportation and Public Facilities; 4111 Aviation Drive, Anchorage, AK 99502; Phone: (907) 269–0534; Fax: (907) 243–6927; e-mail: *jerry.ruehle@alaska.gov.*

SUPPLEMENTARY INFORMATION: The FHWA and the Alaska Department of Transportation and Public Facilities in cooperation with the Municipality of Anchorage, propose to improve the connection between the Seward and Glenn Highways (State Route Number 1) in Anchorage, Alaska. The facilities needing improvement are part of the National Highway System (NHS) and are designated as Interstate Highway Routes. The proposed project is identified in the adopted Anchorage Metropolitan Area Transportation Solutions' ''*Anchorage Bowl Long Range Transportation Plan*'' (LRTP) (2007). The LRTP conducted extensive public involvement and studied the existing transportation problems, planned development patterns, and resultant transportation needs in Anchorage which led to identification of the Highway-to-Highway project in the plan.

The Highway-to-Highway improvements are considered necessary to address capacity, travel demand, safety, and system linkage to major destinations and freight mobility on the existing Seward Highway and Glenn Highway NHS routes. These NHS routes provide access to major employment centers in downtown and midtown Anchorage and major intermodal port, rail, and airport facilities. The Seward and Glenn Highway NHS routes are divided highways coming into the center of Anchorage, which transition to urban arterial streets with connecting roads, stop lights, and commercial and residential access. The urban arterial segments of the routes are characterized by high travel demand, congestion, and resulting safety issues caused by traffic levels that have exceeded the capacity of the existing arterial street network.

Alternatives under consideration include: (1) Taking no action; (2) transportation system management and transportation demand management; (3) transit; (4) connecting the Seward Highway and Glenn Highways on a new alignment; (5) upgrading the Seward Highway and Glenn Highway NHS routes on their existing alignments; and (6) multi-modal options combining elements of alternatives 2 through 5. Incorporated into and studied with the various build alternatives will be design variations of facility type, number of lanes, grade, and alignment.

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 project. Coordination with Cooperating and Participating Agencies and the public will be conducted in accordance with Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), 23 U.S.C. 139. A coordination plan will be prepared to describe the EIS process, identify roles and responsibilities, and explain the project schedule and key coordination points. A series of public meetings will be held in Anchorage over the course of the project. Formal scoping meetings will be held in Anchorage on July 29th and 31st 2008 and an agency scoping meeting will be held in mid-August. While the project team will take comments throughout the development of the project, formal scoping comments should be submitted within 90 days of this notice.

Additional meetings and other opportunities to provide input on the project will be provided as the project develops. A public hearing will be held on the draft EIS. The draft EIS will be available for public and agency review and comment prior to the public

hearing. Public notice in the Anchorage Daily News will be given of the time and place for all public meetings and hearings. Project information can be found on the project Web site at *http://www.highway2highway.com.*

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 FHWA at the address 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: July 7, 2008.

David C. Miller,

Division Administrator, Alaska Division, FHWA, Juneau, Alaska.

[FR Doc. E8–15770 Filed 7–10–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Literacy

AGENCY: Office of Financial Education, Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Literacy will convene its fourth meeting on Tuesday, July 29, 2008, via teleconference beginning at 2 p.m. Eastern Time. The telephone meeting will be open to the public. Members of the public interested in listening to the meeting should call 202–622–7881 or e-mail *FinancialLiteracyCouncil@do.treas.gov* to obtain the conference call number. Individuals needing special accommodations to take part because of a disability should notify the contact person listed below.

DATES: The telephone meeting will be held on Tuesday, July 29, 2008, at 2 p.m. Eastern Time.

Submission of Written Comments: The public is invited to submit written statements with the President's Advisory Council on Financial Literacy by any one of the following methods:

Electronic Statements

E-mail *FinancialLiteracyCouncil@do.treas.gov;* or

Paper Statements

Send paper statements in triplicate to President's Advisory Council on Financial Literacy, Office of Financial Education, Room 1332, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all statements on its Web site (*http://www.treasury.gov/offices/domestic-finance/financial-institution/fin-education/council/index.shtml*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will make such statements available for public inspection and copying in the Department's library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Drew Blacker, Office of Financial Education, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–0887 or *Drew.Blacker@do.treas.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Dubis Correal, Designated Federal Officer of the Advisory Council, has ordered publication of this notice that the President's Advisory Council on Financial Literacy will convene its fourth meeting on Tuesday, July 29, 2008, via teleconference beginning at 2 p.m. Eastern Time. The meeting will be open to the public. Members of the public who wish to listen to the meeting should contact the Office of Financial Education at 202–622–7881 or *FinancialLiteracyCouncil@do.treas.gov* by 5 p.m. Eastern Time on July 25, 2008 to obtain the conference call number. Capacity on the teleconference line is limited and space will be distributed in the order we receive requests. Those who attempt to register after the teleconference line has reached capacity will be invited to the Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC, to listen to the teleconference in a meeting room. The purpose of this telephone meeting is for the President's Advisory Council on Financial Literacy to discuss new agenda items, update the Council on the work of the committees and follow-up on issues from previous meetings.

Dated: July 3, 2008.

Taiya Smith,

Executive Secretary, Treasury Department.

[FR Doc. E8–15852 Filed 7–10–08; 8:45 am]

BILLING CODE 4810–25–P

Corrections

Federal Register

Vol. 73, No. 134

Friday, July 11, 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

Office of Clinical and Preventive Services, Division of Nursing Services Nursing Program, Schools of Nursing

Correction

In notice document E8–14457 beginning on page 36333 in the issue of Thursday, June 26, 2008 make the following corrections:

1. On page 36333, in the second column, under the **I. Funding Opportunity Description** heading, in the eighth line, ''(AI/AN5)'' should read ''(AI/ANs)''.

2. On page 36334, in the third column, in the sixth line from the top, ''c-mails'' should read ''e-mails''

3. On the same page, in the same column, in the first full paragraph, in the second line, ''11-IS'' should read ''IHS''.

4. On page 36335, in the second column, under the fourth bullet, in the fifth line, ''DUO'' should read ''DGO''.

5. On the same page, in the third column, in the 13th line from the bottom, ''DNIP'' should read ''DNP''.

6. On page 36336, in the third column, under the *3. Indirect Costs* heading, in the fifth line, ''Part 11–27'' should read ''Part II–27''.

7. On the same page, in the same column, under the same heading, in the same line, ''IIHS'' should read ''IHS''.

[FR Doc. Z8–14457 Filed 7–10–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–OMM–0007]

MMS Information Collection Activity: 1010–0141, 30 CFR Part 250, Subpart D, Oil and Gas Drilling Operations, Extension of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

Correction

In notice document E8–14893 beginning on page 37475 in the issue of Tuesday, July 1, 2008 make the following correction:

On page 37475, in the first column, between the first and second paragraphs, the dates section did not appear. It should be included to read as follows: ''**DATE:** Submit written comments by July 31, 2008.''

[FR Doc. Z8–14893 Filed 7–10–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
July 11, 2008

Part II

Department of Transportation

National Highway Traffic Safety Administration

Consumer Information; New Car Assessment Program; Notice

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–26555]

Consumer Information; New Car Assessment Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final decision notice.

SUMMARY: On January 25, 2007, NHTSA published a notice announcing a public hearing and requesting comments on an agency report titled, ''The New Car Assessment Program (NCAP) Suggested Approaches for Future Program Enhancements.'' This notice summarizes the comments received and provides the agency's decision on how it will improve the NCAP ratings program.

For model year (MY) 2010, the agency will make changes to its existing front and side crash rating programs. For the frontal crash test program, NHTSA will maintain the 35 mph (56 kmph) full frontal barrier test protocol but will update the test dummies and associated injury criteria used to assess and assign a vehicle's frontal impact star rating. For side impact, NHTSA will maintain the current moving deformable barrier test at 38.5 mph (63 kmph) but will update that test to include new side impact test dummies and new injury criteria that are used to assign a vehicle's side impact star rating. Additionally, vehicles will also be assessed using a new pole test and a small female crash test dummy.

For rollover, the agency will continue to rate vehicles for rollover propensity, but will wait to update its rollover risk model to allow for more real-world crash data of vehicles equipped with electronic stability control.

Also for MY 2010, the agency will implement a new ratings program that will rate vehicles on the presence of select advanced technologies and establish a new overall Vehicle Safety Score that will combine the star ratings from the front, side, and rollover programs.

Finally, for the agency's vehicle labeling program, we are announcing that the side score, rather than being based only on the moving deformable barrier test, will be based on the combination of the moving deformable barrier test and the pole test. Additionally, the agency will initiate rulemaking to include the new overall crashworthiness rating on the Monroney label.

DATES: These changes to the New Car Assessment Program are effective for the 2010 model year.

FOR FURTHER INFORMATION CONTACT: For technical issues concerning the enhancements to NCAP, contact Mr. Nathaniel Beuse or Mr. John Hinch. Telephone: (202) 366–9700. Facsimile: (202) 493–2739. For legal issues, contact Dorothy Nakama, NHTSA Office of Chief Counsel, Telephone (202) 366–2992. Facsimile: (202) 366–3820. You may send mail to these officials at: The National Highway Traffic Safety Administration, Attention: NVS–010, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Summary of Request for Comments
A. Frontal NCAP
B. Side NCAP
C. Rollover NCAP
D. Rear Impact
E. Crash Avoidance Technologies
F. Presentation and Dissemination of NCAP information
G. Manufacturer Self-Certification
III. Summary of Comments
A. Frontal NCAP
1. Impact Protocol
2. Test Dummies (in the Front Seating Position)
3. Injury Criteria
4. Test Speed
B. Side NCAP
1. Oblique Pole Test (Test Dummies and Implementation Time)
2. Moving Barrier Protocol (Test Speed, Test Dummies, and Injury Criteria)
C. Rollover NCAP
1. Rollover Risk Model
2. Dynamic Rollover Structural Test
D. Rear Impact
1. Basic Information
2. Links to the IIHS
3. Dynamic Test
E. Crash Avoidance Technologies
1. Program Implementation
2. Selected Technologies
3. Rating System
F. Presentation of NCAP Information
Combined Crashworthiness Rating
G. Manufacturer Self-Certification (of NCAP Results)
H. Other Suggestions
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A. Frontal NCAP
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C. Rollover NCAP
D. Rear Impact
E. Crash Avoidance Technologies
F. Presentation and Dissemination of Safety Information
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H. Other Recommendations
I. Monroney Label
V. Conclusion
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Appendix D

I. Introduction

The National Highway Traffic Safety Administration (NHTSA) is responsible for reducing deaths, injuries, and economic losses resulting from motor vehicle crashes. One way in which NHTSA accomplishes this mission is by providing consumer information to the public. NHTSA established the New Car Assessment Program (NCAP) in 1978 in response to Title II of the Motor Vehicle Information and Cost Savings Act of 1972. Through NCAP, NHTSA currently conducts tests and provides frontal and side crash, and rollover ratings and communicates the results using a five-star rating system. With this information, consumers can make better-informed decisions about their purchases. In turn, manufacturers respond to the ratings by voluntarily improving the safety of their vehicles beyond the minimum Federal safety standards.

For MY 1979, when the agency began rating vehicles for frontal impact safety, fewer than 30 percent of vehicles tested would have received the top ratings of 4 or 5 stars for the driver seating position.[1] By comparison, for MY 2007, 98 percent of vehicles received 4 and 5 stars in the frontal NCAP rating for that same seating position. Equally impressive is that while it took almost 30 years to reach this level for frontal NCAP performance, the more recent NCAP programs, like side and rollover NCAP, have started reaching this level of safety performance at a pace that can be measured in years rather than decades. The agency believes that consumers continue to consider safety in their purchasing decisions and are demanding ever-increasing levels of safety.

Similarly, recent advances in crash avoidance technology offer a new opportunity for NCAP to further enhance its ability to inform consumers about new systems and encourage them to purchase systems that NHTSA has found to be effective in improving safety.

On January 25, 2007 NHTSA published a notice outlining proposed enhancements to the NCAP activities. In this notice, we requested comments on any additional actions that the agency could undertake so that the program could continue to provide consumers with relevant safety information.[2] These enhancements included new test dummies and injury criteria for frontal NCAP, the addition of a new side pole test, new test dummies, and new injury

[1] NHTSA began using stars in model year 1994. See 69 FR 61072, Docket No. NHTSA–2004–18765.

[2] 72 FR 3473, Docket No. NHTSA–2006–26555.

criteria for side NCAP, an overall summary rating, and a new program to promote advanced crash avoidance technologies. Additionally, the notice announced a March 7, 2007 public hearing to allow interested parties the opportunity to address the suggested approaches for enhancing the program.

Seventy-six (76) individual comments were received in response to the notice and the public hearing.[3] Commenters offered mixed responses to the various proposals for enhancing NCAP; however, most commenters commended the agency's initiative to reexamine the program and supported the proposed approaches. This notice summarizes comments to the January 2007 notice, the March 2007 public hearing, and provides the agency's decision on how it will proceed with changes to NCAP.

I. Summary of Request for Comments

In its notice, the agency presented proposals to improve not only the program's current front, side and rollover activities, but also approaches to improve its information with regards to rear impact, and certain crash avoidance (or active safety) technologies such as Electronic Stability Control (ESC). NHTSA also outlined alternatives to enhance the presentation and dissemination of safety information to consumers, and solicited feedback for additional considerations that would allow NCAP to remain effective and relevant in improving vehicle safety.

A. Frontal NCAP

NHTSA proposed three approaches to enhance the frontal NCAP. The first approach was to maintain the current 35 mph (56 kmph) test protocol with a 50th percentile male Hybrid III dummy, but to account for injuries to the knee/thigh/hip (KTH) complex. This would be accomplished by including a new injury criterion into the formula used to calculate the frontal NCAP rating for the driver and front passenger seating positions. Second, while keeping the test protocol the same, the agency considered determining whether injury measures obtained below the knee using the Denton or Thor-Lx dummy legs are predictive of real-world injuries. Last, the agency considered evaluating vehicles based on a lower test speed.

B. Side NCAP

To enhance its side impact safety ratings, the agency presented two approaches for consideration. NHTSA proposed continuing to rate vehicles using the moving deformable barrier test protocol but would also encourage manufacturers to provide better head and pelvis protection by including the side impact pole test and the new test dummies recently finalized in Federal Motor Vehicle Safety Standard (FMVSS) No. 214 ''Side Impact Protection'' prior to the performance requirements being fully phased-in.[4] Furthermore, the agency proposed research that would focus on the assessment of the injury mechanisms in a fully equipped side impact air bag fleet. The purpose of the research would be to evaluate how serious injuries occur in the new fleet and to develop test procedures to reflect these impact conditions. The outcome of this research could lead to a new barrier test protocol (which could include increased test speed and different barrier characteristics).

C. Rollover NCAP

To enhance its rollover program, the agency indicated that it would continue tracking the rollover rate and the single vehicle crash rate of vehicles equipped with ESC to create a new rollover risk model.

D. Rear Impact

Currently, NHTSA does not provide consumer information on rear impacts. However, NHTSA is aware of recent research suggesting that consumers are concerned about rear crashes. As such, the agency proposed two approaches. First, NHTSA proposed that it could provide consumers with basic information on rear crashes such as safe driving behavior, proper adjustment of head restraints, real-world safety data by vehicle classes, and links to the Insurance Institute of Highway Safety (IIHS) rear impact test results. Second, as a longer term approach, the agency proposed that a dynamic test, which addresses those injuries not covered by the agency's current standards, could be investigated and incorporated into the ratings program.

E. Crash Avoidance Technologies

Technologies such as ESC, forward collision warning (FCW), lane departure warning (LDW) and crash mitigation systems have been developed and are being offered in the current vehicle fleet. Some of these technologies have shown effectiveness in reducing the number of relevant crashes in Department of Transportation (DOT)-sponsored field operational tests.[5] Research by the agency and others has shown that consumers are generally unaware of these technologies or their potential safety benefits. As a result, the agency believed that NCAP should be used to better highlight those beneficial technologies to consumers and sought to establish a new ratings program that evaluated vehicles on the presence of proven crash avoidance technologies. Based on technical maturity, fleet availability, and available effectiveness data, NHTSA identified three technologies that fit these criteria. These technologies are ESC, LDW, and FCW.

NHTSA proposed two possible approaches and illustrated a possible implementation of the program with an A, B, C letter grade system. First, the agency proposed that each of the technologies would have equal weight. For example, if a vehicle had only one technology, it would receive a C; whereas, another vehicle that had all three technologies would receive an A. Approach two would attempt to quantify a technology's real-world benefits by taking into account the target population and anticipated effectiveness of the technology to decide whether a particular type of technology would be given more weighting than another and thus prompt a higher score. For example, in this scheme, if ESC was found to be more effective than lane departure, a vehicle equipped only with ESC could receive a B versus a vehicle equipped only with lane departure warning which would receive a C rating.

It was further stated that this second approach could be expanded into a more comprehensive performance-based crash avoidance rating. As the technologies evolved and as the agency gathered more information related to various versions of these technologies and their associated safety effectiveness, NHTSA proposed that a safety score (i.e., star rating) on individual technologies could then be developed (e.g., different version of ESC might yield different performance results and thus a different star rating).

F. Presentation and Dissemination of NCAP Information

Combined Crashworthiness Rating

Several NHTSA-sponsored research reports and consumer surveys, as well as a Government Accountability Office and a National Academy of Sciences review of NCAP, have all pointed to the public's desire for a summary safety rating. Similarly, other consumer information programs around the world

[3] This count does not include duplicative or multiple comments from the same source.

[4] 73 FR 32473, Docket No. NHTSA–2008–0104. On June 9, 2008 the agency responded to petitions for reconsideration of the final rule, changing the effective date of the pole test. Now, with certain exceptions, all vehicles have to meet the upgraded pole test by September 1, 2014.

[5] See 72 FR 3475, Docket No. NHTSA–2006–26555.

such as the IIHS, Japan NCAP, and EuroNCAP use summary ratings that combine their respective crashworthiness tests. The agency proposed two summary crashworthiness rating concepts. In both concepts, the existing rollover rating was not included in the calculation of the overall summary rating, and star rating boundaries would have to be developed for both individual crash tests and the overall summary rating.

The first approach computed the overall crashworthiness rating by first averaging the driver and right front passenger dummy injury results from the frontal crash mode into a single star rating. The same would be done for the seating positions in the side crash mode to compute the overall side crash rating. To compute the overall crashworthiness rating, the overall frontal and the overall side impact performance would be combined by using weighting factors obtained from real-world data (i.e. the National Automotive Sampling System (NASS)). Each individual total (overall front and overall side) would be weighted by that crash mode's contribution to the total injuries occurring in the real-world.

The second approach computed the overall crashworthiness rating by normalizing the seating positions for each individual crash mode (front and side) using the Injury Assessment Reference Values (IARVs) established for that dummy, body region, and crash mode. Using the NASS data, these normalized values would then be multiplied by the occurrence of that injury in the real-world. Body injury regions that are coded by NASS but are not measured by the dummy and/or not selected by NHTSA for inclusion in the rating would be equally distributed among the remaining body regions.

Presentation of Safety Information

As the consumer's use of the Internet for vehicle safety information has grown, so has the need to consolidate and better present NCAP vehicle safety information to consumers on *http://www.safercar.gov.* The four approaches proposed by the agency were: (1) Developing other topical areas under the Equipment and Safety section of the Web site; (2) redesigning the Web site to improve organization; (3) improving search capabilities on the Web site; and, (4) combining agency recall and ratings database information.

G. Manufacturer Self-Certification

In addition to NHTSA's proposed suggestions in the notice the agency also sought comment at the public hearing on whether or not manufacturers should be allowed to conduct and publish their own NCAP ratings via a self-certification process. We indicated that such an approach would be one way to improve not only the timeliness of NCAP ratings but also to increase the number of vehicles rated by the agency.

III. Summary of Comments

This section provides a brief summary of the seventy-six (76) comments submitted to the docket by vehicle manufacturers, safety advocates, public health groups and the general public in response to the notice and the public hearing.[6] It should be noted that comments unique to the public hearing are stated as such.

A. Frontal NCAP

Comments regarding NHTSA's frontal program are grouped into four categories: Impact Protocol, Test Dummies (in the Front Seating Position), Injury Criteria and Test Speed.

1. Impact Protocol

The Alliance of Automobile Manufacturers (Alliance), Automotive Occupant Restraints Council (AORC), Toyota Motor North America, Inc. (Toyota), BMW of North America (BMW), Fuji Heavy Industries USA, Inc. (Subaru) and Volkswagen of America, Inc. (VW) supported the retention of the current frontal crash test protocol at 35 mph (56 kmph). Consumers Union and Public Citizen suggested adding an offset frontal crash test rating, which Public Citizen believed would be far more useful in assessing the structural integrity of different vehicle models. Likewise, Toyota also encouraged NHTSA to investigate ways to include information on offset collision conditions in its NCAP program. Toyota explained that their investigation of National Automotive Sampling System Crashworthiness Data System (NASS–CDS) data showed that an overwhelming majority of frontal crashes occur in either the full overlap or offset condition. They believed that vehicle performance assessed in the offset condition should yield relevant improvements in safety technology and provide considerable benefit.

IIHS and Subaru recommended the addition of a frontal pole test to address significant injuries resulting from impacts with narrow objects. IIHS asserted that offset tests more closely simulate impacts with narrow objects than do full-width tests, and that a narrow-object NCAP test could have an important impact on real-world vehicle crashworthiness, and would give consumers a wide range of results to inform their purchasing decisions. Subaru suggested that NHTSA should study and possibly propose a frontal pole test for inclusion into NCAP if the frequency of frontal crashes with narrow objects is high. However, General Motors North America (GM) asserted that a pole test is unlikely to result in significant change or further improvement in structural stability and resultant injury reduction. They stated that research in this area may yield only limited or incremental gains in injury mitigation, and that the public interest is likely to be better served by channeling resources into areas that could produce greater societal benefit.

2. Test Dummies (in the Front Seating Position)

With regard to test dummies, the Alliance stated that test dummies in frontal NCAP should be the same as those in FMVSS No. 208. Additionally, GM, AORC, Consumers Union and the Alliance supported the use of the 5th percentile female Hybrid III dummy in the right front passenger position. GM provided NASS data which suggested that small females were over-represented (with regard to serious injuries) in the right front passenger seating position. GM also suggested that in the future, the 5th percentile female dummy should be used in both seating positions to optimize safety. AORC asserted that the substitution of the 5th female for the 50th percentile male would demonstrate a broader population range of protection since some data has been shown which suggests that the weighted frequency of serious and fatal injuries to women is greater than to men in the right front passenger seating position.

Furthermore, Consumers Union asserted that the agency should investigate using the 5th percentile female and 95th percentile male dummies to evaluate NCAP tests for all sizes of vehicle occupants. Subaru supported the continued use of 50th percentile adult male dummies in both front seating positions indicating that this was more representative of real-world occupants. Subaru also asserted that additional tests with other dummies, such as the 5th percentile adult female, should be done only if well supported by real-world data.

3. Injury Criteria

Most vehicle manufacturers agreed that NHTSA should develop and incorporate a KTH injury criterion into

[6] These submissions are available at *http://www.regulations.gov* in Docket No. NHTSA–2006–26555.

the NCAP frontal rating. They noted that a KTH assessment would drive vehicle countermeasures that could mitigate lower leg injuries and also yield important information relevant to vehicle design. Likewise, adding KTH and/or lower leg injury criteria to the NCAP rating protocol could expand the usefulness of the NCAP system by addressing the societal cost of Abbreviated Injury Scale (AIS) 2+ injuries. The Alliance, Autoliv, Consumers Union and IIHS also supported NHTSA's efforts to incorporate a KTH injury criterion into the frontal program. However, IIHS urged the agency to concentrate its research tests on serious injuries and fatalities in frontal impacts to encourage more protective vehicle design. Additionally, Autoliv stated that although a reduction in KTH injuries would have a significant impact on societal cost, they believed that it would have little effect in reducing fatalities.

Nissan North America (Nissan) stated that the agency should consider a KTH assessment only after further study is conducted. Instead, Nissan urged NHTSA to harmonize knee and thigh injury values with those required in Japanese and European regulations. Likewise, the Association of International Automobile Manufacturers (AIAM) did not believe that the agency should move expeditiously to include a KTH criterion in the current frontal NCAP program since the agency had identified crashes of lower test speed as the primary concern regarding leg injuries. They recommended that NHTSA present the analysis and results of their KTH research for public comment prior to including a KTH criterion in the frontal program.

For lower leg assessments, several commenters suggested that additional research was needed to determine whether injury measures obtained below the knee were predictive of real-world injury. GM noted that adding a femur load injury criterion to frontal NCAP would drive many of the same vehicle countermeasures that would mitigate lower leg injuries.

With regards to what anthropomorphic test device (ATD) could be used for these new criteria (KTH and lower leg), Honda specifically stated that a KTH assessment would be possible using the Denton dummy leg. For injuries to the lower leg (below the knee), Honda, Subaru, Nissan, and Volvo Cars of North America, LLC (Volvo), suggested that the agency adopt the Thor-Lx legs in the future. The Alliance did not support the introduction of either the Denton or Thor-Lx legs unless they were included in FMVSS No. 208. Furthermore, VW believed that these test devices must be validated, and the applicable injury criteria and rating must be verified for correlation with real-world safety.

Some commenters suggested that all injury criteria incorporated in FMVSS No. 208 (beyond head injury criteria and chest acceleration criteria) should also be included in frontal NCAP. Specifically, Honda, Ford, GM, the Alliance, and Autoliv supported the inclusion of a chest deflection criterion into the frontal NCAP rating based on NASS–CDS data indicating a substantial number of injuries to ribs and internal organs resulting in AIS 3+ or higher severity injuries. However, Honda stated that the current chest deflection calibration procedure may not be appropriate to assure that chest deflection measurements are accurate enough to provide useful data. GM and the Alliance recommended including a chest compression criterion into frontal NCAP. The Alliance urged NHTSA to conduct research on neck (tension) injury criteria before including it into frontal NCAP. However, GM suggested that the agency add neck injury criteria to frontal NCAP since these criteria are already measured by the Hybrid III dummies and included in FMVSS No. 208.

4. Test Speed

With regards to adopting a lower test speed, the Alliance, GM and Volvo agreed with NHTSA's analysis and supported the agency's proposal to conduct more research on lower test speeds. However, VW questioned whether lower speed crashes represented a greater risk of occupant injury than the current NCAP test procedure. Therefore, VW as well as the Alliance believed that an additional test in frontal NCAP would add significant expense and strain on available resources without any commensurate advantages or benefit.

Subaru asserted that they did not support adding low speed bumper tests to frontal NCAP since those tests would overlap with existing IIHS tests.

Two individual commenters, Mr. Dainius Dalmotas and Dr. Harold Mertz stated that a full vehicle crash test designed to promote enhanced chest protection in low-to-moderate speed frontal crashes would be most promising since the vast majority of serious and fatal injuries among belted drivers occur at collision speeds of 25 mph (40 kmph) or less. They also asserted that incentives to promote improved safety in low-to-moderate speed frontal impacts were lacking and could be addressed through NCAP.

At the public hearing, Consumers Federation of America (CFA) and the Center for Auto Safety (CAS) suggested that NHTSA increase test speeds and challenge manufacturers to post the highest speed at which their vehicles are tested, in order to differentiate amongst the performance of vehicles. However, the Alliance, Consumers Union, AIAM and Subaru opposed a higher speed test for frontal NCAP. The Alliance stated that field data did not show the need for higher test speeds. AIAM and Consumers Union did not believe that increasing crash test speeds would benefit the overall safety of occupants; but rather, it could cause vehicles to become stiffer. Subaru asserted that a higher speed test is not representative of the vast majority of fatal crashes, does not enhance NCAP's consumer information goals, and risks increasing vehicle aggressiveness.

B. Side NCAP

Comments regarding NHTSA's side program are divided into the following categories: Oblique Pole Test (Test Dummies and Implementation Time), Moving Barrier Protocol (Test Speed, Test Dummies, and Injury Criteria), and Side NCAP Research.

1. Oblique Pole Test (Test Dummies and Implementation Time)

GM, Subaru, Toyota, the Alliance, and Autoliv agreed with the agency's proposal to incorporate an oblique pole test into NCAP. However, with regards to adopting the oblique pole test prior to the completion of the FMVSS No. 214 pole test phase-in, BMW, Ford, Toyota, and the Alliance, asserted that such action would be premature, and these commenters suggested that NHTSA adopt the test after the oblique pole test had been fully phased-in. Furthermore, Subaru suggested that 3 years be allowed after the agency announced a new test before rating vehicles under the new test protocol.

Toyota explained that they understood NHTSA's intention to use an early introduction of the pole test to drive the installation of advanced head protection systems (like curtain airbags), but they believed that significant benefits in head protection were already being realized from the introduction of curtain air bags, which was driven by industry's commitment to the industry voluntary compatibility requirements.[7]

[7] IIHS and the Alliance created a voluntary agreement wherein automotive manufacturers agreed to improve occupant protection in front and side crashes involving cars and light trucks. For front-to-side impacts, most automakers agreed to design their vehicles to meet the head injury

Continued

Therefore, Toyota recommended additional investigation into whether there are merits of an early introduction of an oblique pole test into NCAP. Honda recommended adding to the existing side impact test by introducing a second side impact test that is similar to the current IIHS moving deformable barrier (MDB) test.[8] Honda suggested that this would extend the coverage of NHTSA's side impact testing, be more representative of real-world crashes, and help to provide a more realistic assessment of a vehicle's crashworthiness in these types of two-vehicle collisions.

If the agency went forward with an oblique pole test, Subaru recommended a side impact assessment based on two tests (the oblique pole test and IIHS's MDB test) with head injury criteria and the SID–IIs dummy, as long as the results could be combined into a single rating. BMW and the Alliance suggested that the 5th percentile female SID–IIs dummy be used for the driver position in the oblique pole test. BMW asserted that the smaller SID–IIs dummy is most appropriate for determining the geometric coverage area required for a curtain airbag. The Alliance believed that it is appropriate to test only with the 5th percentile female dummy in the front seating position because this is a very severe test condition, and it would serve to meet the intent of NCAP while minimizing additional test burdens on NHTSA and the automotive industry.

Honda, Nissan and VW did not support the inclusion of an oblique pole test into side NCAP. Honda believed that introducing an oblique pole test would be a temporary measure until the test was fully phased-in as a requirement for FMVSS No. 214. To comply with the requirements of FMVSS No. 214, the head protection benefits of the oblique pole test would already have been realized in every vehicle, so there would be little practical benefit to consumers as a result of temporarily including such a test in NCAP. VW and Nissan, similar to Toyota, stated that automobile manufacturers were already committed to front-to-side impact protection, and that the addition of a side impact pole test would provide no added incentive for the manufacturers to implement additional side impact protection. Nissan also believed that incorporating the pole test into NCAP is unnecessary to encourage head protection in new vehicles.

IIHS stated that the current NCAP barrier test did not fully address the mix of vehicles on the road and that the agency needed to improve the existing side impact barrier. IIHS suggested giving greater priority to adopting or modifying the IIHS side impact barrier rather than incorporating a new oblique pole test. However, GM asserted that the pole test is structurally more challenging than the IIHS MDB test, and that the IIHS MDB test and the pole test will not necessarily drive installation of the same air bag solutions.

2. Moving Barrier Protocol (Test Speed, Test Dummies, and Injury Criteria)

NHTSA proposed a new side NCAP barrier test protocol that would include new dummies and additional injury criteria. The Alliance supported the maintenance of the current barrier test but they suggested a revised, lower test speed of 33.5 mph (54 kmph).

With regards to the incorporation of new dummies into the side MDB test, the Alliance, Subaru, Honda, Nissan, Volvo, and AIAM proposed the incorporation of WorldSID into NCAP. Specifically, Volvo and the Alliance suggested that the WorldSID dummy should be introduced in FMVSS No. 214 and NCAP simultaneously. Honda stated that the WorldSID dummy provides excellent biofidelity, and does not present problems with rib guide shape that the ES–2re dummy appears to have based on their evaluation. AORC believed that the current test dummy does not adequately address head injuries, and they encouraged NHTSA to use either EuroSID–2 and/or the SID–IIs side impact dummy.

Volvo recommended that the dummies and injury criteria for the NCAP side barrier test procedures be the same as they are for FMVSS No. 214. Volvo supported the addition of head injury criteria in the NCAP evaluation for the side barrier; however, they would prefer that the NCAP criteria limits are set more stringent in order to encourage manufacturers to exceed the performance standards outlined in the legal requirement. BMW recommended that NHTSA use the ES–2re dummy for the driver position in the MDB test because the SID–IIs dummy is already included in the MDB test conducted by IIHS, and the biofidelity of the SID–IIs dummy in these types of impacts is well understood. GM also suggested the ES–2re dummy for the driver position since the most frequent occupant, and most frequently injured occupant type at the driver position is an adult male.

Autoliv asserted that the ES–2re dummy should be used for the front seating position in both the oblique pole and MDB tests, as this dummy represents the largest percentage of front seat occupants. They also recommended the SID–IIs dummy for the rear seating position to provide information on protection for older children and small adults seated in the rear. GM also recommended the SID–IIs dummy for the rear seating position because more frail persons tend to sit in the rear, the SID–IIs dummy is tuned for frail occupants, and placement in the rear will import safety improvements across the range of occupants.

3. Side NCAP Research

As a longer term approach, the agency suggested research into the moving barrier test protocol to address injuries and fatalities that might occur in vehicles equipped with curtain and side impact air bags. The agency indicated this research could lead to a new barrier, an increased barrier test speed, and a reevaluation of the impact configuration.

The Alliance, AIAM, Honda and Subaru agreed that NHTSA should analyze real-world side impact crashes for vehicles with side curtain airbags. However, the Alliance recommended that the agency and automotive industry should develop more experience with the new pole test and test dummies before considering any increase in test speeds. In addition, the Alliance asserted that future research should evaluate whether it would be beneficial for NCAP to harmonize with the existing IIHS barrier.

Toyota supported additional research efforts to gain a better understanding of the potential for and the necessity of changes to the test device and configuration for vehicles equipped with side airbags. Furthermore, Toyota stated that questions remain relating to barrier characteristics, injury criteria and appropriate ATDs that should be researched from relevant field data.[9]

Autoliv recommended that NHTSA research increasing the test speed and develop a single test that would assess both the head and thorax injury protection systems installed in newer vehicles. Autoliv also suggested that the adoption of the WorldSID dummy would be suitable if incorporated into Part 572 and FMVSS No. 214.

performance requirements of NHTSA's FMVSS No. 201 side-pole test or the IIHS moving deformable barrier test. By September 1, 2007, at least half of all new passenger vehicles would meet one of the two requirements, and by September 1, 2009 model year, all new passenger vehicles would meet the head injury requirements of the Institute's moving deformable barrier test.

[8] This test would represent an SUV to subject vehicle crash (IIHS Side Impact Crash Evaluation test procedure—SICE).

[9] In particular, Toyota recommended continued investigation into previously identified concerns with the performance of the SID–IIs upper arm, which they believed was not biofidelic and affected the thoracic rib response.

Additionally, Delphi opposed releasing a new regulation under FMVSS No. 214 and then promoting a different set of barrier protocols, dummy types and injury metrics for side NCAP evaluation since that decision could cause misdirection for original equipment manufacturers and suppliers.

C. Rollover NCAP

Comments regarding NHTSA's rollover program are grouped into the following categories: Rollover Risk Model and Dynamic Rollover Structural Test.

1. Rollover Risk Model

Most commenters supported the development of a new rollover risk model. Several commenters agreed that real-world crash data was necessary to develop an effective rollover risk model. Specifically, the Alliance, AIAM, the National Automobile Dealers Association (NADA), and VW each commented that NHTSA should collect new crash data for rollover NCAP. In particular, the Alliance and Ford recommended that the agency collect crash data on both ESC and non-ESC equipped vehicles to develop a new rollover risk model that better describes rollover risk for all vehicles, but also accurately reflects the differences between ESC and non-ESC vehicles. Toyota believed that the update to rollover NCAP should reflect real-world benefits of ESC on rollover risk, and that the rollover rating should be combined (with advanced technologies) into an overall crash avoidance rating. AIAM suggested that NHTSA consider adjusting a vehicle's rollover risk rating to reflect the safety benefits of ESC or adopt some other means of communicating those benefits to consumers.

Recognizing that since such a data collection and analysis cannot be completed in the near term, Ford, the Alliance and Volvo suggested that in the near term, an additional rollover NCAP star should be awarded to those vehicles equipped with an ESC system to recognize the benefits of ESC. Specifically, the Alliance recommended that NHTSA provide additional information in the form of a footnote on the agency's Web site and in the Safer Car brochure that explains the benefits of ESC and why these benefits warrant an additional star.

2. Dynamic Rollover Structural Test

Some commenters encouraged NHTSA to develop a test for structural integrity to enhance rollover NCAP. Specifically, Consumers Union, Public Citizen and ARCCA Incorporated (ARCCA) urged the agency to consider a dynamic test to assess body structure, seat belt design (including pretension), side curtain airbags, roof strength, door locks and retention, and the retention of window glazing. In particular, Public Citizen believed that a rollover NCAP rating should be based on a vehicle's ability to resist rollover and to protect occupants in a rollover crash. They suggested a rating that included ejection as a consideration since this would provide valuable information about a vehicle's ability to prevent death or serious injury in a rollover crash. Additionally, the rating should measure rollover propensity, as well as crashworthiness measures of performance in a rollover crash.

The Center for Injury Research (CIR) recommended that an NCAP rollover test be dynamic and somewhat more severe than a dynamic compliance standard. According to CIR, a dynamic test for use as both a safety compliance standard and as an NCAP test can and should be developed simultaneously with action on the roof crush standard. Moreover, CFA and CAS recommended adding a rollover test with comparative roof crush tests, while IIHS suggested that NHTSA should conduct additional research on roof crush. Bidez and Associates stated that a meaningful rollover crashworthiness test must include roof deformation, seat belt performance, door opening, and window breakage. They emphasized that protection should be assessed for front and rear passengers, adults and children, and that the Jordan Rollover System (JRS) holds great promise. Conversely, the Alliance, Ford and Nissan opposed the use of JRS in NCAP. The Alliance commented, and Ford and Nissan stated at the public meeting that there has been no JRS tests conducted with an instrumented dummy and therefore, the JRS test results cannot be related scientifically to the real-world risk of injury in a rollover crash.

D. Rear Impact

Comments regarding NHTSA's rear impact NCAP activity are divided into the following categories: Basic Information, Links to the IIHS, and Dynamic Test.

1. Basic Information

Commenters presented similar views on how NHTSA should provide consumers with basic information concerning rear impact crashes in an NCAP publication. GM, Toyota, Subaru and VW supported the inclusion of information on the proper adjustment and utilization of head restraint systems. Additionally, GM supported consumer education that included material such as safety tips and safe driving practices.

2. Links to the IIHS

The IIHS endorsed the agency's proposal and offered their head restraint evaluation information for posting on the agency's Web site. Toyota believes that the IIHS results are only one way to assess rear impact performance, and thus the agency should be cautious and thorough when determining what rear impact evaluation should be part of a future NCAP evaluation. They also stated that ample consideration should be given to passive and active head restraint concepts in order to maintain benefits from all design types.

The Alliance felt that NHTSA's proposal did not seem consistent with the principle of the Federal government independently generating all NCAP data. Rather, they advocated that the agency should investigate further the injury mechanism of whiplash and then choose which responses to evaluate based on biomechanics. Similarly, GM discouraged NHTSA from implementing this option. According to GM, links to the IIHS Web site might imply that NHTSA has given full endorsement of IIHS methodology and interpretations, and some consumers may even conclude that IIHS is a government agency.

3. Dynamic Test

The Alliance believed that NHTSA should first evaluate potential effectiveness and safety benefits prior to incorporating a rear crash rating into NCAP. Consumers Union stated that rear impact whiplash injuries are debilitating to those involved and cause a large cost to society. Consumers Union recommended that NHTSA look at IIHS's work on rear impact testing to determine whether developing NCAP ratings for rear impact results would be cost effective. Public Citizen suggested that the agency develop a rear-impact crash NCAP rating, especially at speeds of 35 to 40 mph (56 to 64 kmph) to improve rear-impact occupant protection and seat back strength. Furthermore, ARCCA stated that rear impact testing for fuel integrity should be utilized, and that this type of testing would enable the agency to assess occupant kinematics and interactions in rear impacts.

Nissan recommended that NHTSA harmonize with the global technical regulation (GTR) dynamic test

procedure.[10] GM stated that the development of a dynamic test by NHTSA should be considered only after recent revisions to FMVSS No. 202 are assessed. According to GM, if the regulatory changes are shown to be effective in mitigating injury, a rear impact NCAP could be better directed toward areas not fully addressed by the current regulation. Similarly, while Subaru did not support new requirements for FMVSS No. 202a in the short term, they asserted that NHTSA needs to educate consumers on the proper use and adjustment of head restraints. However, Subaru believed that in the long term, NHTSA should focus on the study of whiplash-type injury mechanisms and applicable countermeasures.

E. Crash Avoidance Technologies

Comments regarding NCAP information on crash avoidance technologies are grouped into three categories: Program Implementation, Selected Technologies, and Rating System.

1. Program Implementation

Most commenters encouraged NHTSA to implement a new component into NCAP to rate vehicles on the presence of crash avoidance technologies. They agreed that such a program would help educate consumers about these technologies and encourage manufacturers to include them in more vehicles. According to Ford, the first step would be to identify promising technologies with measurable real-world safety benefits. Next, those items must be assessed using developed performance based metrics, and finally, the assessments should be used to develop crash avoidance NCAP ratings that balance rating flexibility with stability.

GM emphasized an overarching principle that crash avoidance NCAP should be biased toward including features that have a high likelihood of improving safety. GM suggested further that the agency consider a wording revision, perhaps to 'Collision Avoidance and Post-Crash Safety (CAPS)' NCAP so that a technology such as Automatic Collision Notification could be considered and included.

Honda encouraged NHTSA to consider a program that would define the various crash avoidance technologies. They stated that these definitions should be based on the effect each function of a particular system has from the driver's point of view, and include a clear explanation of the actions the system can take to enhance safety. Honda, along with Delphi, suggested the development of assessment-weighting coefficients derived from a system's expected benefits and the frequency of the crash type (using appropriate U.S. databases) that the system is supposed to address.

BMW suggested a program that would accomplish the agency's goals without over-promising consumers on expected performance and avoid crediting systems prematurely. They suggested a program that would differentiate technologies with real-world effectiveness from those whose effectiveness numbers were generated by some other means. They also suggested that NHTSA and manufacturers collaborate on ways to educate consumers on emerging technologies with promising capabilities and proven benefits.

Mercedes-Benz (Mercedes) recommended that NHTSA work with the automotive industry before developing crash avoidance ratings. To develop future ratings they, along with Continental Automotive Systems, supported the idea of creating an advisory panel that represents the viewpoints of all manufacturers competing in the U.S. market.

Nissan agreed with the agency's desire to implement this new program. They also stated that the agency should identify immediately its priority technologies through a press release, on the NCAP Web site, through the ''Buying a Safer Car'' brochure, and on each vehicle's NCAP summary Web page.

IIHS and NADA were not convinced of the need for NCAP crash avoidance ratings at this time. IIHS suggested that NHTSA should not rate vehicle crash avoidance technologies, since the agency cannot currently identify which systems are most effective.

2. Selected Technologies

Nissan and Delphi agreed with the three technologies selected by the agency. However, GM and Toyota believed that there were additional crash avoidance technologies that should be promoted because they would provide safety value to consumers. For brevity, we chose not to list them all in this document, but they included such things as daytime running lights, backover prevention technology, and advanced collision notification. GM further believed that there were data for some of these crash avoidance technologies and methods by which potential benefits could be assessed, and they could be included in the initial implementation of a crash avoidance NCAP. GM felt that limiting crash avoidance technologies to the three identified by the agency would unnecessarily limit the potential safety benefits to consumers.

3. Rating System

a. Cumulative Rating (NHTSA's Approach 1)

There was little support for NHTSA's proposed Approach 1. In the short term, only Nissan supported a simple cumulative rating whereby each priority technology would be weighted the same. Both the Alliance and GM were opposed to this approach. GM believed that a cumulative rating would not discriminate among the three technologies, and they would prefer that NHTSA weight appropriately safety-enhancing features based on their relative benefits. The Alliance stated that the effectiveness of the selected technologies was not equal, and providing equal weighting would significantly mislead the consumer as to their relative safety benefits.

Rather than a star rating or the use of a cumulative rating, BMW suggested a ''thumbs up'' rating system to assist consumers in quickly and intuitively distinguishing among technologies on the basis of maturity. BMW believed that this approach would deliver to consumers two levels of information: which technologies have the potential for success and which technologies have a history of success. Furthermore, BMW felt that this approach would reduce the need for NHTSA to research, analyze and document the actual benefits of a technology. Mercedes believed that NCAP should issue publications that would rank the merits of emerging technologies in a manner similar to that used in the IIHS status reports, and that NHTSA should communicate with the industry so that public safety messages could be coordinated with industry advertisements.

b. Effectiveness Rating (NHTSA's Approach 2)

Nissan, in the long term, along with Toyota, Volvo, Public Citizen, AORC, the Alliance, AIAM and GM favored the agency's proposed Approach 2 of establishing an effectiveness rating for crash avoidance technologies. Toyota, however, believed that it would be ideal to develop information related to each new technology's safety potential and to establish a ''Graduated Comprehensive Crash Avoidance Rating System'' concept. They also recommended

[10] See *http://www.unece.org/trans/doc/2007/wp29/WP29-143-23r1e.doc*. This is an agreement to begin work on Phase 2 of this GTR, which will analyze a revised dynamic test procedure incorporating the BioRID–II dummy.

further study to expand the list of technologies beyond ESC, lane departure warning and forward collision warning to include systems such as rear pre-collision preparation/warning, emergency stop signal, blind zone alert, vehicle-to-vehicle and vehicle-to-infrastructure communications.

F. Presentation of NCAP Information

Comments regarding the presentation and dissemination of NCAP focused mainly on a combined crashworthiness rating. A few commenters offered suggestions on the dissemination of NCAP information. NADA suggested that NHTSA develop, maintain and make available a database of non-agency sources of credible vehicle safety information. The CAS and CFA suggested that the agency implement additional and more sophisticated systems that deliver safety information at the point of sale. They believed this information should be beyond the agency's new NCAP labeling program (no examples were given).

Combined Crashworthiness Rating

Most responders to the NCAP notice expressed support for an overall crashworthiness rating that combined the results from all the crash modes (front and side) tested. However, IIHS cautioned that an all-encompassing single rating may allow some poor performance qualities to be hidden under the umbrella rating. Therefore, they urged NHTSA to provide consumers with all of the scores in each crash mode to allow them to choose which vehicle to purchase. Additionally, Delphi, Public Citizen and Bidez and Associates noted that while a single overall crashworthiness rating would simplify information for consumers, it could also confuse consumers if not based on sound science.

Toyota believed there is merit to combining ratings for crashworthiness evaluations to provide the consumer with a comprehensive summary of the crash performance of the vehicle in front and side impacts. They recommended weighting the injuries and assessment in each impact condition by the distribution of serious injuries (AIS3+) and fatalities. After determining the weighting factors for each injury, each impact configuration should receive similar ''Field Relevance Weighting'' based on frequency, severe injury risk, and occupancy. Because of the small number of fatalities in NASS, Toyota suggested exploring FARS augmented with the Multiple Cause of Death (MCOD) database.

Honda supported a combined crashworthiness rating that covers a wide variety of real-world collisions. Honda recommended compatibility testing that assesses performance in crashes between two vehicles with different geometries and/or weights. Further, they recommended weighting coefficients for each region of the crash test dummy, representing specific types of injuries, based on real-world crash and injury data.

The Alliance generally supported the concept of a combined crashworthiness rating. They believed that it is possible to combine the different body regions into a single star rating for both frontal and side. However, they noted that the frontal NCAP ratings are vehicle-weight dependent while the side NCAP ratings are generally weight independent. Thus, the Alliance asserted that a combined crashworthiness rating would be comparable only within vehicle weight class. Moreover, AIAM urged NHTSA to ensure that a single rating is meaningful in terms of real-world performance to drive safety improvements in all crash modes. They recommended that changes to the star system be considered only if based on appropriate research involving consumer surveys or focus groups, and not on intuitive judgments about what data presentation is most effective.

Public Citizen supported a single rating if it were weighted with respect to saving lives and preventing injuries. They also suggested that NHTSA use a letter grade rating system instead of ''stars.'' Volkswagen believed that the agency should consider a single crash rating only until a crash avoidance NCAP rating grows in substance and scope. Delphi expressed that a combined crashworthiness rating would obscure safety benefits; rather, they supported a Euro NCAP style point system and recommended that key performance-based assessments be presented as the primary information and that feature-based indicators be presented as of secondary importance.

G. Manufacturer Self-Certification (of NCAP Results)

With regards to manufacturers providing their own NCAP test results, GM and Toyota supported the implementation of a type-approval program wherein NHTSA would oversee NCAP testing conducted by the manufacturer. GM felt that NHTSA's attendance (or the presence of a NHTSA representative) would allow appropriate scrutiny of the testing and ensure consumer confidence in such a program. Additionally, they strongly discouraged implementation of any program that could compromise NHTSA-sanctioned vehicle ratings because of results obtained through spot-checking (presumably conducted by NHTSA). Bidez and Associates, Consumers Union and Public Citizen urged NHTSA to consider a manufacturer self-certifying process in which the industry would test and rate its own vehicles and undergo spot checking of their test results by NHTSA. According to these commenters, the benefit of such a program would be to disseminate NCAP test information on newly-introduced vehicles more rapidly than under the current system.

H. Other Suggestions

In addition to the approaches that NHTSA had proposed to further enhance its NCAP crashworthiness and crash avoidance activities, commenters submitted other recommendations to the agency. These comments on other possible approaches to improving NCAP are grouped into the following categories: Child Restraints and Rear Seat Testing, Lighting, and Pedestrians.

1. Child Restraints

Public Citizen suggested that NHTSA incorporate a dynamic child restraint system (CRS) test into NCAP in all crash modes (including frontal, rollover, side and rear crashes). They recommended that a six-year old Hybrid III dummy be restrained in a backless booster and a 5th percentile female Hybrid III dummy be placed in a 3-point belt in both rear-outboard seating positions. ARCCA recommended adding instrumented child dummies to the outboard-designated seating positions in the rear to investigate issues associated with accommodations and crash performance of rear-seated occupants resulting from cargo.

Bidez & Associates asserted that the agency should build upon and leverage the experience of EuroNCAP in child protection to force design innovation in rear seat safety for six to twelve-year olds.[11] They believed there was a need to enhance frontal impact protection of nine to twelve-year old children who are properly belted in the rear seat. Their research for restrained nine to twelve-year old children suggested that rear seat occupants had a risk of serious injury 78 percent higher than that of front seat occupants. They estimated that the overall injury rate for all restrained nine to twelve-year olds in all crash types was 38 percent higher in the rear seat than in the front seat. As such,

[11] The commenter did not provide specific detail as to what design innovations have occurred as a result of the EuroNCAP activity.

Bidez & Associates recommended that NHTSA immediately warn consumers, retract its message to parents about placing children in the rear, and force the automobile industry to upgrade the safety of the rear occupant area of the existing and future vehicle fleet.

Subaru, GM and the Alliance opposed implementation of a CRS test into NCAP. GM asserted that there can be no meaningful dynamic NCAP test for CRS until there is a meaningful way to tie a CRS NCAP performance rating to real-world performance. They believed that it is inappropriate to invent a test and claim correlation to real-world safety performance improvements without sound data to back this claim. These commenters felt that using child safety seats in NCAP vehicle tests would confound the test results and would not lead to a meaningful vehicle or CRS rating. Additionally, the Alliance asserted that the real-world safety benefits of child restraints demonstrate the children are already very well-protected in the rear seat. As such, they believed that adding child dummies in child restraints to the rear seating position for front or side NCAP testing would not maximize advancements in child protection.

Volvo suggested that if the agency wanted to develop a child restraint test, then the test should be performed on a sled, and they asserted that there should be improvements in FMVSS No. 213. According to Volvo, the restrictions for design and testing of the restraints, as set up in this standard, basically prohibit innovative concepts with improved performance for reducing misuse and improper installation and for improving safety performance in a crash. To improve child safety, Consumers Union recommended that NHTSA pursue research toward an NCAP rating on (rear) vehicle visibility since they believed that data from Kids and Cars and others suggest that children are most at risk from poor visibility and blind zones around the vehicle.

2. Rear Seat Testing

Adding rear seat dummies into the frontal NCAP program was encouraged by some commenters. In particular, AORC and Bidez and Associates suggested the addition of the 5th percentile female or the 10-year old dummy. However, AORC asserted that an analysis of field data would be needed to determine the most appropriate dummy and seating position, and that dummy development may be required in this area to better measure abdominal injuries that may be present among belted occupants in the rear seat.

Individual commenter Mr. Todd Saczalski recommended rear seat testing with adult and child dummies and child restraints to assess the difficulty exiting the vehicle and to examine injuries due to seat back failure. The Children's Hospital of Philadelphia (CHOP) stated that the agency should place an older belt-restrained dummy, such as the six or ten-year old Hybrid III child dummy, in the rear seat of the NCAP frontal test to better understand rear restraint systems for child occupants. Additionally, they encouraged the use of a belt-positioning booster seat with the six-year old Hybrid III dummy.

Subaru did not support adding dummies to the rear seating position. Subaru stated that it might not be possible, with the current front seat positioning procedure, to properly position a 50th percentile male Hybrid III dummy in the rear seat of some vehicles; the result could be inconsistent performance evaluations across all vehicles.

3. Lighting

Some public commenters expressed concerns about lighting and glare related to daytime running lights (DRLs). However, the glare comments were focused on the agency's rulemaking activity and not its consumer information activity. Therefore, daytime running lights are not discussed in this notice. GM stated that numerous field effectiveness studies conducted throughout the world show that DRLs could prevent some crashes. Citing an analysis of field data suggesting that under daytime conditions, daytime running lights can prevent 5 percent of opposite direction crashes and 12 percent of pedestrian and pedalcyclist crashes, GM encouraged NHTSA to expand the installation of DRLs and include this technology in its crash avoidance rating so that manufacturers will be encouraged to install them and provide additional collision avoidance benefit.

4. Pedestrians

Consumers Union recommended that NHTSA study the work of auto safety researchers in other countries to determine whether a pedestrian-friendly NCAP rating would be effective in the United States. Consumers Union noted that Honda has taken a leadership role in designing a dummy for testing pedestrian safety and designing its vehicles with pedestrian safety in mind. They urged NHTSA to consider using the Honda pedestrian dummy and to pursue other opportunities to improve pedestrian safety. Public Citizen encouraged NHTSA to issue a pedestrian NCAP test and an accompanying safety standard. They also challenged NHTSA to follow the lead of the rest of the world by taking a far more aggressive stand against the dangers vehicles pose to pedestrians and to raise the bar for pedestrian safety in its discussions for a Global Technical Regulation (GTR) on pedestrian safety.

IV. Discussion and Agency Decision

A. Frontal NCAP

In the comments to the notice and the public hearing concerning enhancements to frontal NCAP, most manufacturers and vehicle safety advocates supported the retention of the current frontal crash test protocol at 35 mph (56 kmph). Additionally, several comments suggested that NCAP injury criteria and metrics be consistent with FMVSS No. 208. Most responders favored using the KTH injury metric (after additional research) but also encouraged the inclusion of other injury criteria such as neck and chest deflection. Some commenters suggested that the agency immediately evaluate lower leg injuries with the Thor-Lx dummy, while others recommended that NHTSA harmonize with Japan and Euro NCAP on lower leg assessments. The agency's analysis and decisions on frontal NCAP are grouped by categories: Test Dummies, Injury Criteria and their associated Risk Curves, and Lower Speed Testing.

Test Dummies

Comments pertaining to the adoption of additional test dummies included wide support for the 5th percentile female Hybrid III dummy, including its placement in the right front seating position. Others recommended that the agency include a 95th percentile male Hybrid III dummy in frontal NCAP. It was also suggested that dummies be placed in the rear seat for the purpose of rating vehicles.

In response to these comments, NHTSA has decided to include the 5th percentile female Hybrid III dummy in the right front passenger seating position. GM provided the most compelling evidence, and the agency reexamined its own data and reached the same conclusion.[12] That is, the real-

[12] The agency's analysis found, based on NASS–CDS estimates from 1997–2006, that the risk of AIS 2+ injury for smaller belted occupants in the right front passenger seating position is 33% greater than that of a mid-sized adult belted occupant in the same seating position in full frontal crashes (0–40 delta velocities, non-rollover cases, age ranges from 13 years old or older, height for small adult: Less

world data suggest that the smaller females were at greater risk and more likely to be seated in the right front position in frontal crashes. The agency believes that this dummy's incorporation into the NCAP frontal program is reflective of real-world crash conditions.

NHTSA has chosen, however, not to include the 95th percentile male Hybrid III dummy in frontal NCAP at this time. The 95th percentile male Hybrid III dummy has not been evaluated for robustness, reproducibility, and repeatability in laboratory impact conditions and it has only undergone very limited sled and vehicle testing. As such, we believe additional research and testing with this dummy is necessary before it can be included into frontal NCAP.

With regards to placing adult dummies in the rear seating positions of frontal NCAP tests, NHTSA believes that more analysis is needed before a rating program that includes rear seat occupants can be established. The agency has conducted some limited testing with both the 50th and 5th percentile Hybrid III adult dummies in the rear seat under a full frontal impact condition. However, these preliminary results did not correlate to findings in the real-world and additional research is necessary to better understand the results.[13] Similarly, none of the commenters that suggested an NCAP rating program for the rear seat provided the necessary data to establish how such a program would lead to meaningful improvements in safety.

The agency has decided not to incorporate the use of the lower legs from the Thor dummy to evaluate lower leg injuries into the program at this time. The agency is awaiting the completion of research currently in progress by an SAE task group. Additionally, this tool has not undergone the necessary robustness, reproducibility, and repeatability testing that the agency believes is necessary for incorporation into an NCAP ratings program.

Injury Criteria and Risk Curves

With regards to frontal NCAP injury criteria, the agency agrees with the commenters and has decided to include all of the FMVSS No. 208 body regions into the frontal NCAP rating system. As suggested by many commenters, the agency believes that their inclusion will not only add to the robustness of vehicle evaluations, but it will make the criteria used to assign NCAP frontal ratings consistent with those used in FMVSS No. 208 and in other frontal-crash vehicle assessment programs. It will also allow the agency to incorporate all safety concerns related to injury criteria readings into the calculation of the frontal rating thus eliminating the need to use the safety concern symbol.[14] However, unlike the current NCAP program which uses chest acceleration to assess thoracic injury risk, the new frontal program will focus instead on peak chest deflection instead. We believe that the inclusion of chest deflection into frontal NCAP will encourage development of restraint systems that will further reduce the risk of thoracic injuries.[15] This is especially true given a manufacturer's compliance margin with the chest acceleration limit of 60 G's and the fact that the FMVSS No. 208 belted test is now conducted at the same speed as the frontal NCAP test. Accordingly, frontal NCAP will include the following body regions and injury criteria: Head (HIC_{15}), neck (Nij, tension, and compression), chest (deflection), and femur (axial force). The risk curves that will be used for these criteria are described below.

As indicated in our proposal, NHTSA is also adopting AIS 3+ and AIS 2+ injury risk curves to assess the risk of injury to front seat occupants.[16] This approach is different from the current NCAP rating system which uses AIS 4+ (severe) injury risk curves. The new risk curves will focus vehicle performance on more frequently occurring injuries than severe (AIS 4+) or critical (AIS 5+) injuries.

With the exception of chest deflection, the AIS 3+ injury risk curves that will be used by the agency in NCAP are the same as those used for FMVSS No. 208. The AIS 3+ chest deflection injury risk curve that the agency will use in NCAP was developed in 2003 by Laituri et al.[17] The agency chose this risk curve for deflection because, as noted by the agency during the FMVSS No. 208 advanced air bag rulemaking, the chest deflection risk curve published by the agency was not used to establish the performance limits currently in FMVSS No. 208.

The agency will be using an AIS 2+ risk curve for the femur because most femur fractures are either of the AIS 2 or AIS 3 injury severity. Additionally, the AIS 2+ femur risk curve was primarily developed from multi-fragmentary patellar fractures, which, like other articular surface injuries, are associated with a high level of disability. As such, using an AIS 2+ injury risk curve will help ensure that debilitating multi-fragmentary patellar fractures are addressed.[18]

NHTSA has decided not to incorporate an advanced KTH risk curve into frontal NCAP at this time. In consideration of the comments received and because this risk curve is undergoing additional evaluation, the agency felt it would be premature to include it in NCAP. However, we do believe that the inclusion of a femur injury criterion, as indicated above, will lead to improved bolster design. Similarly, when coupled with the other injury criteria for chest deflection and neck, will lead to overall improved restraint system designs. NHTSA has also decided not to harmonize its NCAP femur injury values with those of EuroNCAP and Japan NCAP. The agency evaluated the rating schemes of these international programs along with that from the IIHS. These programs use a sliding scale to rate vehicles as opposed to injury risk curves. As such, as will be explained later in this document, because we have chosen to maintain our current methodology for combining injury risk we cannot substitute sliding scales for risk curves.[19]

The injury risk curves used in the NCAP frontal crash test program for the 50th percentile male Hybrid III and 5th percentile female Hybrid III dummies

than 65 inches, and height for mid-sized adult: 65–73 inches).

[13] Kuppa, S., Saunders, J., Fessahaie, O., *Rear Seat Occupant Protection in Frontal Crashes,* Paper No. 05–0212, Nineteenth ESV Conference, Washington DC (2005).

[14] A safety concern symbol is a test occurrence that is not reflected in a vehicle's star rating but that NHTSA feels is of significant importance that the event should be communicated to consumers.

[15] The agency evaluated new MY 2005–2007 tested vehicles and found that for acceleration, the standard deviation for risk of injury was approximately ±3% compared to chest deflection which was approximately ±4%.

[16] Details of these injury risk curves are provided in Appendix C, Injury Risk Curves for the NCAP Combined Crashworthiness Rating System.

[17] Laituri, T., Prasad, P., Sullivan, K., Frankstein, M., Thomas, R. (2005), *Derivation and Evaluation of a Provisional, Age Dependent AIS 3+ Thoracic Risk Curve for Belted Adults in Frontal Impacts,* SAE Paper No. 2005–01–0297.

[18] See Ore, L., Tanner, B., States, J. (1993), *Accident Investigation and Impairment Study of Lower Extremity Injury,* SAE Paper No. 930096, SAE International Congress and Exposition, Detroit, MI, and MacKenzie, E. (1986), *The Public Health Impact of Lower Extremity Trauma,* SAE Paper No. 861932, Symposium on Biomechanics and Medical Aspects of Lower Limb Injuries, San Diego.

[19] The sliding scales in these programs relate injury measures to point values without equating them to probability of injury. However, risk curves equate the injury measures to expected risks of injury.

are shown below. How these injury risk curves will be combined to generate a vehicle's frontal NCAP star rating will be discussed later in Section IV–F.

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Injury Risk Curves for Frontal NCAP

(HIII 50M dummy):

Injury Criteria	Risk Curve
Head (HIC_{15})	$P_{head}(AIS3+) = \Phi\left(\frac{\ln(HIC15) - 7.45231}{0.73998}\right)$ $where\ \Phi = \text{cumulative normal distribution}$
Chest (deflection in mm)	$P_{chest_defl}(AIS3+) = \frac{1}{1+e^{10.5456-1.568*(ChestDefl)^{0.4612}}}$
Femur (force in kN)	$P(AIS\ 2+) = \frac{1}{1+e^{5.795-0.5196\,Femur_Force}}$
Neck (Nij and tension/compression in kN)	$P_{neck_Nij}(AIS3+) = \frac{1}{1+e^{3.2269-1.9688Nij}}$ $P_{neck_Tens}(AIS3+) = \frac{1}{1+e^{10.9745-2.375Neck_Tension}}$ $P_{neck_Comp}(AIS3+) = \frac{1}{1+e^{10.9745-2.375Neck_Compression}}$ $P_{neck} = \max imum(P_{neck_Nij}, P_{neck_Tens}, P_{neck_Comp})$

(HIII 5F dummy):

Injury Criteria	Risk Curve
Head (HIC_{15})	$P_{head}(AIS3+) = \Phi\left(\frac{\ln(HIC15) - 7.45231}{0.73998}\right)$ where Φ = cumulative normal distribution
Chest (deflection in mm)	$P_{chest_defl}(AIS3+) = \frac{1}{1+e^{10.5456-1.7212*(ChestDefl)^{0.4612}}}$
Femur (force in kN)	$P(AIS2+) = \frac{1}{1+e^{5.7949-0.7619Femur_Force}}$
Neck (Nij and tension/compression in kN)	$P_{neck_Nij}(AIS3+) = \frac{1}{1+e^{3.2269-1.9688Nij}}$ $P_{neck_Tens}(AIS3+) = \frac{1}{1+e^{10.958-3.770Neck_Tension}}$ $P_{neck_Comp}(AIS3+) = \frac{1}{1+e^{10.958-3.770Neck_Compression}}$ $P_{neck} = \max imum(P_{neck_Nij}, P_{neck_Tens}, P_{neck_Comp})$

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Lower Test Speed

A lower test speed for frontal NCAP was supported by some commenters but an almost equal number opposed such an NCAP test. In light of the real-world studies conducted by the agency and some of the commenters, NHTSA has decided that additional research is necessary to fully address the proposal for a lower test speed. At this time, the agency has insufficient data with respect to test speed, injury mechanisms, dummy biofidelity, and risk curves to proceed.

B. Side NCAP

Most commenters supported the agency's proposal to incorporate an oblique pole test into the program, with several suggesting that this test should be adopted after the completion of the FMVSS No. 214 phase-in. Additionally, several responses encouraged the adoption of new test dummies for side NCAP including WorldSID, SID–IIs and ES–2re dummies. Commenters also suggested that side impact test procedures and injury criteria be consistent with FMVSS No. 214. Finally, IIHS encouraged NHTSA to adopt or modify their current moving deformable barrier (MDB). The agency's analysis and decisions on side NCAP are grouped into the following categories: MDB Design, MDB Test Speed, Oblique Pole Test, Test Dummies in the MDB and Oblique Pole Tests, and Injury Criteria and their associated Risk Curves.

MDB Design

The agency has decided against any modifications to the existing moving deformable barrier. Instead, we will evaluate the IIHS MDB (including the crabbed vs. perpendicular configuration) as part of a more comprehensive approach that is currently underway. This research will help the agency decide what properties a new MDB should have. As noted in the FMVSS No. 214 Final Rule,[20] initiatives to improve vehicle compatibility between passenger cars and light truck vehicles in side crashes are likely to change the characteristics of striking vehicles in the future.[21] As such, we believe these new characteristics should be included in any upgraded MDB.

MDB Test Speed

There was little support for an increased test speed for side NCAP, while some urged the agency to maintain or lower the current speed. As indicated in our request for comments, the real-world data indicates that the current test speed is largely representative of real-world crashes in which serious and fatal injuries occur; yet, increasing the test speed by 5 mph (8 kmph) would capture approximately 5,000 more serious and fatal injuries. No commenters disagreed with this data. However, NHTSA has not conducted any testing at this increased test speed with the ES–2re or SID–IIs dummies, and we want to better understand what countermeasures would be developed if the test speed in side NCAP were increased to 43.5 mph (71 kmph) or higher. As such, NHTSA has decided to maintain the current test speed and we will evaluate the test speed as part of our more comprehensive research work that is already underway.

Oblique Pole Test

Most commenters supported incorporating an oblique pole test into NCAP. However, some opposed this proposal, stating that a pole test would not add an incentive for manufacturers to provide additional head side impact protection beyond the IIHS side impact test. The agency does not agree with these commenters. As we stated in the FMVSS No. 214 Final Rule, we believe that the pole test in conjunction with our current MDB will drive better head, chest and pelvis protection than conducting the IIHS side impact test alone. Recent pole tests conducted on vehicles that were found to have ''Good'' or ''Acceptable'' performance in the IIHS barrier test had dummy head and pelvis injury readings, for some vehicles, that were significantly higher than the IIHS test indicated.[22] These test results indicate that the use of the oblique pole test in NCAP will demand more robust countermeasure designs leading to higher levels of safety performance.

Because the pole test can evaluate only one seating position at a time, most commenters were in support of running one pole test. Several stated that conducting multiple side impact pole tests with different sizes of dummies would introduce significant test burden. We have decided to add the oblique pole test procedure specified in the FMVSS No. 214 Final Rule for all vehicles tested by NCAP. Therefore, rather than conducting a pole test for each outboard seating position in the vehicle, we will conduct only one test to evaluate the front seat outboard performance of vehicles. NHTSA believes that a single pole test with one dummy will provide consumers with information on side pole performance without introducing significant test burden to both NHTSA and manufacturers.

Test Dummies in the MDB and Oblique Pole Tests

Outside of those commenters who suggested use of the World SID, most commenters supported the incorporation of the new, recently federalized side impact crash test dummies into side NCAP. Some specifically proposed that the agency use the 50th percentile male ES–2re dummy for the driver seating position and the 5th percentile female SID–IIs dummy for the rear seating position in the MDB test. For an oblique pole test, most encouraged the use of the SID–IIs dummy in the driver seating position.

Several commenters recommended that the agency incorporate the WorldSID dummy into Part 572 and side NCAP. For both test configurations (pole and MDB), the agency has decided not to incorporate this dummy into NCAP at this time. Although the agency has been conducting testing and evaluation to determine the suitability of incorporating the WorldSID into Part 572 and side impact crash tests, further work remains to be completed before its use in NCAP can occur.

Test dummy selection for the MDB and the pole test are discussed below.

a. MDB Test

NHTSA has decided to incorporate the new 50th percentile male ES–2re dummy into the driver seating position and the 5th percentile female SID–IIs dummy in the rear seating position for the MDB test as adopted in the FMVSS No. 214 Final Rule. The agency selected the 50th percentile male ES–2re dummy in the driver position because its weight and height is more representative of the average driving population than is the SID–IIs dummy. The 5th percentile SID–IIs dummy was selected for the rear seating position because it is closer in height to the average outboard rear seat occupant than the 50th percentile ES–2re dummy, and its placement in the rear seat will lead to a more demanding test.[23]

b. Oblique Pole Test

NHTSA has decided to conduct only one oblique pole impact test with the 5th percentile female SID–IIs dummy in the driver position. As stated in our recent FMVSS No. 214 Final Rule, small stature drivers (height up to 5 feet 4 inches) comprise approximately 28 percent of seriously or fatally injured drivers in narrow object side impacts. In addition, real-world crash data suggests that small stature occupants have a higher proportion of head, abdominal, and pelvic injuries and a lesser proportion of chest injuries than median stature occupants.

So while we selected the 50th percentile dummy for the front seating position in the MDB test (because it represents the average driver), for the pole test we are selecting the 5th percentile dummy as the driver because in collisions with narrow objects, the 5th percentile has the higher risk of injury. Additionally, since we are conducting the MDB test with the 50th percentile dummy in the driver seating position and the 5th percentile dummy in the driver seating position for the pole test, manufacturers will have to encompass a broader range of seating positions with their vehicle and restraint system designs.

Injury Criteria and Risk Curves

As with frontal NCAP, several commenters stated that the injury metrics used in NCAP should be consistent with the safety standard that serves as their basis. In the case of side NCAP, the safety standard is FMVSS No. 214. Several commenters stated that

[20] 72 FR 51908, Docket No. NHTSA–2007–29134.

[21] 69 FR at 27992, Docket No. NHTSA–2004–17694.

[22] See Appendix A, NCAP and IIHS Pole Test Results.

[23] In the testing which supported the FMVSS No. 214 upgrade, both the 5th and the 50th percentile dummies passed the MDB test but the rear was more stringent and difficult for the 5th percentile dummy.

the adoption of the 50th percentile male ES–2re and 5th percentile female SID–IIs dummies and their associated injury criteria from FMVSS No. 214 would facilitate a more comprehensive assessment of side impact injury. NHTSA agrees with these commenters and has decided to incorporate head (HIC_{36}), chest (deflection), abdomen (force), and pelvic (force) injury criteria as well as applicable risk curves to rate vehicles for the ES–2re and, consistent with the safety standard, HIC_{36} and pelvic (force) for the SID–IIs dummy.[24] NHTSA believes that these criteria and their inclusion in side NCAP will lead to a more robust rating. Similarly, it will also allow the inclusion of head- and pelvic-related injury criteria in the calculation of the side rating without the need for the safety concern symbol. Similarly, the injury risk curves that the agency will use in side NCAP are the same as those used for the recent upgrade to FMVSS No. 214.[25]

The table below presents the applicable injury criteria and associated injury risk curves for each dummy that will be used in the side NCAP vehicle rating. How these injury risk curves will be combined to generate a vehicle's side NCAP star rating will be discussed later in Section IV–F.

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[24] We note that for the SID IIs, we are not incorporating spine acceleration at this time. Even though this measure is included in the new FMVSS No. 214, we do not have a risk curve that has been validated at this time to include in our rating scheme for rating vehicles for side impact protection.

[25] Details of these injury risk curves are provided in Appendix C, Injury Risk Curves for the NCAP Combined Crashworthiness Rating System.

Injury Risk Curves for Side NCAP

(ES-2re 50M dummy):

Injury Criteria	Risk Curve
Head (HIC_{36})	$P_{head}(AIS3+) = \Phi\left(\frac{\ln(HIC36) - 7.45231}{0.73998}\right)$ *where* Φ = cumulative normal distribution
Chest (rib deflection in mm)	$P_{chest}(AIS3+) = \frac{1}{1+e^{5.3895-0.0919*\max.\,rib\,deflection}}$
Abdomen (total abdominal force in N)	$P_{abdomen}(AIS3+) = \frac{1}{1+e^{6.04044-0.002133*F}}$ *where F =total abdominal force (N) in ES-2re*
Pelvis (Force)	$P_{pelvis}(AIS3+) = \frac{1}{1+e^{7.5969-0.0011*F}}$ *where F is the pubic force in the* ES-2re *in Newtons*

(SID-IIs 5F dummy):

Injury Criteria	Risk Curve
Head (HIC_{36})	$P_{head}(AIS3+) = \Phi\left(\frac{\ln(HIC36) - 7.45231}{0.73998}\right)$ where Φ = cumulative normal distribution
Pelvis (acetabular + iliac force in N)	$p_{pelvis}(AIS2+) = \frac{1}{1+e^{6.3055-0.00094*F}}$ where F is the sum of acetabular and iliac force in the SID – IIs dummy in Newtons

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Lead Time

While most commenters supported the inclusion of the pole test in NCAP, an almost equal number suggested that the test not be incorporated until after FMVSS No. 214 is fully phased-in. NHTSA does not agree with these commenters. NHTSA believes that some manufacturers have begun to design vehicles to meet the pole test and we want consumers to be aware of those vehicles. Additionally, we believe that conducting the pole test for MY 2010 will provide an incentive for others to begin and/or accelerate their processes for improvement as well. Finally, rating vehicles on both their performance in the pole test and the MDB test, which will now incorporate HIC and other criteria, will help foster an environment for vehicle manufacturers to design better side impact designs for the head, chest and pelvis, and allow consumers to make more informed choices based on these new tests.

C. Rollover NCAP

Several commenters suggested that the agency add an additional star to the Rollover NCAP rating for vehicles equipped with ESC. They suggested the extra star be supplemented by a footnote saying, ''equipped with electronic stability control.'' In addition, one commenter suggested that a star be subtracted from vehicles not equipped with ESC. Commenters also recommended that NHTSA incorporate a new, dynamic structural test into rollover NCAP. The agency's analysis

and decisions regarding NHTSA's rollover program are grouped into two categories: Rollover Risk and Injury Risk Models and Dynamic Rollover and Structural Test.

Rollover Risk and Injury Risk Models

With regards to the agency's proposal to develop a new rollover risk model, the agency agrees with commenters' concerns about the effects of ESC on the rollover risk model. However, we do not agree that is appropriate to add or subtract a star in the rollover rating to account for ESC. The current rollover rating is the result of a detailed analysis of a vehicle's potential risk of rollover if a crash is initiated. Given that the star bands are set at 10 percent, adding a star to the rollover risk rating could suggest to consumers that ESC would reduce a particular vehicle's risk of rollover by up to 10 percent in a given crash. This could result in unsupported and inaccurate vehicle ratings.

The current rollover risk model was fit using crash data collected several years ago (at a time when ESC was available in relatively few vehicles). We are monitoring the fit of the model to newer data and, in particular, to data for ESC-equipped vehicles. We have identified 7,000 single-vehicle crashes with NCAP-tested vehicles equipped with ESC in our State Data System (SDS). At this time, the current model appears consistent with the newer data, possibly (at least in part) because of the sampling variability associated with the relatively small ESC subset. A larger sample may produce different results, and we will recalibrate the estimates if we determine conclusively (that is, beyond the effects of statistical variability) that the current estimates do not describe the newer data. In the meantime, we will continue to use the risk estimated from the vehicle's Static Stability Factor (SSF) and its propensity to tip up in the dynamic rollover ''fishhook'' test as described in 68 FR 59250 (October 14, 2003). These are provided below:

$$\textit{Vehicles not tipping in dynamic test: Rollover risk} = \frac{1}{1+e^{2.8891+1.1686\times Ln\,(SSF-0.9)}}$$

$$\textit{Vehicles tipping in dynamic test: Rollover risk} = \frac{1}{1+e^{2.6968+1.1686\times Ln\,(SSF-0.9)}}$$

Where SSF=static stability factor

This model describes the absolute risk of rollover given a single-vehicle crash.

As will be discussed later, we will include ESC in the new NCAP Crash Avoidance Rating. We feel this will be much more effective in highlighting the importance of ESC and other potentially life-saving technologies.

Dynamic Rollover and Structural Test

In their public hearing testimony, Ford suggested that NCAP dynamic rollover protocol be aligned with compliance protocol for ESC to minimize the risk of unintended consequences from the program. The agency does not agree with this suggestion. These tests have significantly different performance requirements and are intended to measure different dynamic vehicle responses. In the future, it may be possible to address the likelihood of aligning the new ESC compliance test with the NCAP dynamic rollover ''fish-hook'' test, but additional research is needed before these two tests can be combined. Neither test measures the responses from the other test; therefore, neither test could be used as a substitute for the other.

Some commenters suggested a structural rollover test; in particular, NHTSA received comments regarding the Jordan Rollover System (JRS) test device.[26] Some commenters believe that the JRS test can be conducted with dummies to demonstrate whether vehicle roof performance meets objective injury and ejection criteria for belted and unbelted occupants. As part of our roof crush upgrade, the agency has received numerous comments regarding the JRS device.[27] The JRS and other dynamic rollover procedures are being addressed as a part of the roof crush rulemaking currently underway. Therefore, a decision on its appropriateness for incorporation into NCAP would be premature at this time.

D. Rear Impact

With regards to rear impact NCAP, some commenters urged the agency to include a rear impact crash test rating and/or the IIHS test results in NCAP. Others indicated that linkage to IIHS could appear to be an agency endorsement of the IIHS testing and that it would be premature to incorporate a new rear impact dynamic test into NCAP since the effect of the new FMVSS No. 202a requirements is unknown at this time.[28] Rather, they suggested that NHTSA educate consumers on the proper use and adjustment of head restraints.

NHTSA does not agree that a dynamic test would be premature at this time since such an option exists in our FMVSS No. 202a. However, we do agree with the commenters that providing the IIHS results on our Web site could lead to consumers believing that the agency has approved, in particular, their dynamic test procedure. In addition, we note that the test dummy used by IIHS has not been approved for regulatory use, and some of the injury criteria used for this assessment have not been correlated with real-world injury.

We also see very little benefit to consumers in publishing IIHS's static head restraint ratings of Good, Acceptable, Marginal, etc. on *http://www.safercar.gov*. The agency's upgraded head restraint regulation (FMVSS No. 202a) will begin an 80% phase-in for front seats in MY 2010. Any manufacturer certifying their head restraint to the static option of FMVSS No. 202a, according to IIHS's current scheme, would be placed in the Good or Acceptable category. Most of those not achieving a Good rating will be adjustable head restraints that IIHS downgrades by one category simply because they are adjustable. Thus, there would be very little meaningful difference in the rating.

For those manufacturers certifying their head restraints to the dynamic option in FMVSS No. 202a, the static IIHS rating would not provide a meaningful metric of performance. The agency also contemplated publishing the actual numerical values of static height and backset that the IIHS measures but have decided against this course. We believe that consumers would find this information confusing

[26] The JRS device rotates a vehicle body structure on a rotating apparatus (''spit'') while the road surface moves along the track and contacts the roof structure.

[27] See Docket No. NHTSA–2005–22143.

[28] By MY 2012, 100% of front and rear seats will have to meet the upgraded FMVSS No. 202a.

and difficult to interpret. As such, rather than providing the IIHS data on our Web site, we have decided to update *http://www.safercar.gov* to include information related to proper head restraint adjustment.

E. Crash Avoidance Technologies

Most commenters supported the agency's proposal to implement a crash avoidance ratings program. However, there were two commenters who did not believe that a crash avoidance rating program was needed at this time. Two commenters suggested that NHTSA work with the automotive industry to create an advisory panel to develop a crash avoidance rating system. Additionally, most responses did not favor a cumulative rating system; instead, several commenters emphasized the importance of selecting advanced technologies and developing a rating system based on real-world effectiveness. Furthermore, several commenters recommended that the agency consider other advanced technologies beyond ESC, FCW and LDW.

NHTSA agrees that a rating system that incorporates a crash avoidance system's estimated benefit is ideal. We also believe that we should establish this new program quickly for two reasons. First, we want to draw a greater distinction for consumers regarding vehicles that are being equipped with ESC during the phase-in period. Second, in addition to ESC, there are other new safety technologies which exist today that can assist a driver in preventing severe and frequently occurring crashes. We believe that through NCAP, we can provide an incentive to encourage accelerated deployment of these new, advanced technologies. The agency's analysis and decisions on new crash avoidance ratings program are grouped into the following categories: Selected Technologies and Rating System.

Selected Technologies

Those commenters who supported establishment of a program that would promote crash avoidance technologies agreed with the agency's selection of ESC, FCW and LDW as beneficial technologies. Others believed that the agency should expand its list to encompass crash avoidance, crashworthiness and post-crash technologies so as not to limit the potential safety information that could be provided to consumers. NHTSA believes that ESC, FCW and LDW are the only technologies that meet the agency's criteria and are mature enough for inclusion in a crash avoidance rating program. That is, all three have available benefits data and performance test procedures to be included in a rating program.

We believe that both FCW and LDW will address major crash problems seen on U.S. roadways. FCW is designed to address primarily rear-end crashes, which account for approximately 30 percent of all crashes, while LDW is designed to address crashes due to unintended lane drift. Crash types that may result from lane drift include road departure and opposite direction crashes. The NCAP report showed that rear-end road departure, and opposite direction crashes represent a significant amount of the total maximum AIS 3+ injuries.[29] Results from large scale field tests for FCW and LDW provided effectiveness and benefit information for each technology and suggest that FCW and LDW have the potential to significantly reduce the number of crashes that occur in the U.S.[30]

Additionally, NHTSA used data from these field operational tests (FOTs), as well as additional agency research, to finalize performance tests establishing minimum performance criteria for FCW and LDW so that vehicles can be rated on their presence.[31] For ESC, because it had been in the field for some time, we used real-world data to establish effectiveness and then used the test procedure which accompanied the Final Rule (FMVSS No. 126) to develop a performance test and minimum performance criteria.[32] The table below presents NHTSA's effectiveness estimate values for ESC, FCW, and LDW.[33] A range was used for LDW to reflect potential system availability variation due to lane marking quality.

EFFECTIVENESS ESTIMATES FOR ESC, FCW, AND LDW

System	Effectiveness (percent)
ESC	59
FCW	15
LDW	6–11

NHTSA believes that the FOT results for FCW and LDW are applicable for estimating real-world safety benefits since these technologies were evaluated in the same real-world driving environment in which they would be deployed. In general, in an FOT, the major variables impacting a technology's safety benefits, including differences in individual driving styles and behavior, system performance, and driver acceptance, are taken into account. Likewise, critical safety incidents (i.e. near-crash incidents that occur during the FOT) data are recorded and evaluated to determine if the technology provided a safety benefit in terms of critical incident reduction. Assuming a proportional relationship between near-crash events and actual crashes, critical incident data are further evaluated using statistical methods to estimate crash reduction benefits. In the field tests for FCW and LDW systems, NHTSA provided technical management and the Volpe National Transportation Systems Center performed an independent evaluation to estimate safety benefits which included rigorous statistical analysis.

NHTSA believes that ESC, FCW and LDW are the only crash avoidance technologies that meet the agency's criteria for inclusion in a crash avoidance rating program at this time. That is, all three address a major crash problem, safety benefit projections have been assessed, and performance tests and procedures are available to ensure an acceptable performance level. The agency acknowledges that many other technologies were identified by commenters such as collision mitigation braking systems, lane keeping assist systems, and side object detection technologies. However, at this time the agency does not have enough data to estimate the safety benefits of these systems, and therefore will not promote these other technologies at this time.

Through our current research activities and/or information obtained from the automotive industry and the public, the agency anticipates that it will gain information on the benefits and performance capabilities of other advanced safety technologies. If the agency anticipates making changes to the rating system or the technologies that the agency has chosen to promote

[29] See *http://www.safercar.gov/newcarassessmentenhancements-2007.pdf* at page 18, Table 6.

[30] LDW effectiveness estimated from data included in NHTSA Report No. DOT HS 810 854, *Evaluation of a Road Departure Crash Warning System,* December 2007. FCW effectiveness estimated from data included in NHTSA Report No. DOT HS 810 569, *Evaluation of an Automotive Rear-End Collision Avoidance System,* March 2006.

[31] See Docket No. NHTSA–2007–27662 for ESC, LDW, and FCW test procedures.

[32] See NHTSA Report No. DOT HS 810 794, *The Statistical Analysis of the Effectiveness of Electronic Stability Control (ESC) Systems-Final Report,* July 2007. See also 72 FR 17236, Docket No. NHTSA–2007–27662.

[33] See Appendix B, Effectiveness Estimates for ESC, FCW and LDW for a summary explanation of how overall effectiveness estimate values were generated.

as that information is gathered, the agency will seek public input on the appropriateness of such changes. At this time, we anticipate using similar criteria (addresses a major crash problem, assessed safety benefits, and established performance tests and procedures) to determine technologies for future program inclusion.

Rating System

Generally, there was little support for a crash avoidance rating system based on a cumulative concept (e.g., the more technology you have; the higher the rating). Instead, several commenters preferred that the agency develop a rating system based on a computation of benefits to be expected from the crash avoidance technologies of a rated vehicle. Regardless of approach, these commenters all suggested that the agency use a star rating system to inform consumers about the presence of advanced technologies. BMW and Mercedes suggested a simpler approach whereby technologies would essentially be listed without regards to their effectiveness and without summing them into an overall rating crash avoidance rating. BMW offered an approach where all technologies would all be treated equally but where those technologies that had been proven beneficial by real world studies would somehow (in their scheme solid green and hollow thumbs were used) be denoted differently. Similarly, Mercedes suggested a simple ranking system for technologies.

To gauge consumer understanding and acceptance of these various systems, NHTSA tested the cumulative approach, the effectiveness approach, and the list approach with groups of consumers.[34] NHTSA conducted four focus group sessions in the DC area with participants who had to qualify as either a primary or shared decision maker with respect to automobile purchases for their household and intended to purchase a new or used automobile in the next two years. Participants in both groups were also screened to ensure they had some level of concern about the safety of automobiles and the groups represented a mix of age, education, and income. The agency tested letters, stars, words, check marks, and color schemes (for standard and optional availability) depending on which one of the three approaches was being tested. The agency also tested a subset of these treatments in an on-line forum.

With regards to what type of rating system should be used, participants overwhelmingly preferred a rating system that was a simple list approach. Additionally, focus group participants unanimously agreed that the use of colors is not visually appealing to fully comprehend what they are viewing. In the treatments tested by the agency, single check marks as opposed to multiple check marks to indicate a technologies importance were preferred by most participants. Additionally, to display and communicate the information, consumers stated that a single check mark or the use of text (indicating standard or optional) is the most understandable way to illustrate the presence of crash prevention technologies, though neither marking was overwhelmingly preferred.

Participants overwhelmingly objected to the multiple checks, star markings and A–D grading scale, saying they were very difficult to understand, despite having an associated key. Several participants also stated that if there were a technology or several technologies that were more important than the others, than that should be specifically communicated or noted on the layout and inferred, not the use of stars, individual letter grades, or multiple check marks.

The agency believes that the preference for the use of check marks or text over the use of an effectiveness approach may be rooted in the fact that participants (and to the extent that they are reflective in general of new car buyers) may not fully grasp the importance of these features. For example, participants generally stated that they think of these features as ''nice to haves'' rather than ''must haves'' because they are not yet aware of how the features can reduce fatalities. As such, the agency intends to continue monitor the public's understanding of this new rating program and if necessary change the way in which ratings are communicated to the public. For now, based on these focus group results, the agency will use text to communicate the standard or optional presence of ESC, LDW, and FCW on vehicles.

F. Presentation and Dissemination of Safety Information

Some commenters encouraged the agency to disseminate additional and more sophisticated consumer information but no specific examples were given. Most commenters discussed and supported the agency's proposal for a combined crashworthiness rating. The agency's analysis and decisions on the presentation and dissemination of safety information are divided into the following categories: Presentation of Safety Information and Combined Crashworthiness Rating.

Presentation of Safety Information

Some commenters supported consumer education materials such as safety tips and safe driving practices. Others suggested that NHTSA develop, maintain and make available a database of non-agency sources of credible vehicle safety information. Finally, some commenters suggested that the agency provide additional information at the point of sale (beyond that required by the new labeling program). NHTSA agrees with many of these suggestions. NHTSA continuously investigates ways to improve marketing the NCAP vehicle ratings program. We will place the results of our enhanced marketing studies in Docket No. NHTSA–02004–19104, as they are completed.

Combined Crashworthiness Rating

Most commenters supported an overall crashworthiness rating that combined the results from all test conditions. Honda and Toyota provided some details but GM and Ford provided very specific information on how this new rating could be calculated. Some commenters cautioned that an overall rating would overly simplify information for consumers, and that it could mislead consumers if poor performance were hidden under an umbrella rating. Given the general support for an overall rating and the public's desire for simpler information, NHTSA is implementing a new overall crashworthiness rating that combines the results of the front, side and rollover programs.

NHTSA will provide a summary crashworthiness rating for each vehicle (which we will call the Vehicle Safety Score) plus individual scores for each occupant in each crash condition for that vehicle (as a set of relative risk measures). This is in accordance with comments from Delphi, Public Citizen, Bidez and Associates, and the IIHS who expressed concern over individual test results being masked and that individual scores in each crash mode should continue to be provided to the consumer. Scores for vehicles will be provided to the consumer via a star rating system where the new bands for 1 to 5 stars were determined by the mean and dispersion of the risk of injury in each crash test condition (front and side) and the risk of rollover.

Although NHTSA's previous proposal did not suggest including the rollover risk rating in the crashworthiness rating, the agency has now decided to do so.

[34] The full study report is available *http://www.regulations.gov* in Docket No. NHTSA–02004–19104.

The agency's decision to include the rollover rating in the combined rating is consistent with the 1996 Transportation Research Board recommendation,[35] and we believe that its inclusion provides a more complete summary rating. Below, we describe how the frontal and side scores are developed and how these scores are combined with the rollover score to create an overall score.

Consistent with what has already been presented, NHTSA has selected the following test conditions, test dummies and injury criteria to develop its combined rating:

- One frontal impact crash test (full frontal rigid barrier crash test at 35 mph (56 kmph)) with a 50th percentile male Hybrid III dummy in the driver position and a 5th percentile female Hybrid III dummy in the front passenger seating position.
- One side impact crash test (38.5 mph (62 kmph) with NHTSA's moving deformable barrier (MDB) crabbed at 27 degrees into the side of vehicle) with an ES–2re dummy in the front seating position and a SID-IIs dummy in the rear seating position on the struck side of the vehicle.
- An oblique pole impact test (20 mph (32 kmph)) at 75 degrees into a 25 cm diameter pole including the SID-IIs dummy in the front seating position.
- Dynamic maneuvering (fish-hook) rollover test and static stability factor (SSF).
- All applicable injury criteria.
- Use of injury risk curves.

a. Combining Injury Risk From Different Body Regions

The agency has chosen to maintain its current method for combining injury metrics for any seating position in its test. That is, the risk of injury to each body region are assumed to be independent events and can be statistically combined to determine the joint probability of injury to the occupant using the following equation: $p(A \text{ or } B) = p(A)+p(B) - p(A)*p(B)$ where A and B are the independent events. Using injury risk curves for different body regions, this method results in an overall risk of injury for the occupant. For the two adult Hybrid III dummies there are four independent events to combine, which are injury risk to the head, neck, chest, and femur/knee. For the ES–2re dummy, there are also four independent events, which are injury risk to the head, chest, abdomen, and pelvis, while for the SID–IIs dummy, there are only 2 independent events which are injury risk to the head and pelvis.

In GM's proposal, the normalized injury measures for different body regions are combined by weighting each by the proportion of injuries associated with each injury measure. The result of this method does not represent either an absolute injury risk or a relative injury risk (as in NHTSA's method). Therefore, the risk levels of different vehicles are not quantifiable. In addition, Ford stated that GM's proposal assumes a linear relationship between the dummy response and injury risk, when generally the relationship is non-linear. Therefore, Ford expressed that GM's proposal could result in an inaccurate estimation of the relative vehicle safety performance. NHTSA agrees with this assessment and has chosen to use the joint probability of injury formula, as it does now, to combine injury risks to different body regions for an occupant. However, the agency notes that computation of the joint probability requires there to be quality data available for all of the injury risks being combined. Similarly, to compute the overall summary rating, data must also be available from all of the tests to prevent a model from not being rated. As such, the agency has included redundant sensor measurement capability in the test dummies (where possible), grouped tests (front, side, and rollover) together, and worked with our test labs to ensure that they are using the most up to date calibration procedures. In this way, we hope to alleviate the potential loss of data and subsequently, vehicles with incomplete ratings.

b. Risk of Injury by Seating Position and Test Condition

For each vehicle, the risk of injury is estimated from six test results, which are: (1) Driver in frontal crash, (2) passenger in frontal crash, (3) driver in side MDB crash, (4) rear seat passenger in side MDB crash, (5) driver in oblique pole impact, and (6) rollover potential in single-vehicle crashes using rollover test results. Ford suggested that the agency combine results using a simple average, but GM suggested a weighted approach to combine results.

To combine the risk of injury by occupant seating position, GM suggested weighting based on occupant demographics and the relative frequency of exposure by seating position. Ford commented that this approach would undervalue NCAP test results for passengers since the proportion of drivers is far greater than that of passengers. Ford asserted that this method of obtaining the overall injury risk might confuse consumers who seek a broader assessment of safety performance than one limited to the driver. Ford proposed using the straight average of the risks of injury for the driver and the passenger to obtain the overall injury risk. NHTSA agrees with Ford's suggested approach.

However, rather than use the percentages calculated from the probability of injury results (as is currently done), NHTSA will be computing the relative risk for each seating position and each test condition. This relative risk measure provides an estimate of an occupant's risk of injury compared to a baseline injury risk. The score for each occupant in each test condition is computed by dividing the overall risk of injury in each test condition by a baseline risk of injury. As will be explained below, the baseline risk of injury in each test condition is an approximation of the fleet average injury risk for that test condition. The baseline risk of injury is set once and reused for subsequent model years. This allows cross-year comparisons with future fleets.[36] This operation results in six summary scores for each vehicle representing the relative risk of injury for the driver and passenger in the frontal crash test and side MDB test, the driver in the oblique pole test, and the relative risk for all occupants in rollovers with respect to a baseline injury risk. As such, the scores indicate how a particular vehicle compares to a baseline risk and these are the scores (star ratings) that will be presented to consumers on the Web site and in agency publications.

To compute a vehicle's overall risk of injury in frontal crash tests, NHTSA has decided to use the simple average of the probability of injury to the driver and front passenger. The risk of injury to the driver in side crashes is calculated as the weighted average of the combined probability of injury of the driver in the MDB test (weighted by 80 percent) and that of the driver in the oblique pole test (weighted by 20 percent). The weights reflect the proportion of belted driver fatalities in real-world crashes represented by the MDB and pole tests in MY 1999 and newer vehicles (FMVSS No. 214 Final Rule, Docket No. NHTSA–2007–29134). The overall risk of injury in side crashes is then computed as the average of the risk of injury to the driver in side impacts (weighted average from MDB and pole test results) and the probability of injury to the rear seat

[35] See Transportation Research Board, *Shopping For Safety: Providing Consumer Automotive Safety Information*. TRB Special Report 248 (1996).

[36] In the future, the baseline could be adjusted to reflect vehicle designs. However, the agency would seek public input on the issue before such an adjustment would occur.

passenger in the MDB test. For rollover, in order to combine the risk from the rollover test with the risk of injuries obtained from the crash test, the agency has assumed that a belted occupant in a single-vehicle crash p(roll) has the same *relative* risk of injury as the risk of rollover given a single vehicle crash.

As suggested in Ford's proposal, NHTSA is adopting this method of averaging the risk of injury between the driver and the passenger to obtain an overall injury risk for each crash mode to ensure equal weighting for all seating positions. This is unlike GM's approach of applying significantly higher weight to the driver than the passenger based on occupancy rates in each seating position. NHTSA believes that GM's proposal would not encourage manufacturers to offer advanced safety systems to all seating positions, thereby resulting in reduced protection to some. This is especially significant in the side MDB crash test where the SID–IIs dummy in the rear seat generally demonstrates a higher risk of injury than the driver. Under GM's approach, the rear seating position would have far less value than the driver seating position because the rear seat has a relatively low occupancy rate. However, when combining the pole test results with the MDB results for the front seat, we do believe that weighting by crash test condition is appropriate. In this way, the results from the pole tests are proportional to their occurrence and do not mask a vehicles performance in the MDB test, possibly providing an inaccurate portrayal of the vehicle.

The figure below graphically illustrates the method of combining the different risks.

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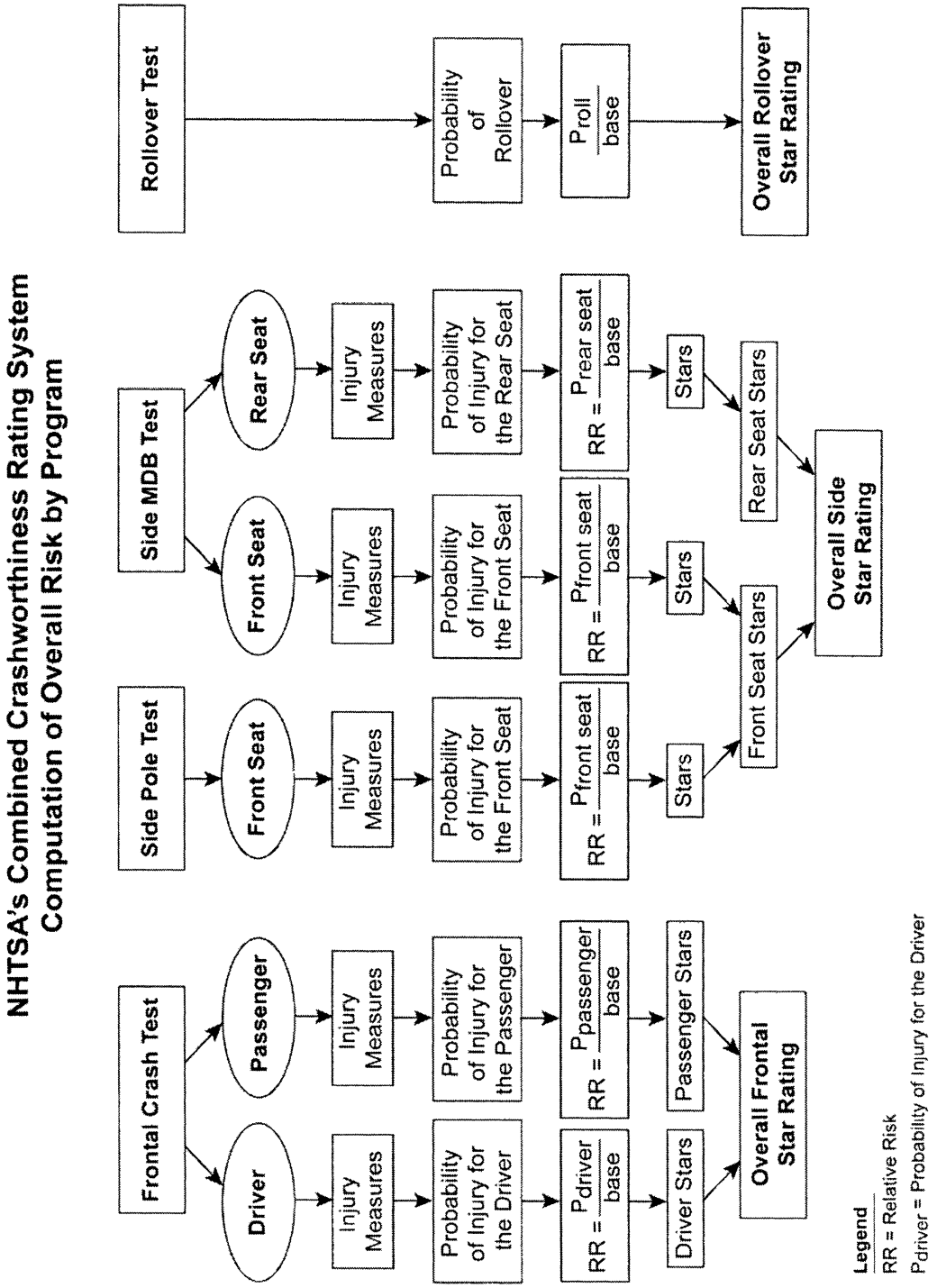

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c. Combined Crashworthiness Rating

The agency's combined crashworthiness rating, the Vehicle Safety Score (VSS), is computed as the weighted average of the three summary scores for front, side, and rollover. The weight factors applied (5/12 for frontal crashes, 4/12 for side crashes, and 3/12 rollovers) reflect the proportion of injuries for belted occupants (in vehicles of model year 1999 and later) in each crash mode.[37] This approach is similar to GM's proposal of combining the crash test results using a weighted average.

Since the NCAP frontal crash test involves a vehicle with a fixed rigid barrier, it represents a crash between two vehicles of the same weight. Therefore, the safety rating from the NCAP frontal crash test and the combined crashworthiness rating (which includes the frontal crash test results) depends on vehicle mass, and cannot be compared across vehicle weight classes. In contrast, on an individual basis, the side crash (pole and MDB) test results and the rollover results can be compared across vehicle classes.

[37] These model years were chosen to reflect newer vehicle designs and to obtain a statistically robust trend from the NASS/CDS data.

d. Determination of Baseline Risk and Star Bands

NHTSA will continue to use the star rating system to provide an individual crashworthiness rating for each seating position, each crash mode, and their combination. However under the new system, stars will be interpreted differently. Bands for 1 to 5 stars were determined by the mean and dispersion of the risk of injury in all three test conditions (front, side, and rollover).

In the NCAP frontal tests, the average risk of injury to the driver in all 2008 model year vehicles is 15 percent ± 5 percent. Based on our NCAP injury data for the 50th percentile male seated in the right front passenger seat, we expect that a 5th percentile seated in that same seating position would have a similar distribution. Therefore, the agency selected a baseline injury risk of 15 percent to compute the frontal relative risk scores. A relationship between relative risk of injury and the number of stars assigned was developed using the existing NCAP frontal crash test data for the 50th percentile male Hybrid III dummy in the driver seating position.

To determine the star bands for frontal NCAP, NHTSA selected a baseline risk of 15 percent (representing the average risk of injury to the driver in MY 2008 vehicles in the NCAP frontal crash test) to serve as the break point for the 4 star and 3 star rating. Other criteria used to determine the star bands were (1) vehicles performing exceptionally well (At 0–15 percentile of vehicles tested) are assigned a five star rating, and (2) Vehicles performing very poorly (greater than 4 standard deviations from mean) would be assigned a one star. Attempts were also made to maintain equidistant star band boundaries. Based on these criteria and the distribution of the relative risk of injury scores of MY 2008 vehicles, the relationship between the Relative Risk Score (RRS) and the number of stars was established, and is presented below. The RRS is computed by (1) rounding the injury risk to the nearest tenth of a percent in accordance with the rounding-off method of ASTM Standard Practice E 29 for Using Significant Digits in Test Data to Determine Conformance with Specifications, (2) dividing the injury risk by 0.15 (15.0 percent baseline injury risk), (3) and finally rounding the result to the nearest one hundredth in accordance to ASTM Standard E 29.

As with frontal NCAP, this same methodology was applied to the scores in the side MDB and oblique pole tests as well as the combined crashworthiness Vehicle Safety Score. The agency found, for a limited number of newer vehicles tested to both the MDB and Pole test, that when the MDB test results were combined with the pole test, the average risk was 15%. As such, for side NCAP, the combined crashworthiness rating also represents the relative risk of injury with respect to an injury risk of 15 percent.

RELATIONSHIP BETWEEN THE RELATIVE RISK AND THE STAR BANDS FOR FRONT AND SIDE CRASH TESTS USING 15 PERCENT RISK OF INJURY AS THE FLEET AVERAGE

	5 stars	4 stars	3 stars	2 stars	1 star
RRS Values	RRS < 0.67	0.67 ≤ RRS < 1.00	1.00 ≤ RRS < 1.33	1.33 ≤ RRS < 2.67.	RRS ≥ 2.67.
Probability	P < 0.100	0.100 ≤ P < 0.150	0.150 ≤ P < 0.200	0.200 ≤ P < 0.400	P ≥ 0.400.

Similarly for rollover, we selected a baseline risk of 15 percent for the risk of rollover, which produces the relative risk measures shown below.[38]

CURRENT NCAP STAR RATING IN ROLLOVER AND ITS RELATIONSHIP WITH THE RELATIVE RISK IN ROLLOVER USING 15 PERCENT RISK OF INJURY AS THE BASELINE

Number of stars	Risk of rollover	Relative risk score in rollover
1 star	P ≥0.40	RRS ≥2.67.
2 stars	0.30 ≤P <0.40	2.00 ≤RRS <2.67.
3 stars	0.20 ≤P <0.30	1.33 ≤RRS <2.00.
4 stars	0.10 ≤P <0.20	0.67 ≤RRS <1.33.
5 stars	P <0.10	P <0.67.

G. Manufacturer Self-Certification

Several commenters suggested that NHTSA consider a self-certification process in which NHTSA would oversee the testing conducted by the manufacturer. However, it seems possible that manufacturers could run several tests and report only the best results; or because manufacturers would know exactly what vehicle was being tested, the vehicle's star ratings might not be indicative of a random sample (as currently done by the agency). Additionally, because NHTSA does not currently have the resources to conduct oversight over a manufacturer's test facility, dummy certification and test setup, a manufacturer's facilities might take more liberty than agency contract laboratories in their testing procedures.

These issues do not affect a manufacturer's self-certification of compliance with the Federal motor vehicle safety standards. A manufacturer had a legal duty to report any non-compliance promptly to NHTSA. They must also recall and remedy without charge to the purchaser any vehicle that fails to comply with an applicable safety standard. The manufacturer also is subject to additional penalties if it cannot demonstrate that it had no reason to know, despite exercising reasonable care, that the vehicle did not comply with the standard. These are all express provisions of Title 49, Chapter 301 of the United States Code. There are no

[38] See Appendix D, Probability of Injury, Vehicle Safety Score, and the Star Rating System.

parallel provisions for the New Car Assessment Program.

In addition, one of the primary reasons for allowing manufacturer self-certification in NCAP was to allow information about new vehicles to be provided more quickly. In this case, NHTSA has had an optional NCAP test program in place for nearly 20 years. This allows manufacturers to request a test of new or redesigned vehicles and get the NCAP information out quickly to the public. Given these considerations, NHTSA is not adopting the suggestions to permit manufacturer self-certification of NCAP results.

H. Other Recommendations

Several commenters, in their responses to the notice and at the public hearing, presented other recommendations for the agency's consideration. NHTSA has decided not to adopt any of these recommendations at this time for the reasons outlined below.

Compatibility Assessment

Some commenters recommended front-to-front compatibility assessments, while others suggested vehicle aggressivity evaluations for frontal NCAP. These commenters did not provide (and NHTSA is not aware of) any data that would support an NCAP compatibility evaluation at this time. The agency has a research program in this area and should a valid compatibility metric emerge from that research, the agency will consider it at that time.

Child Restraints

Some commenters suggested that the agency test and rate child restraints either in the vehicle and/or on a sled test. NHTSA has examined this in the past and at that time concluded that: (1) A dynamic rating for a child restraint system (CRS) was not feasible; (2) the agency wanted to focus on ease of use ratings; and (3) limited in-vehicle testing with a six-year old dummy did not correlate with real-world data.[39] However, the agency has continued to investigate CRS and child dummy performance in the current NCAP test environment, and their correlation to injury risks for children in real-world crashes. The agency will take actions at such time as the test results and analyses can be used to support such a rating program.

[39] See 70 FR 29815, Docket No. NHTSA–2004–18682.

Increased Test Speed

Two commenters and most automobile manufacturers stated that increased test speeds in frontal NCAP would promote stiffer vehicle designs and more aggressive restraints. NHTSA agrees that without an appropriate measure of vehicle stiffness, a higher speed test could lead to more aggressive vehicle designs. Therefore, NHTSA has decided not to adopt a 40 mph (64 kmph) frontal NCAP test because of concerns about vehicle compatibility, the lack of test data, and no clear understanding of potential countermeasures that could be used by manufacturers to achieve the top rating. In addition, the agency notes that the current frontal NCAP test speed represents 99 percent of all crashes, and increasing the test speed would not address a large portion of real-world crashes.

Lighting

Some commenters recommended that NHTSA incorporate a lighting/visibility program into NCAP to address vehicle blind spots and glare. The commenters did not provide (and NHTSA does not believe that there is) sufficient data to justify incorporating a lighting or visibility measure into NCAP at this time. The agency is conducting research in both of these areas to better assess the safety problem and explore what approaches and/or countermeasures should be considered. Therefore, NHTSA has decided not to incorporate an NCAP rating for lighting or visibility at this time.

Frontal Offset Test

Some commenters encouraged the incorporation of a frontal offset test into frontal NCAP. However, others did not support an offset test stating that such a test did not provide sufficient benefit to consumers or that it was already being done by others (e.g., IIHS). NHTSA has been studying the offset test procedure, but we continue to believe that further research and analysis is needed to ensure that improved occupant protection is provided by such a test without potential unintended consequences such as increased vehicle stiffness and aggressivity.

Pedestrians

Some commenters encouraged NHTSA to pursue opportunities to improve pedestrian safety through NCAP. The agency has no pedestrian standard at this time. While NHTSA is actively engaged in the development of a Global Technical Regulation on pedestrian safety, we feel it would be premature to develop a rating program before the details, test protocol and potential benefits of this activity have been resolved. Therefore, we are not incorporating pedestrian rating into NCAP at this time.

Frontal Pole Test

A frontal pole test was suggested by two commenters and specifically opposed by one. While the real-world data presented by the IIHS seems to imply that a number of fatalities and injuries are occurring in narrow object frontal impacts, at this time NHTSA is unclear as to what countermeasures might be developed. Similarly, a significant amount of research would need to be conducted to establish a new frontal impact pole test for NCAP. Accordingly, the agency is not adopting this proposal at this time.

I. Monroney Label

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). Section 10307 of the Act requires new passenger automobiles to have NCAP safety ratings displayed on the price sticker, known as the Monroney label. As required by SAFETEA–LU, on September 12, 2006 (71 FR 53572), NHTSA published a final rule implementing this statutory requirement, including prescribing the form, required information, and layout of the label. The rule, set forth at 49 CFR part 575.301, applied to covered vehicles manufactured on or after September 1, 2007.

Regulation 575.301 specifies the required information for the NCAP front, side and rollover tests. For the frontal crash, there are two separate ratings, one for the driver and one for the right front passenger. Similarly, two separate ratings are established for the side crash, one for the front seat and one for the rear seat. One rating is provided for rollover.

Under our regulation, front, side and rollover NCAP ratings must be placed on new vehicles manufactured 30 or more days after the manufacturer receives notification from NHTSA of the ratings. As explained earlier in this notice, in addition to any overall rating, the agency will still make available on *http://www.safercar.gov* the individual seating position results for each crash condition (front, side pole, and side MDB) and for side NCAP, the front seat and rear seat score developed from the combination of the pole and MDB test results. However, the agency is using this notice to inform manufacturers and other interested persons of our intent to use the new combined side impact score

developed from the pole and MDB tests for the Monroney label. In addition, we will initiate rulemaking to change the format and/or the layout of the Monroney label to incorporate the new overall combined crashworthiness rating. We believe that the combined rating and the new side impact score will provide consumers with the information they need to make comparative judgments on new vehicles.

When we issue the notice of proposed rulemaking, we will address relevant issues including changing the layout and format of the label to incorporate this new, additional information and to address other labeling issues such as the lead time necessary for the manufacturers to update their labeling operations.

V. Conclusion

NHTSA will implement these decisions regarding enhancements to NCAP beginning with MY 2010 vehicles. For that model year, the agency will make changes to its existing front and side testing activities requiring all vehicles to be rated using these new protocols. With regards to the frontal crash test program, NHTSA will maintain the 35 mph (56 kmph) full frontal barrier test protocol but will incorporate the following body injury criteria: Head (HIC_{15}), neck (Nij, tension, and compression), chest (deflection), and femur (axial force). The agency will also add the 5th percentile female Hybrid III dummy in the right front seating position. For side impact, NHTSA will maintain the current moving deformable barrier test at 38.5 mph (63 kmph) but will update that test to include head (HIC_{36}), chest (deflection), abdomen (force), and pelvic (force) injury criteria for the ES–2re and, consistent with the safety standard, HIC_{36} and pelvic (force) for the SID–IIs dummy. For the MDB test, the 50th percentile male ES–2re dummy will be used for the driver position and the 5th percentile SID–IIs dummy for the rear seated passenger position. Additionally, vehicles will also be assessed using a new oblique pole test and a 5th percentile female dummy in the driver position, using HIC_{36} and pelvic (force). For rollover, the agency will continue to rate vehicles for rollover propensity, but will wait to update its rollover risk model to allow for more real-world crash data of vehicles equipped with electronic stability control.

For MY 2010, the agency will also implement a new crash avoidance program that will rate vehicles on the presence of select advanced technologies and a new overall Vehicle Safety Score that will combine the star ratings from the front, side, and rollover programs.

Appendix A

NCAP and IIHS Pole Test Results

NHTSA

Vehicle	Vehicle class	SAB type	Driver test dummy	HIC36	Lower spine accel (Gs)	Combined acetabulum & iliac force (N)
			IARV Limits	1000	82	5525
2007 Honda Pilot	SUV	Curtain + Torso	SIDIIs	3464	68	6649
2007 Nissan Quest	Van	Curtain	SIDIIs	5694	79	5786
2007 Ford Escape	SUV	Curtain + Torso	SIDIIs	407	65	6515
2006 VW Passat	Medium PC	Curtain + Torso	SIDIIs	323	40	3778
2006 Subaru Impreza	Medium PC	Combo	SIDIIs	184	58	4377
2007 Toyota Avalon	Heavy PC	Curtain + Torso	SIDIIs	642	62	6672

Vehicle	Vehicle class	SAB type	Driver test dummy	HIC15	Combined acetab-ulum & iliac force (N)	Overall rating	Head/ neck	Torso	Pelvis/leg	Head protec-tion	Structure/ safety cage
2007 Honda Pilot	SUV	Curtain + Torso	SID–IIs	167	4700	G	G	G	G	G	A
2007 Nissan Quest.	Van	Curtain + Torso	SID–IIs	207	2900	G	G	G	G	G	A
2007 Ford Escape	SUV	Curtain + Torso	SID–IIs	216	5600	G	G	G	A	G	A
2006 VW Passat	Medium PC	Curtain + Torso	SID–IIs	168	3300	G	G	G	G	G	G
2006 Subaru Impreza.	Medium PC	Combo	SID–IIs	325	5100	G	G	G	G	G	A
2007 Toyota Avalon.	Heavy PC	Curtain + Torso	SID–IIs	350	4100	G	G	A	G	G	A

Appendix B

Effectiveness Estimates for ESC, FCW and LDW

Electronic Stability Control (ESC)

This effectiveness estimate comes from the report: *Statistical Analysis of the Effectiveness of Electronic Stability Control (ESC) Systems—Final Report.* Report No. DOT HS 810 794, July 2007.

From the Executive Summary, page vii, for Road Departure—Police Reported Crashes:

- The effectiveness of ESC for passenger cars = 45% (weighting for the difference in crash reporting among the States).
- The effectiveness of ESC for Light Trucks and Vans (LTV's) = 72% (weighting for the difference in crash reporting among the States).
- Assuming an equal weighting between passenger cars and LTVs, the average effectiveness = 59% for Road Departure Crashes.

59% was assumed to be a best overall effectiveness estimate for road departure crashes.

Forward Collision Warning (FCW)

Based on field operational test (FOT) data from the *Automotive Rear-End Collision Avoidance FOT (ACAS FOT)* collected from 66 participants who each drove an FCW-equipped vehicle for 3 weeks, it was estimated that the FCW system has the potential to reduce about 15% of all rear-end crashes. The FCW system integrated rear-end crash warning function with adaptive cruise control function. This system becomes operational when vehicle speed exceeds 25 mph and disengages when the speed falls below 20 mph. The participants accumulated 98,000 miles of driving data. The FCW system operated in the background during the first week of the FOT, providing information about baseline driving. The final 2 weeks of the FOT generated information

about driver performance with the FCW system while it operated in the foreground.

FCW system effectiveness was estimated separately in each of nine driving conditions based on FOT data, which combined three driving states (lead vehicle stopped, lead vehicle decelerating, and slower constant-speed lead vehicle) and three travel speed bins (<25, between 25 and 35, and ≥35 mph). Total system effectiveness was derived by integrating individual system effectiveness estimates in the nine driving conditions using corresponding rear-end crash data from the GES (see Equation (6) in Section 4.2.2.3 on page 4–70). Based on available FOT data, the FCW has shown crash prevention potential in lead vehicle stopped at speeds over 25 mph, slower constant-speed lead vehicle at speeds below 25 and over 35 mph, and lead vehicle decelerating at speeds over 35 mph (see Table 4–32 on page 4–73). Using corresponding crash data by travel speed only (not taking into account crash data by attempted avoidance maneuver), total system effectiveness was estimated at 9±5% of all rear-end crashes (see Figure 4–42 on page 4–74). However, GES crash data on travel speed are unreliable since the travel speed variable is coded as ''unknown'' in over 70% of the rear-end crash cases. As an alternative to travel speed, it is recommended that the posted limit data be used to break down the rear-end crash data. Thus by using corresponding crash data by posted speed limit, total system effectiveness was estimated at 15±11% of all rear-end crashes assuming that crash-involved vehicles were traveling at the posted speed limits reported in the crash database (see Figure 4–42 on page 4–74). This safety benefit also assumes 100% system deployment in the vehicle fleet.

15% was assumed to be a best overall effectiveness estimate for rear-end crash prevention.

Reference

Najm, W.G., Stearns, M.D., Howarth, H., Koopmann, J., and Hitz, J., ''*Evaluation of an Automotive Rear-End Collision Avoidance System*''. U.S. Department of Transportation, National Highway Traffic Safety Administration, DOT HS 810 569, March 2006.

Lane Departure Warning (LDW)

The overall average crash reduction estimate range (6% to 11%) for Lane Departure Warning was obtained from data collected during a Road Departure Collision Warning (RDCW) System Field operational test (FOT). The system merged and arbitrated warnings between a lane departure warning system (referred to as a lateral drift warning function in the study) and Curve speed warning (CSW) function. LDW monitored the vehicle's lane position, lateral speed and available maneuvering room. The CSW monitored the vehicle's speed and upcoming road curvature.

The RDCW Evaluation Final Report [1] discusses numerous safety-related benefits that resulted during the treatment period, when the RDCW alerts were enabled. Most safety benefits were accrued by the LDW portion of the RDCW system. These benefits include increased turn signal use, improved lane keeping, and fewer crossings of a solid lane marker at speeds above 55 mph. However, only one of these benefits—fewer crossing of a solid lane marker—was used to forecast a reduction in road-departure crashes. Solid lane markers serve as the road boundary. During the treatment period and at speeds above 55 mph, drivers crossed solid lane markers 44 percent less often than they did in the baseline period, when RDCW alerts were not enabled. This reduction, weighted by the national departure crash counts at this speed range, resulted in a forecasted reduction in road-departure crashes.

Road-departure crash statistics presented in Section 4.1 of the RDCW Evaluation Report.[1]

TABLE 4–1.—ROAD-DEPARTURE PRECRASH SCENARIOS (THOUSANDS) GES 2003

[Critical event]

	Vehicle movement	Departed road edge	Lost control	Other	Row totals
Count		261	208		469
Row Percent	Going Straight	55.7	44.3		
Percent		25.4	20.3		45.7
Count		116	172		288
Row Percent	Negotiating a Curve	40.3	59.7		
Percent		11.3	16.7		28.0
Count		65	55		120
Row Percent	Initiating a Maneuver	54.2	45.8		
Percent		6.3	5.4		11.7
Count				150	150
Percent	Other				14.6
Count		442	435	150	1,027
Percent	All Groups	43.0	42.4	14.6	

From section 4.4.1, this results in an estimated 9,372 to 74,844 fewer road-departure crashes each year. The average of this range equals 42,108. This range is based on full LDW availability.

Effectiveness = collisions avoided/collision population

Collision population originates from two departure road edge cells in Table 4–1, and equals 377,000 crashes. With full availability, the effectiveness equals:

$$\frac{42108}{377000} \approx 11\% \qquad (1)$$

With the 56% availability observed in the FOT, the estimated effectiveness estimated is (.56)(.11) = 6%.

Since system availability may vary depending on the quality of lane markings, a range of 6 to 11% was assumed to be the best overall effectiveness estimate for crashes caused by lane drift.

Reference

[1] Wilson, B.H., Stearns, M.D., Koopman, J., Yang, D., ''*Evaluation of a Road Departure Crash Warning System*''. U.S. Department of Transportation, National Highway Traffic Safety Administration, DOT HS 810 854, December 2007.

Appendix C

Injury Risk Curves for the NCAP Combined Crashworthiness Rating System

This Appendix presents the injury risk curves for various body regions applicable to the Hybrid III 50th percentile male (HIII 50M) and the Hybrid III 5th percentile female (HIII 5F) dummies in frontal crash tests and the ES–2re and the SID–IIs side impact dummies in lateral crash tests.

Injury Risk Curves for Frontal NCAP Head

The head injury criterion (HIC_{15}) as a metric for assessing head injury risk is well established and in use in FMVSS No. 208 (Eppinger et al., 1999).

$$P(AIS3+) = \Phi\left(\frac{\ln\ (HIC15) - 7.45231}{0.73998}\right) \qquad (1)$$

Where Φ = *cumulative normal distribution*

The AIS 3+ head injury risk curve from the FMVSS No. 208 Advanced Airbag Final Economic Assessment was extended from the Hertz (1993) AIS 2+ head injury risk curve using real-world data to determine the relative incidence of different severity brain injuries. Since NHTSA will assess the risk of serious or more severe head injuries, this equation has been selected for use in NCAP (Equation 1). Due to the uncertainty in the scaling methods, NHTSA took the conservative approach in estimating head injury assessment reference values for the HIII 5F dummy. As such, this equation will also be used to assess the risk of AIS 3+ head injury for the HIII 5F dummies.

Neck

The risk of AIS 3+ neck injury is assessed using Nij (Equation 2) as described in Eppinger *et al.* (1999, 2000) and currently used in FMVSS No. 208. The equation below presents the Nij formulation and Table 1 presents the intercept values (from FMVSS No. 208) of F_{int} and M_{int} used in Nij.

$$N_{ij} = \frac{F_z}{F_{\text{int}}} + \frac{M_y}{M_{\text{int}}} \qquad (2)$$

Where F_z *is the axial force and* M_y *is the flexion/extension moment measured in the upper neck load cell.*

TABLE 1.—NIJ INTERCEPT VALUES AND TENSION/COMPRESSION LIMITS FOR IN-POSITION 50TH PERCENTILE ADULT MALE AND 5TH PERCENTILE FEMALE DUMMIES

Dummy	Nij intercepts					
	Tension	Compression	Tension	Compression	Flexion	Extension
HIII 50M	4170 N	4000 N	6806 N	6160 N	310 Nm	135 Nm.
HIII 5F	2620 N	2520 N	4287 N	3880 N	155 Nm	67 Nm.

In general, neck injuries occur due to combination loading to in-position occupants. As such, the Nij injury risk curve is applicable and the agency has selected the risk curve used in the establishment of the Advanced Air Bag rule for FMVSS No. 208 from Eppinger. The neck tension injury risk curve was developed using the same paired pig and dummy test data used for the development of Nij. NHTSA assumed that the tensile neck tolerance is approximately equal to the compressive neck tolerance. Therefore, the injury risk curve for neck tension can also be applied to obtain neck injury risk due to neck compression. Equations 3–5 present the risk of AIS 3+ neck injury as a function of Nij, neck tension, and neck compression for the HIII 50M and HIII 5F dummies.

$$\text{HIII 50M and HIII 5F: } P(AIS3+) = \frac{1}{1+e^{3.227-1.969*N_{ij}}} \qquad (3)$$

$$\text{HIII 50M: } P(AIS3+) = \frac{1}{1+e^{10.9745-2.375*Tension_or_Compression}} \qquad (4)$$

$$\text{HIII 5F: } P(AIS3+) = \frac{1}{1+e^{10.958-3.770*Tension_or_Compression}} \qquad (5)$$

Where tension_or_compression is in kV.

The risk of AIS 3+ neck injury in the NCAP frontal crash test is the greater of the injury risk for Nij, neck tension, and neck compression. In general, the risk of injury obtained from Nij is higher than that for neck tension or compression in frontal NCAP tests.

Chest

Eppinger et al. (1999) developed injury risk curves for chest deflection. However, the derived injury risk curve was independent of occupant age and was not adequately adjusted to reflect real-world chest injury risk. As such, we have chosen to use a more recent, peer reviewed thoracic injury risk curve using chest deflection. Laituri *et al.* (2003, 2005) developed AIS 3+ thoracic injury risk curves by analyzing published cadaveric sled test data and then developing a transfer function between dummy chest deflection measurements and cadaveric chest deflection under similar impact conditions. The resulting thoracic injury risk curve is based on dummy measured chest deflection and occupant age and was evaluated against real world injury risk in frontal crashes. In order to apply this AIS 3+ thoracic injury risk curve in NCAP, it was normalized to the average age of the driving population which is approximately 35 years. The injury risk curve based on this evaluation for assessing risk of AIS 3+ chest injury is presented in Equation 6 for the Hybrid III 50th percentile male dummy. The injury risk curve as a function of chest deflection (Equation 7) for the HIII 5th percentile female dummy (HIII 5F) is obtained by scaling the risk curves for the HIII 50M using the scale factor for chest deflection (=0.817) which is the ratio of the chest depth of a 5th percentile female to that of a 50th percentile male (Eppinger (1999) and Mertz (2003)).

$$50th\ percentile\ \ P(AIS3+) = \frac{1}{1+e^{12.597-0.05861*35-1.568*(ChestDefl)^{0.4612}}} \qquad (6)$$

$$5th\ percentile\ P(AIS3+) = \frac{1}{1+e^{12.597-0.05861*35-1.568*(ChestDefl/0.817)^{0.4612}}} \qquad (7)$$

Knee-Thigh-Hip

The injury risk curve that the agency will use for the Knee-Thigh-Hip (KTH) is the same as that reported by Eppinger et al. (1999) in support of FMVSS No. 208 (Equation 8). The injury risk curves represent femur and knee injury risk since most of the injuries in the datasets that were used to develop these injury risk curves were to the distal femur and knee and only four of the 126 tests used to develop these risks curves produced a hip fracture. In addition, the knee injuries in this dataset were primarily multifragmentary patellar fractures, which, like other articular surface injuries, are associated with a high level of long-term disability.

The femur injury risk curve as a function of femur axial force for the HIII 5th percentile female dummy (HIII 5F) was developed by scaling the risk curves for the HIII 50M using a scale factor of 0.68 (Equation 9). This scale factor was proposed by Eppinger (1999) and later by Mertz (2003) and is based on the ratio of the thigh circumference of a 5th percentile female to that of a 50th percentile male.

$$50th\ percentile\ \ P(AIS\ 2+) = \frac{1}{1+e^{5.7949-0.5196\ Femur_Force}} \qquad (8)$$

$$5th\ percentile\ P(AIS\ 2+) = \frac{1}{1+e^{5.7949-0.7619\ Femur_Force}} \qquad (9)$$

Joint Probability of Injury

The joint probability of injury to an occupant is obtained by combining the risk of injury to each body region assuming the injury to different body regions are independent events. Therefore the probability of serious injury, P_{joint}, is given by:

$$P_{joint} = 1-(1-P_{head})\times(1-P_{neck})\times(1-P_{chest})\times(1-P_{femur})$$

Injury Risk Curves for Side NCAP

The injury risk curves for the side impact dummies, ES–2re and SID–IIs (Kuppa, 2006), were developed from biomechanical tests involving human cadaveric subjects and detailed in NHTSA docket (NHTSA–2007–29134).

Head

The Head Injury Criterion (HIC), used for assessing injury risk in frontal impacts is based on repeated drop tests of embalmed human cadavers onto rigid and padded surfaces where the impact area was the forehead (Lissner et al. 1960, Hodgson et al. 1972). Though forehead impacts are representative of a frontal impact scenario, the ECE R95 directive and Euro NCAP continue to apply HIC for head injury assessment in lateral impact scenarios, implicitly assuming that the head/brain injury tolerance is independent of loading direction and impact location. Similarly, NHTSA applied HIC36 to assess head/brain injuries in lateral crashes in the upgrade to FMVSS No. 214 so as to harmonize with the existing FMVSS No. 201 optional pole impact test.

Therefore, the FMVSS No. 208 AIS 3+ injury risk function presented above for the HIII 50M and HIII 5F dummies will be used in the NCAP side impact tests with the ES–2re and SID–IIs dummies. However, in order to be consistent with FMVSS No. 214, HIC36 will be used rather than HIC15 (Equation 10).

$$\mathrm{P(AIS3+)} = \Phi\left(\frac{\ln\ (HIC36)-7.45231}{0.73998}\right) \qquad (10)$$

Where Φ = *cumulative normal distribution*

Chest

The risk of AIS 3+ and AIS 4+ thoracic injury for a 45 year old (average age of the driving population involved in side impacts) 50th percentile adult male occupant as a function of maximum rib deflection of the ES–2re side impact dummy was developed by Kuppa (2006) by considering the injury severity to be a polychotomous variable (AIS<3, AIS=3, AIS>3). However, this AIS 3+ injury risk curve has a finite risk of injury even at zero mm of rib deflection. The same cadaver and dummy test data reported by Kuppa (2006) were reanalyzed considering the injury severity to be dichotomous (AIS<3 and AIS≥3 or AIS<4 and AIS≥4) to develop new AIS 3+ and AIS 4+ injury risk curves. Since the injury risk curves have not been adjusted to represent the average risk of injury in real world side crashes, NHTSA will use the AIS 4+ injury risk curve as the corresponding AIS 3+ injury risk in NCAP. The risk of AIS 3+ thoracic injury for a 45 year old (average age of the driving population involved in side impacts) 50th percentile adult male occupant as a function of maximum rib deflection of the ES–2re for use in NCAP is presented in Equation 11.

$$p(AIS3+) = \frac{1}{1+e^{(5.3895-0.0919\ *\ \max.\ rib.\ defl.)}} \qquad (11)$$

FMVSS 214 final rule does not utilize rib deflection measures of the SID IIs dummy and so they are not considered in NCAP at this time. Additionally, because the agency does not have a valid risk curve at this time for spine acceleration, it is also not included.

Abdomen

The AIS 3+ abdominal injury risk curve using the total force in the ES–2re abdomen reported by Kuppa (2006) is utilized in NCAP and is presented in Equation 12.

$$p(AIS3+) = \frac{1}{1+e^{6.04044-0.002133*F}} \qquad (12)$$

Where F is the total force in the ES–2re abdomen in Newtons.

Since FMVSS No. 214 does not utilize the abdominal rib deflection measures of the SID-IIs dummy for injury assessment, no abdominal injury risk assessment will be applied to the NCAP side MDB test and the oblique pole test using the SID IIs dummy.

Pelvis

NHTSA will utilize the AIS 3+ pelvic injury risk curve (Equation 13) reported by Kuppa (2006) for injury assessment with the ES–2re driver in the side MDB NCAP test.

$$p(\text{AIS3+}) = \frac{1}{1+e^{7.5969-0.0011*F}} \qquad (13)$$

Where F is the pubic force in the ES–2re dummy in Newtons

Kuppa (2006) developed the risk curve for AIS 2+ pelvic fracture as a function of the sum of iliac wing and acetabular force in the SID-IIs by scaling the normalized 50th percentile male data to that of a 5th percentile female, accounting for older subject age, adjusting for lower bone tolerance among female occupants, and transforming the applied force on the cadaver to the sum of acetabular and iliac force measured in the SID–IIs dummy. This pelvic injury risk function for the SID–IIs is presented in Equation 14.

$$p(\text{AIS2+}) = \frac{1}{1+e^{6.3055-0.00094*F}} \qquad (14)$$

Where F is the sum of the acetabular and iliac force in the SID–IIs dummy in Newtons

In developing the pelvis injury criteria for the SID-IIs, an occupant age of 56 years was considered to correspond to the average age of AIS 3+ injured occupants (of height less than 5 ft 4 inches) involved in side crashes. Research has indicated that pelvic injuries to older occupants are associated with increased mortality (O'Brien et al. 2002; Henry et al. 2002). During a 5-year period, O' Brien et al. and Henry et al. examined patients who sustained a pelvic fracture and found that patients 55 years and older were more likely to sustain a lateral compression fracture pattern and had a higher frequency of mortality due to the injury than younger patients (<55 years old). Due to the higher mortality rate associated with the elderly, an AIS 2+ injury risk curve is used in NCAP for the SID–IIs representing a 56 year old small female rather than the AIS 3+ injury risk specified for the ES–2re dummy

Joint Probability of Injury

The joint risk of injury to an occupant is obtained by combining the risk of injury to the head, chest, abdomen and pelvis assuming the injury to different body regions are independent events (as was done for frontal impact). Note that for the SID–IIs, the risk of chest and abdomen injury is omitted and only the risk of injury to the head and pelvis are combined.

$$P_{joint} = 1-(1-P_{head})\times(1-P_{chest})\times(1-P_{abdomen})\times(1-P_{pelvis})$$

Injury Risk In Rollover Crashes

The Static Stability Factor (SSF) of a vehicle is defined as one-half the track width, *t*, divided by *h*, the height of the center of gravity above the road (SSF = t/(2 × h)). Since 2004, the NCAP vehicle rollover rating has been calculated as a function of the vehicle's static stability factor and its propensity to tip up in the dynamic rollover ''fishhook'' test (68 FR 59250). The risk of rollover in single-vehicle crashes as a function of the static stability factor and the results of the dynamic rollover test was estimated from the State Data System and is presented below in Equations 15 and 16.

$$\textit{Vehicles not tipping in dynamic test : Rollover risk} = \frac{1}{1+e^{2.8891+1.1686\times Ln\,(SSF-0.9)}} \qquad (15)$$

$$\textit{Vehicles tipping in dynamic test : Rollover risk} = \frac{1}{1+e^{2.6968+1.1686\times Ln\,(SSF-0.9)}} \qquad (16)$$

Where SSF=static stability factor

This model describes the absolute risk of rollover given a single-vehicle crash. We can also describe the risk of rollover relative to an ''average'' vehicle. For example, we could use a ''typical'' SSF (which is about 1.35 for the current fleet) for vehicles that did not tip up in the dynamic test (which reflects the future in the sense that when all vehicles are equipped with ESC there will be essentially no tip-ups in the dynamic test). The risk of rollover for a subject vehicle compared to the risk of rollover for this baseline case describes how much more or less likely the subject vehicle is to roll over compared to the baseline. Thus, for example, a relative risk of rollover of 0.80 means that the subject vehicle is 20 percent less likely to roll over than the baseline; a relative risk of 1.25 means that the subject vehicle is 25 percent more likely to roll over than the baseline. For certain purposes (specifically, in producing the Vehicle Safety Score as described elsewhere in this Notice), we treat this as equivalent to the relative risk that a belted occupant is injured in a rollover crash given a single-vehicle crash. This is not strictly true, but our review of the SDS data for belted drivers indicates that it is approximately true. Therefore, the relative risks of injury to a belted driver in a rollover crash conditional on being involved in a single-vehicle crash are approximately proportional to the risks of rollover outlined above.

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Appendix D

Relative Risk of Injury, Vehicle Safety Score, and the Star Rating System

Introduction

The risk of injury to each occupant in NHTSA's Crashworthiness Rating System is the joint probability of injury to each body region considered for that occupant. The overall risk of injury in frontal crashes is the average of the injury risk to the driver and passenger in the frontal crash test. The risk of injury to the driver in side crashes is the weighted average of the risk to the driver in the MDB test (weight=0.8) and the pole test (weight=0.2). The overall risk of injury in side crashes is the average of the injury risk to the driver in side crashes (MDB and Pole) and the injury risk to the rear seat passenger in the MDB test.

The crashworthiness rating system provides relative risk of injury for each occupant in each crash test condition (driver and front outboard passenger in the frontal crash test, driver and near side rear seat passenger in the side MDB test, driver in the oblique pole impact test, and rollover test) and a Combined Crashworthiness Rating Vehicle Safety Score. The relative risk of injury in each test condition for a vehicle is computed by dividing the overall risk of injury in each crash mode by an average baseline risk (for example, the average risk of serious injury in the fleet or that of a group of select vehicles in the fleet for a certain model year). The Combined Crashworthiness Rating Vehicle Safety Score (VSS) is obtained as a weighted average of the individual Relative Risk Score (RRS) in each test condition.

The RRS for each test condition and the VSS represent the risk of injury to occupants of the vehicle relative to a baseline risk of injury. For example, a VSS of 1.15 for a vehicle implies that the occupants in that vehicle are 15 percent more likely to sustain serious injury than a vehicle representing the baseline risk.

Frontal Crash Test Rating

The historical frontal NCAP crash test data for the driver from the model years 1995 through 2008 were examined using the injury risk curves presented in Appendix C.

The average risk of injury to the head, neck, chest, and femur of the driver, computed using the injury risk curves from Appendix C, for each vehicle of model years 2004 to 2008 is presented in Figure 1.

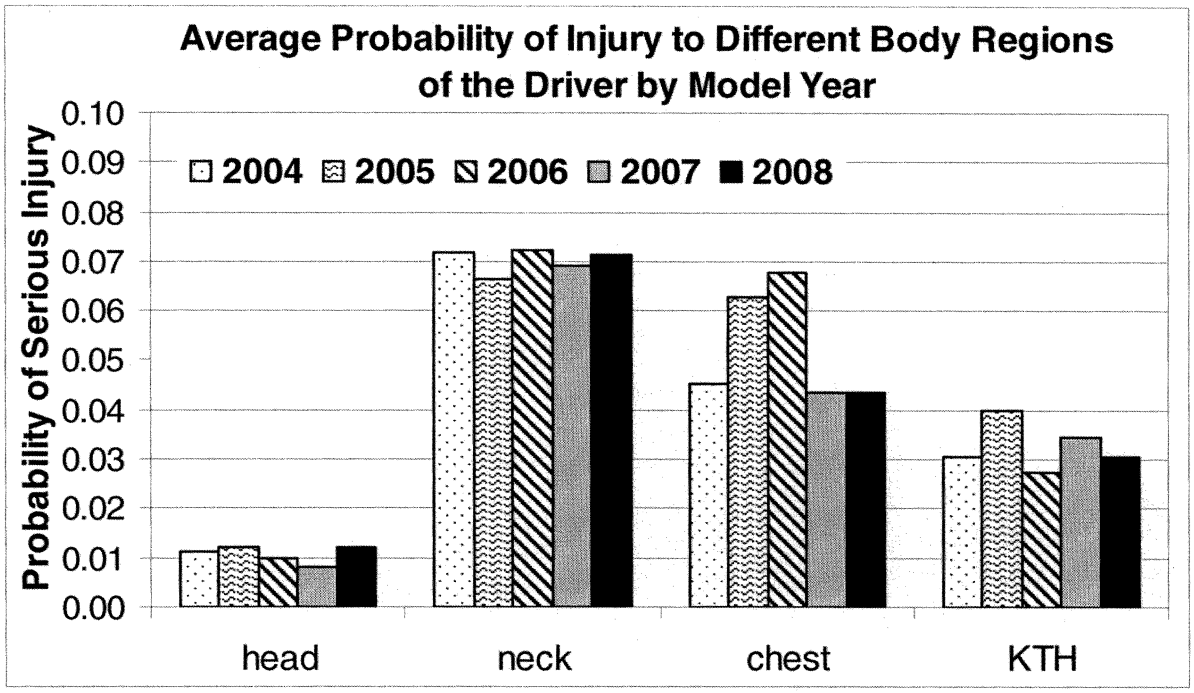

Figure 1. Average risk of serious injury to different body regions by vehicle model year.

When compared to data from 1995, these data indicate that the average risk of injury to the driver by model year has been reduced since 1995 and is less than 0.2 after MY 2002 (Table 2). If the average performance of all the vehicles tested in NCAP each year is used to represent the fleet of new cars, then for MY 2008, the average risk of serious injury in the fleet is approximately 0.15. Therefore, the baseline injury risk of 0.15 was used to compute the relative risk of injury in frontal crashes for each vehicle (Table 3).

TABLE 1.—PROBABILITY OF INJURY STATISTICS FOR DRIVERS IN NCAP FRONTAL CRASH TESTS BY MODEL YEAR

MY	Average prob	Prob Std. deviation	Minimum P	P 25% quartile	P Median	P 75% quartile	Maximum P
1995	0.30	0.12	0.10	0.21	0.27	0.35	0.62
1996	0.32	0.18	0.13	0.18	0.28	0.40	0.86
1997	0.26	0.14	0.12	0.17	0.22	0.28	0.69
1998	0.26	0.11	0.11	0.20	0.24	0.30	0.63
1999	0.29	0.18	0.09	0.17	0.23	0.36	0.71
2000	0.25	0.15	0.11	0.15	0.22	0.28	0.64
2001	0.23	0.12	0.09	0.17	0.19	0.26	0.63
2002	0.20	0.09	0.09	0.14	0.17	0.22	0.61
2003	0.18	0.09	0.08	0.12	0.15	0.18	0.45
2004	0.15	0.07	0.08	0.11	0.14	0.18	0.46
2005	0.17	0.11	0.09	0.11	0.14	0.19	0.57
2006	0.17	0.06	0.08	0.13	0.15	0.22	0.31
2007	0.15	0.05	0.09	0.12	0.14	0.17	0.38
2008	0.15	0.04	0.09	0.12	0.14	0.18	0.24
Average MY 1995–2008			0.10	0.15	0.19	0.25	0.56
Average MY 2004–2008			0.08	0.12	0.14	0.19	0.39

Table 2: Relative Risk Score statistics for drivers in NCAP frontal crash tests by model year

MY	average RRS	RRS Std. deviation	Minimum RRS	RRS 25% quartile	RRS Median	RRS 75% quartile	Maximum RRS
1995	1.98	0.78	0.70	1.40	1.82	2.34	4.14
1996	2.16	1.20	0.87	1.23	1.83	2.70	5.73
1997	1.74	0.91	0.82	1.13	1.49	1.89	4.59
1998	1.77	0.74	0.73	1.31	1.57	1.98	4.19
1999	1.96	1.23	0.59	1.12	1.52	2.42	4.76
2000	1.67	1.00	0.75	1.03	1.44	1.84	4.27
2001	1.51	0.78	0.59	1.10	1.25	1.72	4.23
2002	1.31	0.61	0.62	0.95	1.16	1.46	4.09
2003	1.19	0.60	0.55	0.82	1.00	1.22	2.99
2004	1.00	0.44	0.54	0.75	0.91	1.21	3.08
2005	1.16	0.72	0.57	0.74	0.93	1.24	3.82
2006	1.13	0.38	0.55	0.86	0.99	1.44	2.05
2007	0.98	0.34	0.59	0.78	0.91	1.10	2.52
2008	0.99	0.28	0.58	0.79	0.93	1.19	1.63
Average MY1995-2008			0.65	1.00	1.27	1.70	3.72
Average MY2004-2008			0.57	0.78	0.93	1.24	2.62

The average, minimum, maximum, and the quartiles presented in Table 3 provide an estimate of the dispersion of Relative Risk Score (RRS) in different model years. Since most of the current vehicles receive four or five stars in the NCAP frontal crash tests, NHTSA prescribed the baseline risk of 15 percent (representing the average risk of injury to the driver in MY 2007 and MY 2008 vehicles in the NCAP frontal crash test) to be at the border of the 4 star and 3 star rating. Other criteria used to determine the star bands were (1) vehicles performing exceptionally well (at 0–15 percentile of vehicles tested) are assigned a five star rating, and (2) vehicles performing very poorly (greater than 4 standard deviations from mean) would be assigned a one star. Attempts were also made to maintain equidistant star band boundaries. Based on these criteria and the distribution of relative risk of injury scores presented in Table 3, the relationship between RRS and the number of stars was established as presented in Table 4. The RRS is computed by (1) rounding the injury risk to the nearest tenth of a percent in accordance with the rounding-off method of ASTM Standard Practice E 29 for Using Significant Digits in Test Data to Determine Conformance with Specifications, (2) dividing the injury risk by 0.15 (15.0 percent baseline injury risk), (3) and finally rounding the result to the nearest one hundredth in accordance to ASTM Standard E 29. It should be noted that a vehicle which passes compliance (with a 20 percent compliance margin) would have an injury risk of 52.1 percent corresponding to a RRS value of 3.47.

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Table 3. Relationship between Relative Risk Score (RRS) and the star rating
(using 15 percent baseline injury risk)

	5 stars	4 stars	3 stars	2 stars	1 star
RRS Values	RRS <0.67	0.67 ≤ RRS <1.00	1.00 ≤ RRS < 1.33	1.33 ≤ RRS < 2.67	RRS ≥ 2.67
Probability	P < 0.100	0.100 ≤ P < 0.150	0.150 ≤ P < 0.200	0.200 ≤ P < 0.400	P ≥ 0.400

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Side Crash Test Rating

Because the agency did not have test data using the ES 2re or SID IIs dummies at the NCAP test speed for the MDB test, the agency computed the average risk of serious injury derived from relevant MDB tests and oblique pole impact tests done in support of the FMVSS 214 side impact protection upgrade. The MDB test is conducted with the ES–2re dummy in the front driver seat and the SID–IIs in the rear passenger seat. The pole impact test is conduced with the SID–IIs in the driver's seat.

The injury risk curves for side impact reported in Appendix C are applied to side MDB tests and oblique pole tests. These tests were part of NHTSA's fleet evaluation for the FMVSS 214 side impact upgrade and details and thorough analysis of these tests are available in the NHTSA docket number NHTSA–2007–25441.

There were six vehicles which were tested in the FMVSS 214 test conditions (MDB impact at 53 km/h rather than the NCAP 62 km/h) as well as the oblique pole impact with the SID–IIs dummies. The dummy injury measures in the paired crash tests of these vehicles with the ES–2re and SID–IIs dummies were used to determine risk of injury in side crashes and a Relative Risk Score (RRS) for side crashes. Table 4 presents the statistics for the risk of injury (average, standard deviation, minimum, maximum, median, and 25 and 75 percentile injury risk values) for each dummy in the MDB and oblique pole tests using the injury risk curves from Appendix C.

The overall risk of injury to the driver for each vehicle is the weighted average of the driver injury risk in the MDB test (multiplied by 0.8) and that in the oblique pole test (multiplied by 0.2). The risk of injuries in side crashes for a vehicle is the simple average of the injury risk of the rear seat passenger in the MDB test and the overall driver injury risk. Table 4 also presents the statistics for the overall risk of injury to the driver and the risk of injury in side crashes.

TABLE 4.—PROBABILITY OF INJURY (P) STATISTICS FOR DIFFERENT OCCUPANTS IN THE SIDE MDB AND THE OBLIQUE POLE CRASH TESTS

Crash type	Average P	Std. Dev. P	Min P	25% quartile P	Median P	75% quartile P	Max P
MDB Driver	0.09	0.04	0.04	0.06	0.09	0.12	0.13
MDB Pass	0.13	0.21	0.03	0.03	0.04	0.07	0.55
Pole Driver	0.64	0.39	0.13	0.32	0.79	0.93	0.98
Overall Driver	0.20	0.11	0.06	0.12	0.23	0.28	0.30
Side Impact	0.16	0.16	0.05	0.07	0.14	0.18	0.43

• The overall risk of injury to the driver is computed as the weighted average of the risk of driver injury in the MDB test (multiplied by 0.8) and the risk of driver injury in the pole test (multiplied by 0.2).
• The risk of injury in side impact is the average of the overall driver risk and the risk of rear passenger in the MDB test.

The average risk of injury from the six MDB tests for the driver and the rear passenger is 0.09 and 0.13, respectively. The average risk of injury to the driver in the six oblique pole tests is 0.64 and the average overall risk of injury to the driver (combining the MDB and pole test results) is 0.20. For these six vehicles, the average risk of injury in side crashes is 0.16.

In order to promote improvement in side impact safety in all the vehicles, the baseline risk of injury to compute Relative Risk Scores (RRS) in side crashes is taken to be 15 percent. As in frontal crash tests, the RRS in side MDB and pole crash tests is computed by 1) rounding the injury risk to the nearest tenth of a percent in accordance with the rounding-off method of ASTM Standard Practice E 29 for Using Significant Digits in Test Data to Determine Conformance with Specifications, 2) dividing the injury risk by 0.15 (15.0 percent baseline injury risk), 3) and finally rounding the result to the nearest one hundredth in accordance to ASTM Standard E 29. Table 5 presents the RRS statistics corresponding to the injury risk presented in Table 4 using a baseline injury risk of 15 percent.

TABLE 5.—RELATIVE RISK SCORE (RRS) STATISTICS FOR DIFFERENT OCCUPANTS IN THE SIDE MDB AND THE OBLIQUE POLE CRASH TESTS

Crash type	Average RRS	Std. Dev. RRS	Min RRS	25% quartile RRS	Median RRS	75% quartile RRS	Max RRS
MDB Driver	0.60	0.25	0.28	0.42	0.59	0.80	0.87
MDB Pass	0.86	1.39	0.20	0.21	0.28	0.45	3.69
Pole Driver	4.27	2.57	0.89	2.15	5.24	6.23	6.54
Overall Driver	1.33	0.71	0.40	0.77	1.52	1.89	2.00
Side Impact	1.09	1.05	0.30	0.49	0.90	1.17	2.84

• The Relative Risk Score for MDB tests, pole tests, and side impacts is obtained by dividing the risk of injury in each side crash mode listed in Table 4 by 0.15 which represents the baseline risk of injury in side impacts.

Vehicles for which all the dummy injury measures (for the ES–2re and SID–IIs) in the MDB and pole tests just meet the compliance limits, the risk of injury is 0.70 for the ES–2re and 0.42 for the SID IIs dummies resulting in an overall risk of injury in side crashes of 0.532, a RRS of 3.54.

Rollover Rating

Since the proposed rollover rating is the same as that currently used in NCAP, the current relationship between the risk of rollover and star rating used in NCAP is applied here and is shown in Table 11. If 15 percent risk (corresponding to a 4 star rating) is used as the baseline risk (as that in front and side crash test rating), then the relationship between the vehicle safety score in rollover is as shown in Table 11.

TABLE 11.—STAR RATING, RISK OF ROLLOVER, AND THE RELATIVE RISK SCORE IN ROLLOVER

[Using a baseline risk of 15 percent]

Number of stars	Risk of rollover	Relative risk score in rollover
1 star	P ≥ 40 percent	RRS ≥ 2.67
2 stars	30 ≤ P < 40 percent	2.0 ≤ RRS < 2.67
3 stars	20 ≤ P < 30 percent	1.33 ≤ RRS < 2.0
4 stars	10 ≤ P < 20 percent	0.67 ≤ RRS < 1.33
5 stars	P < 10 percent	RRS < 0.67

Combined Crashworthiness Rating Vehicle Safety Score

The weighted average of the Relative Risk Scores (RRS) in front, side, and rollover crashes is the combined crashworthiness rating Vehicle Safety Score (VSS). The weight applied to each crash mode represents the proportion of injury associated with that crash mode. Since the baseline injury risk used to compute RRS in each crash mode is 15 percent, the combined crashworthiness rating also represents the relative risk of injury with respect to a baseline of 15 percent. The Vehicle Safety Score for the Combined Crashworthiness Rating is computed below:

$$\text{Combined Rating} = (5/12) \times \text{RRS(front)} + (4/12) \times \text{RRS(side)} + (3/12) \times \text{RRS(roll)}$$

The final VSS value is obtained by rounding the result from the above equation to the nearest one hundredth in accordance to ASTM Standard E 29. The star bands used for rating frontal and side impacts are applied to the combined crashworthiness rating using VSS and is presented in Table 12.

TABLE 12.—RELATIONSHIP BETWEEN VEHICLE SAFETY SCORE AND THE STAR RATING

	5 stars	4 stars	3 stars	2 stars	1 star
VSS Values	VSS <0.67	0.67 ≤ VSS <1.00	1.00 ≤ VSS < 1.33	1.33 ≤ VSS < 2.67	VSS ≥ 2.67
Probability	P < 0.100	0.100 ≤ P < 0.150	0.150 ≤ P < 0.200	0.200 ≤ P < 0.400	P ≥ 0.400

Authority: 49 U.S.C. §§ 32302, 30111, 30115, 30117, 30166, and 30168, and Pub. L. 106–414, 114 Stat. 1800; delegation of authority at 49 CFR 1.50.

Issued on: July 3, 2008.

Nicole R. Nason,

Administrator.

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Federal Register

Friday,
July 11, 2008

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Availability of Grant Funds for Fiscal Year 2009; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 080626787–8788–01]

RIN 0648–ZB96

Availability of Grant Funds for Fiscal Year 2009

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) publishes this notice to provide the general public with a consolidated source of program and application information related to its competitive grant and cooperative agreement (CA) award offerings for fiscal year (FY) 2009. This Omnibus notice is designed to replace the multiple **Federal Register** notices that traditionally advertised the availability of NOAA's discretionary funds for its various programs. It should be noted that additional program initiatives unanticipated at the time of the publication of this notice may be announced through subsequent **Federal Register** notices. All announcements will also be available through the Grants.gov Web site.

DATES: Proposals must be received by the date and time indicated under each program listing in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: Proposals must be submitted to the addresses listed in the **SUPPLEMENTARY INFORMATION** section of this notice for each program. The **Federal Register** and Full Funding Opportunity (FFO) notices may be found on the Grants.gov Web site. The URL for Grants.gov is *http://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: Please contact the person listed within this notice as the information contact under each program.

SUPPLEMENTARY INFORMATION: Applicants must comply with all requirements contained in the Federal Funding Opportunity announcement for each of the programs listed in this omnibus notice. These Federal Funding Opportunities are available at *http://www.grants.gov*. The list of entries below describe the basic information and requirements for competitive grant/cooperative agreement programs offered by NOAA. These programs are open to any applicant who meets the eligibility criteria provided in each entry. To be considered for an award in a competitive grant/cooperative agreement program, an eligible applicant must submit a complete and responsive application to the appropriate program office. An award is made upon conclusion of the evaluation and selection process for the respective program.

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IV. NOAA Project Competitions Listed by NOAA Mission Goals

1. Protect, Restore and Manage the Use of Coastal and Ocean Resources Through Ecosystem-Based Management

Summary Description: Coastal areas are among the most developed in the Nation. More than half the population lives on less than one-fifth of the land in the contiguous United States. Furthermore, employment in near shore areas is growing three times faster than population. Coastal and marine waters support over 28 million jobs and provide a tourism destination for nearly 90 million Americans a year. The value of the ocean economy to the United States is over $115 billion. The value added annually to the national economy by the commercial and recreational fishing industry alone is over $48 billion. U.S. aquaculture sales total almost $1 billion annually. With its Exclusive Economic Zone of 3.4 million square miles, the United States manages the largest marine territory of any nation in the world.

Funded proposals should help achieve the following outcomes:

- Healthy and productive coastal and marine ecosystems that benefit society
- A well-informed public that acts as a steward of coastal and marine ecosystems

Program Names:

1. FY 2009 CRCP-Coral Reef Management
2. Bay Watershed Education and Training (B–WET) Hawaii Program
3. Cooperative Research Program
4. Marine Fisheries Initiative (MARFIN)
5. National Estuarine Research Reserve Land Acquisition and Construction Program FY 2009
6. National Estuarine Research Reserve Graduate Research Fellowship Program FY 2009
7. International Coral
8. CSCOR FY09 NGOMEX and CRES
9. FY 2009 California Bay Watershed Education and Training Program
10. FY 2009 Ocean Exploration Omnibus—Marine Archaeology
11. FY 2009 Sea Scallop Research Set-Aside
12. FY 2009 CRCP Coral Reef Ecosystem Monitoring
13. NOAA's National Height Modernization Program
14. FY 2009 Monkfish Research Set-Aside
15. Protected Species Cooperative Conservation
16. FY 2009 Ocean Exploration Omnibus—Ocean Exploration
17. FY 2009 Ocean Exploration Omnibus—Education
18. FY 2009 B–WET Chesapeake
19. National Coastal and Estuarine Research and Technology Program
20. NOAA General Coral Reef Conservation Grants Program
21. FY 2009 Open Rivers Initiative
22. FY 2009 Community-based Marine Debris Prevention and Removal Project Grants
23. Projects to Improve or Amend Coral Reef Fishery Management Plans
24. FY 2009 Atlantic Salmon Conservation Grants
25. FY 2010 Dean John A. Knauss Marine Policy Fellowship (Knauss Fellowship Program)

26. FY 2009 NMFS-Sea Grant Fellowships in Population Dynamics
27. FY 2009 NMFS-Sea Grant Fellowships in Marine Resource Economics
28. Prescott 2009

2. Understand Climate Variability and Change To Enhance Society's Ability To Plan and Respond

Summary Description: Climate shapes the environment, natural resources, economies, and social systems that people depend upon worldwide. While humanity has learned to contend with some aspects of climate's natural variability, major climatic events, combined with the stresses of population growth, economic growth, public health concerns, and land-use practices, can impose serious consequences on society. The 1997–98 El Nino, for example, had a $25 billion impact on the U.S. economy-property losses were $2.6 billion and crop losses approached $2 billion. Long-term drought leads to increased and competing demands for fresh water with related effects on terrestrial and marine ecosystems, agricultural productivity, and even the spread of infectious diseases. Decisions about mitigating climate change also can alter economic and social structures on a global scale. We can deliver reliable climate information in useful ways to help minimize risks and maximize opportunities for decisions in agriculture, public policy, natural resources, water and energy use, and public health. We continue to move toward developing a seamless suite of weather and climate products. The Climate Goal addresses predictions on time scales of up to decades or longer.

Funded proposals should help achieve the following outcomes:

- A predictive understanding of the global climate system on time scales of weeks to decades with quantified uncertainties sufficient for making informed and reasoned decisions.
- Climate-sensitive sectors and the climate-literate public effectively incorporating NOAA's climate products into their plans and decisions.

Program Names:

1. Bay Watershed Education and Training (B–WET) Hawaii Program
2. Climate Program Office for FY 2009
3. FY 2009 Ocean Exploration Omnibus—Marine Archaeology
4. FY 2009 Ocean Exploration Omnibus—Ocean Exploration
5. FY 2009 Ocean Exploration Omnibus—Education
6. FY 2010 Dean John A. Knauss Marine Policy Fellowship (Knauss Fellowship Program)

3. Provide Critical Support for NOAA's Mission

Summary Description: Strong, effective, and efficient support activities are necessary for us to achieve our Mission Goals. Our facilities, ships, aircraft, environmental satellites, data processing systems, computing and communication systems, and our approach to management provide the foundation of support for all of our programs. This critical foundation must adapt to evolving mission needs and, therefore, is an integral part of our strategic planning. It also must support U.S. homeland security by maintaining continuity of operations and by providing NOAA services, such as civil alert relays through NOAA Weather Radio and air dispersion forecasts, in response to national emergencies. NOAA ships, aircraft, and environmental satellites are the backbone of the global Earth observing system and provide many critical mission support services. To keep this capability strong and current with our Mission Goals, we will ensure that NOAA has adequate access to safe and efficient ships and aircraft through the use of both NOAA platforms and those of other agency, academic, and commercial partners. We will work with academia and partners in the public and private sectors to ensure that future satellite systems are designed, developed, and operated with the latest technology. Leadership development and program support are essential for achieving our Mission Goals. We must also commit to organizational excellence through management and leadership across a ''corporate'' NOAA. We must continue our commitment to valuing NOAA's diverse workforce, including effective workforce planning strategies designed to attract, retain and develop competencies at all levels of our workforce. Through the use of business process re-engineering, we will strive for state-of-the-art, value-added financial and administrative processes. NOAA will ensure state-of-the-art and secure information technology and systems. By developing long-range, comprehensive facility planning processes, NOAA will be able to ensure right-sized, cost-effective, and safe facilities.

Funded proposals should help achieve the following outcomes:

- A dynamic workforce with competencies that support NOAA's mission today and in the future.

Program Names:

1. Saltonstall-Kennedy Grant Program (FY 2009)
2. FY 2010 Dean John A. Knauss Marine Policy Fellowship (Knauss Fellowship Program)

4. Support the Nation's Commerce With Information for Safe, Efficient, and Environmentally Sound Transportation

Summary Description: Safe and efficient transportation systems are crucial to the U.S. economy. The U.S. marine transportation system ships over 95 percent of the tonnage and more than 20 percent by value of foreign trade through U.S. ports, including 48 percent of the oil needed to meet America's energy demands. At least $4 billion is lost annually due to economic inefficiencies resulting from weather related air-traffic delays. Improved surface weather forecasts and specific user warnings would reduce the 7,000 weather related fatalities and 800,000 injuries that occur annually from crashes on roads and highways. The injuries, loss of life, and property damage from weather-related crashes cost an average of $42 billion annually. We provide information, services, and products for transportation safety and for increased commerce on roads, rails, and waterways. We will improve the accuracy of our information for marine, aviation, and surface weather forecasts, the availability of accurate and advanced electronic navigational charts, and the delivery of real-time oceanographic information. We seek to provide consistent, accurate, and timely positioning information that is critical for air, sea, and surface transportation. We will respond to hazardous material spills and provide search and rescue routinely to save lives and money and to protect the coastal environment. We will work with port and coastal communities and with Federal and state partners to ensure that port operations and development proceed efficiently and in an environmentally sound manner. We will work with the Federal Aviation Administration and the private sector to reduce the negative impacts of weather on aviation without compromising safety. Because of increased interest by the public and private sectors, we also will expand weather information for marine and surface transportation to enhance safety and efficiency.

Funded proposals should help achieve the following outcomes:

- Safe, secure, efficient, and seamless movement of goods and people in the U.S. transportation system
- Environmentally sound development and use of the U.S. transportation system.

Program Names:

1. NOAA's National Height Modernization Program
2. FY 2010 Dean John A. Knauss Marine Policy Fellowship (Knauss Fellowship Program)

5. Serve Society's Needs for Weather and Water Information

Summary Description: Floods, droughts, hurricanes, tornadoes, tsunamis, wildfires, and other severe weather events cause $11 billion in damages each year in the United States. Weather is directly linked to public health and safety, and nearly one-third of the U.S. economy (about $3 trillion) is sensitive to weather and climate. With so much at stake, NOAA's role in understanding, observing, forecasting, and warning of environmental events is expanding. With our partners, we seek to provide decision makers with key observations, analyses, predictions, and warnings for a range of weather and water conditions, including those related to water supply, air quality, space weather, and wildfires. Businesses, governments, and nongovernmental organizations are getting more sophisticated about how to use this weather and water information to improve operational efficiencies, to manage environmental resources, and to create a better quality of life. On average, hurricanes, tornadoes, tsunamis, and other severe weather events cause $11 billion in damages per year. Weather, including space weather, is directly linked to public safety and about one-third of the U.S. economy (about $3 trillion) is weather sensitive. With so much at stake, NOAA's role in observing, forecasting, and warning of environmental events is expanding, while economic sectors and its public are becoming increasingly sophisticated at using NOAA's weather, air quality, and water information to improve their operational efficiencies and their

management of environmental resources, and quality of life.

Funded proposals should help achieve the following outcomes:

- Reduced loss of life, injury, and damage to the economy
- Better, quicker, and more valuable weather and water information to support improved decisions
- Increased customer satisfaction with weather and water information and services

Program Names:

1. FY 2009 Joint Hurricane Testbed
2. FY 2010 Dean John A. Knauss Marine Policy Fellowship (Knauss Fellowship Program)

V. NOAA Non-competitive Opportunity

I. Background

Each of the following grant opportunities provide: A description of the program, funding availability, statutory authority, catalog of federal domestic assistance (CFDA) number, application deadline, address for submitting proposals, information contacts, eligibility requirements, cost sharing requirements, and intergovernmental review under Executive Order 12372.

In addition, this notice announces information related to a non-competitive financial assistance project to be administered by NOAA. This project is titled ''NOAA Coral Reef Conservation Grant Program—Coral Reef Ecosystem Research Grants''. The NOAA Coral Reef Conservation Grant Program announces that it is providing funding to the NOAA Undersea Research Program (NURP) Centers for: The Southeastern U.S., Florida, and Gulf of Mexico Region, the Southeast U.S. and Gulf of Mexico Center; and the Hawaii and Western Pacific Region, the Hawaii Undersea Research Laboratory, to administer two external, competitive coral reef ecosystem research grants programs. To receive an award for this project, an eligible applicant must submit a complete and responsive application to the appropriate program office. An award is made upon conclusion of the evaluation process for the prospective project.

II. Electronic Access

The FFO for each program is available via the Grants.gov Web site at: *http://www.grants.gov*. Electronic applications for the NOAA Programs listed in this announcement may be accessed, downloaded, and submitted to that Web site. The due dates and times for paper and electronic submissions are identical. NOAA strongly recommends that you do not wait until the application deadline to begin the application process through Grants.gov.

Grants.gov

Getting started with Grants.gov is easy. Users should note that there are two key features on the Web site: Find Grant Opportunities and Apply for Grants. The site is designed to support these two features and your use of them.

While you can begin searching for grant opportunities immediately, it is recommended that you complete the steps to Get Started (below) ahead of time. This will help ensure you are ready to go when you find an opportunity for which you would like to apply.

Applications From Individuals

In order for you to apply as an individual, the announcement must specify that the program is open to individuals and it must be published on the Grants.gov Web site. Individuals must register with the Credential Provider (see Step 3 below) and with Grants.gov (see Step 4 below).

Individuals do not need a DUNS number to register (see Step 4 below) and submit their applications. The system will generate a default value in that field.

Grants.gov Application Submission and Receipt Procedures

This section provides the application submission and receipt instructions for NOAA program applications. Please read the following instructions carefully and completely.

1. Electronic Delivery. NOAA is participating in the Grants.gov Initiative, which provides the Grant Community a single site to find and apply for grant funding opportunities. NOAA encourages applicants to submit their applications electronically through: *http://www.grants.gov/applicants/apply_for_grants.jsp*.

2. The following describes what to expect when applying online using Grants.gov/Apply:

a. Instructions. On the site, you will find step-by-step instructions, which enable you to apply for NOAA funds. The Grants.gov/Apply feature includes a simple, unified application process that makes it possible for applicants to apply for grants online. There are six ''Get Started'' steps to complete at Grants.gov. The information applicants need to understand and execute the steps can be found at: *http://www.grants.gov/applicants/get_registered.jsp*. Applicants should read the Get Started steps carefully. The site also contains registration checklists to help you walk through the process. NOAA recommends that you download the checklists and prepare the information requested before beginning the registration process. Reviewing and assembling required information before beginning the registration process will make the process fast and smooth and save time.

b. DUNS Requirement. All applicants applying for funding, including renewal funding, must have a Dun and Bradstreet Universal Data Numbering System (DUNS) number. The DUNS number must be included in the data entry field labeled ''Organizational Duns'' on the form SF–424. Instructions for obtaining a DUNS number can be found at the following Web site: *http://www.grants.gov/applicants/get_registered.jsp*.

c. Central Contractor Registry and Credential Provider Registration. In addition to having a DUNS number, applicants applying electronically through Grants.gov must register with the Federal Central Contractor Registry and with a Credential Provider. The *http://www.grants.gov* Web site at *http://www.grants.gov/applicants/get_registered.jsp* provides step-by-step instructions for registering in the Central Contractor Registry and for registering with a credential provider. All applicants filing electronically must register with the Central Contractor Registry and receive credentials from the Grants.gov credential provider in order to apply online. Failure to register with the Central Contractor Registry and credential provider will result in your application being rejected by the Grants.gov portal.

The registration process is a separate process from submitting an application. Applicants are, therefore, encouraged to register early. The registration process can take approximately two weeks to be completed. Therefore, registration should be done in sufficient time to ensure it does not impact your ability to meet required submission deadlines. You will be able to submit your application online any time after you receive your e-authentication credentials.

d. Electronic Signature. Applications submitted through Grants.gov constitute submission as electronically signed applications. The registration and e-authentication process establishes the Authorized Organization Representative (AOR). When you submit the application through Grants.gov, the name of your authorized organization representative on file will be inserted into the signature line of the application. Applicants must register the individual who is able to make legally binding commitments for the applicant organization as the

Authorized Organization Representative.

3. Instructions on how to submit an electronic application to NOAA via Grants.gov/Apply: Grants.gov has a full set of instructions on how to apply for funds on its Web site at *http://www.grants.gov/applicants/apply_for_grants.jsp*. The following provides simple guidance on what you will find on the Grants.gov/Apply site. Applicants are encouraged to read through the page entitled, ''Complete Application Package'' before getting started. Grants.gov allows applicants to download the application package, instructions and forms that are incorporated in the instructions, and work offline. In addition to forms that are part of the application instructions, there will be a series of electronic forms that are provided utilizing an Adobe Reader.

Note: For the Adobe Reader, Grants.gov is only compatible with versions 8.1.1 and above. Please do not use lower versions of the Adobe Reader. Mandatory Fields on Adobe Reader Forms: In the Adobe forms you will note fields that appear with a yellow background and red outline color. These fields are mandatory and must be completed to successfully submit your application.

Completion of SF–424 Fields: The Adobe forms are designed to fill in common required fields such as the applicant name and address, DUNS number, etc., on all Adobe electronic forms. To trigger this feature, an applicant must complete the SF–424 information first. Once it is completed the information will transfer to the other forms.

Customer Support. The Grants.gov Web site provides customer support via (800) 518–4726 (this is a toll-free number) or through e-mail at *support@grants.gov*. The Contact Center is open from 7 a.m. to 9 p.m. Eastern time, Monday through Friday, except federal holidays, to address Grants.gov technology issues. For technical assistance to program related questions, contact the number listed in the Program Section of the program you are applying for.

4. Timely Receipt Requirements and Proof of Timely Submission.

a. Electronic Submission. All applications must be received by *http://www.grants.gov/applicants/apply_for_grants.jsp* the due date established for each program. Proof of timely submission is automatically recorded by Grants.gov. An electronic time stamp is generated within the system when the application is successfully received by Grants.gov. The applicant will receive an acknowledgment of receipt and a tracking number from Grants.gov with the successful transmission of their application. Applicants should print this receipt and save it, along with facsimile receipts for information provided by facsimile, as proof of timely submission. When NOAA successfully retrieves the application from Grants.gov, Grants.gov will provide an electronic acknowledgment of receipt to the e-mail address of the AOR. Proof of timely submission shall be the date and time that Grants.gov receives your application. Applications received by Grants.gov after the established due date for the program will be considered late and will not be considered for funding by NOAA.

NOAA suggests that applicants submit their applications during the operating hours of the Contact Center for Grants.gov, so that if there are questions concerning transmission, operators will be available to walk you through the process. Submitting your application during the Contact Center hours will also ensure that you have sufficient time for the application to complete its transmission prior to the application deadline. Applicants using dial-up connections should be aware that transmission may take some time before Grants.gov receives it. Grants.gov will provide either an error or a successfully received transmission message. The Grants.gov reports that some applicants abort the transmission because they think that nothing is occurring during the transmission process. Please be patient and give the system time to process the application. Uploading and transmitting many files particularly electronic forms with associated XML schemas will take some time to be processed.

Evaluation Criteria and Selection Procedures

NOAA has standardized the evaluation and selection process for its competitive assistance programs. There are two separate sets of evaluation criteria and selection procedures (see below), one for project proposals, and the other for fellowship, scholarship, and internship programs.

Project Proposals

Review and Selection Process. Some project proposals may include a pre-application process that provides for feedback to applicants that responded to a call for letters of intent or pre-proposals; however, not all programs will include this pre-application. If a program has a pre-application process, it will be described in the Summary Description section of the announcement and the deadline will be specified in the Application Deadline section.

Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine compliance with requirements and completeness of the application. A merit review will also be conducted to produce a rank order of the proposals.

The NOAA Program Officer may review the ranking of the proposals and make recommendations to the Selecting Official based on the administrative and/or merit review(s) and selection factors listed below. The Selecting Official selects proposals after considering the administrative and/or merit review(s) and recommendations of the Program Officer. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Program Officer and/or Selecting Official may negotiate the funding level of the proposal. The Selecting Official makes final award recommendations to the Grants Officer authorized to obligate the funds.

Evaluation Criteria

At least three technical reviewers will individually evaluate and rank proposals using the following evaluation criteria:

1. Importance and/or relevance and applicability of a proposed project to the program goals: This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal (other than NOAA), regional, state, or local activities.

2. Technical/scientific merit: This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

3. Overall qualifications of applicants: This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

4. Project costs: The project's budget is evaluated to determine if it is realistic and commensurate with the project needs and timeframe.

5. Outreach and education: NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding its mission to protect the Nation's natural resources.

Selection Factors. The merit review ratings will be used to provide a rank order to the Selecting Official for final funding recommendations. A Program Officer may first make

recommendations to the Selecting Official applying the selection factors listed below. The Selecting Official shall award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:
a. Geographically,
b. By type of institutions,
c. By type of partners,
d. By research areas, and
e. By project types.
3. Whether the project duplicates other projects funded or considered for funding by NOAA or other federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or participation of targeted groups.
7. Adequacy of information necessary for NOAA to make a National Environmental Policy Act determination and draft necessary documentation before funding recommendations are made to the Grants Officer.

Fellowship, Scholarship and Internship Programs

Review and Selection Process: Some fellowship, scholarship and internship programs may include a pre-application process that provides for feedback to the applicants that have responded to a call for letters of intent or pre-proposals; however, not all programs will include this pre-application. If a program has a pre-application process, the process will be described in the Summary Description section of the announcement and the deadline will be specified in the Application Deadline section.

Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine compliance with requirements and completeness of the application. A merit review will also be conducted to produce a rank order of the proposals.

The NOAA Program Officer may review the ranking of the proposals and make recommendations to the Selecting Official based on the administrative and/or merit review(s) and selection factors listed below. The Selecting Official selects proposals after considering the administrative and/or merit review(s) and recommendations of the Program Officer. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Program Officer and/or Selecting Official may negotiate the funding level of the proposal. The Selecting Official makes final award recommendations to the Grants Officer authorized to obligate the funds.

Evaluation Criteria

At least three technical reviewers will individually evaluate and rank proposals using the following evaluation criteria.

1. Academic record and statement of career goals and objectives of the student.
2. Quality of project and applicability to program priorities.
3. Recommendations and/or endorsements of the student.
4. Additional relevant experience related to diversity of education; extra-curricular activities; honors and awards; and interpersonal, written, and oral communications skills.
5. Financial need of the student.

Selection Factors

The merit review ratings will be used to provide a rank order by the Selecting Official for final funding recommendations. A Program Officer may first make recommendations to the Selecting Official by applying the selection factors listed below. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funds.
2. Balance/distribution of funds:
a. Across academic disciplines,
b. By types of institutions, or
c. Geographically.
3. Program-specific objectives.
4. Degree in scientific area and type of degree sought.

III. NOAA Project Competitions

National Marine Fisheries Service (NMFS)

1. FY 2009 Monkfish Research Set-Aside

Summary Description: NMFS announces that the New England and Mid-Atlantic Fishery Management Councils (Councils) have set aside 500 monkfish days-at-sea (DAS) to be used for research endeavors under a research set-aside (RSA) program. NMFS is soliciting proposals for research activities concerning the monkfish fishery for fishing year 2009 (May 1, 2009-April 30, 2010). Through the allocation of research DAS, the Monkfish RSA Program provides a mechanism to reduce the cost for vessel owners to participate in cooperative monkfish research. The intent of this program is for fishing vessels to utilize these research DAS to conduct monkfish related research, rather than their allocated monkfish DAS, thereby eliminating any cost to the vessel associated with using a monkfish DAS. Landings from such research trips may be sold to generate funds to help defray research costs. No Federal funds are provided for research under this notification. Rather, projects funded under the Monkfish RSA Program would be provided with additional opportunity to harvest monkfish, and the catch sold to generate income to offset research costs. Projects funded under an RSA DAS award must enhance the knowledge of the monkfish fishery resource or contribute to the body of information on which management decisions are made. The Councils and NMFS will give priority to funding research proposals in the following general subject areas: (1) Cooperative research to supplement NMFS surveys; (2) life history studies on age and growth, longevity, reproduction, and natural mortality; (3) tagging and telemetry studies to investigate short- and long-term movements and habitat use; (4) research concerning bycatch and discard mortality of target and/or non-target species; (5) trawl and gillnet gear studies concerning size and/or species selectivity and bycatch reduction (including reducing bycatch of and interactions with protected species); and (6) research concerning trophic interactions of monkfish with other species. Please note that the research subject areas listed above are not listed in order of priority. Projects that follow up or expand on previous cooperative research are encouraged and will be given additional consideration, provided such research would enhance the utility of the initial work.

Funding Availability: No Federal funds are provided for research under this notification. Rather, projects selected under the Monkfish RSA Program would be provided with additional opportunity to harvest monkfish, and the catch sold to generate income to offset research costs. The Federal Government (i.e., NMFS) may issue an Exempted Fishing Permit (EFP), if needed, that may provide special fishing privileges in response to research proposals selected under this program. For example, vessels participating in an approved research project may be authorized by the Northeast Regional Administrator, NMFS, to harvest monkfish in excess of established possession limits. This would be the fourth year of the

Monkfish RSA Program. Two awards were issued under the 2006 Monkfish RSA Program, with these projects ending in April 2007. Three awards were issued under the 2007 Monkfish RSA Program, with these projects recently ending April 2007. Four awards have been issued under the 2008 Monkfish RSA program, and these projects are expected to commence in May 2008. A total of 137.5 RSA DAS were issued to projects during FY 2006. A total of 367 RSA DAS were issued to projects for FY 2007. All of the 500 monkfish RSA DAS available thru the Monkfish RSA program have been issued to projects for FY 2009. It is anticipated that 2–5 awards will be made under the 2009 Monkfish RSA Program. Funds generated from landings harvested and sold under the Monkfish RSA Program shall be used to cover the cost of research activities, including vessel costs. For example, the funds may be used to pay for gear modifications, monitoring equipment, the salaries of research personnel, or vessel operation costs. The Federal Government shall not be liable for any costs incurred in the conduct of the project. Specifically, the Federal Government is not liable for any costs incurred by the researcher or vessel owner should the sale of catch not fully reimburse the researcher or vessel owner for his/her expenses. Any additional funds generated through the sale of set-aside landings, above the cost of the research activities, shall be retained by the vessel owner as compensation for the use of his/her vessel.

Statutory Authority: Statutory authority for this program is found under sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881(c), respectively. The ability to set aside monkfish DAS for research purposes was established in the final rule implementing Amendment 2 to the Monkfish Fishery Management Plan (70 FR 21927, April 28, 2005), codified at 50 CFR 648.92(c).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.454, Unallied Management Projects.

Application Deadline: Full proposals must be received by 5 p.m., Eastern Daylight Time, on September 9, 2008.

Address for Submitting Proposals: To apply for this NOAA Federal funding opportunity, please go to *http://www.grants.gov*, and use the following funding opportunity # NMFS–NEFSC–2009–2001478. Applicants without Internet access may contact Cheryl Corbett, NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, by phone 508–495–2070, fax 508–495–2004, or e-mail *ccorbett@noaa.gov*.

Information Contacts: Information may be obtained from Paul Howard, Executive Director, New England Fishery Management Council (NEFMC), by phone 978–465–0492, or by fax 978–465–3116; Philip Haring, Senior Fishery Analyst, NEFMC, by phone 978–465–0492, or by e-mail at *pharing@nefmc.org*; or Cheryl Corbett, NMFS, Northeast Fisheries Science Center, phone 508–495–2070, fax 508–495–2004, or e-mail *ccorbett@noaa.gov*, or from Ryan Silva, NMFS, Northeast Regional Office, phone (978) 281–9326, fax (978) 281–9135, e-mail *ryan.silva@noaa.gov*.

Eligibility: 1. Eligible applicants include, but are not limited to, institutions of higher education, hospitals, other nonprofits, commercial organizations, individuals, State, local, and Native American tribal governments. Federal agencies and institutions are not eligible to receive Federal assistance under this notice. Additionally, employees of any Federal agency or Regional Fishery Management Council (Council) are ineligible to submit an application under this program. However, Council members who are not Federal employees may submit an application. 2. DOC/NOAA supports cultural and gender diversity and encourages women and minority individuals and groups to submit applications to the RSA program. In addition, DOC/NOAA is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. DOC/NOAA encourages proposals involving any of the above institutions. 3. DOC/NOAA encourages applications from members of the fishing community and applications that involve fishing community cooperation and participation.

Cost Sharing Requirements: None required.

Intergovernmental Review: Applicants will need to determine if their State participates in the intergovernmental review process. This information can be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*. This information will assist applicants in providing either a Yes or No response to Item 16 of the Application Form, SF–424, entitled ''Application for Federal Assistance.''

2. FY 2009 Sea Scallop Research Set-Aside

Summary Description: NMFS requests scallop research proposals to utilize Atlantic sea scallop (scallop) total allowable catch (TAC) and Days-at-Sea (DAS) that have been set-aside by the New England Fishery Management Council (Council) to fund scallop research endeavors through the 2009 Atlantic Sea Scallop Research Set-Aside Program (Scallop RSA Program). NMFS is requesting proposals for research activities for FY 2009. No Federal funds are provided for research under this notification.

Rather, the Scallop RSA Program funds scallop research and compensates participating vessels through the sale of scallops harvested under the research set-aside quota. Priority will be given to scallop research proposals that investigate research priorities identified by the Council and detailed under the Program Priorities section of the FFO.

Funding Availability: No Federal funds are provided for sea scallop research under this notice. Funds are generated through the sale of set-aside scallops. The Federal government will issue Letters of Authorization (LOAs) that provide special fishing privileges in response to sea scallop research proposals selected to participate in the 2009 Scallop RSA Program. Funds generated from RSA landings shall be used to cover the cost of the research activities, including vessel costs, and to compensate vessels for expenses incurred during the collection of set-aside scallops. For example, these funds could be used to pay for gear modifications, monitoring equipment, additional provisions (e.g., fuel, ice, food for scientists) or the salaries of research personnel. The Federal Government is not liable for any costs incurred by the researcher or vessel owner. Any additional funds generated through the sale of set-aside scallops above the cost of the research activities, shall be retained by the vessel owner as compensation for the use of his/her vessel.

Statutory Authority: Statutory authority for this program is provided under sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881(c), respectively. The ability to set aside scallop TAC and DAS and to establish parameters are found in the Joint Frameworks (69 FR 63460, November 2, 2004), and Amendment 10 (69 FR 35194, June 23, 2004) and Framework Adjustment 19 (73 FR 30790, May 29, 2008) to the Federal

Atlantic Sea Scallop Fishery Management Plan (May 15, 1982).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.454, Unallied Management Projects.

Application Deadline: Full proposals must be received by 5 p.m., Eastern Standard Time, on August 25, 2008.

Address for Submitting Proposals: To apply for this NOAA Federal funding opportunity, please go to *http://www.grants.gov*, and use the following funding opportunity # NMFS–NEFSC–2009–2001472. Applicants without Internet access may contact Cheryl Corbett, NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, by phone 508–495–2070, fax 508–495–2004, or e-mail *ccorbett@noaa.gov*.

Information Contacts: Information may be obtained from Deirdre Boelke, New England Fishery Management Council, phone (978) 465–0492, fax (978) 465–3116, or e-mail *dboelke@nefmc.org*, from Cheryl Corbett, NMFS, Northeast Fisheries Science Center, phone 508–495–2070, fax 508–495–2004, or e-mail *ccorbett@noaa.gov*, or from Ryan Silva, NMFS, Northeast Regional Office, phone (978) 281–9326, fax (978) 281–9135, e-mail *ryan.silva@noaa.gov*.

Eligibility: 1. Eligible applicants include, but are not limited to, institutions of higher education, hospitals, other nonprofits, commercial organizations, individuals, state, local, and Native American tribal governments. Federal agencies and institutions are not eligible to receive Federal assistance under this notice. Additionally, employees of any Federal agency or Regional Fishery Management Council (Council) are ineligible to submit an application under this program. However, Council members who are not Federal employees may submit an application. 2. DOC/NOAA supports cultural and gender diversity and encourages women and minority individuals and groups to submit applications to the RSA program. In addition, DOC/NOAA is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. DOC/NOAA encourages proposals involving any of the above institutions. 3. DOC/NOAA encourages applications from members of the fishing community and applications that involve fishing community cooperation and participation.

Cost Sharing Requirements: None Required.

Intergovernmental Review: Applicants will need to determine if their State participates in the intergovernmental review process. This information can be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*. This information will assist applicants in providing either a Yes or No response to Item 16 of the Application Form, SF–424, entitled ''Application for Federal Assistance.''

3. Cooperative Research Program

Summary Description: The CRP program provides financial assistance for projects that seek to increase and improve the working relationship between researchers from the NMFS, state fishery agencies, universities, and fishermen in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia, and Florida involving the U.S. fishing industry (recreational and commercial). The program is a means of involving commercial and recreational fishermen in the collection of fundamental fisheries information. Collection efforts support the development and evaluation of management and regulatory options. This program addresses NOAA's mission goal to ''Protect, Restore, and Manage the Use of Coastal and Ocean Resources Through an Ecosystem Approach to Management.''

Funding Availability: Approximately $2.0 million may be available in fiscal year (FY) 2009 for projects. Actual funding availability for this program is contingent upon Fiscal Year 2009 Congressional appropriations. The NMFS Southeast Regional Office estimates awarding projects that will range from $25,000 to $400,000. The average award is $150,000. Publication of this notice does not obligate NMFS to award any specific grant or cooperative agreement or any of the available funds.

Statutory Authority: Authority for the CRP is provided by the following: 15 U.S.C. 713c–3(d).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.454, Unallied Management Projects.

Application Deadline: Applications must be received by 5 p.m., Eastern Daylight Time on September 9, 2008 to be considered for funding. Applications received after the deadline will be rejected/returned to the sender without further consideration.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: National Marine Fisheries Service, State/Federal Liaison Branch, 263 13th Avenue South, St. Petersburg, FL 33701.

Information Contacts: For questions regarding the application process, you may contact: Robert Sadler, State/Federal Liaison Branch, (727) 824–5324, or *Robert.Sadler@noaa.gov*.

Eligibility: Eligible applicants may be institutions of higher education, nonprofits, commercial organizations, individuals, and state, local, and Indian tribal governments. Federal agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of this solicitation since the objective of the CRP is to optimize research and development benefits from U.S. marine fishery resources. Applicants who are not commercial or recreational fisherman must have commercial or recreational fishermen participating in their project. There must be a written agreement with a fisherman describing the involvement in the project activity.

Cost Sharing Requirements: Cost-sharing is not required for this program.

Intergovernmental Review: Applications submitted by state and local governments are subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs. Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html*.

4. FY 2009 B–WET Chesapeake

Summary Description: The Chesapeake B–WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the entire Chesapeake Bay watershed. Funded projects assist in meeting the Stewardship and Community Engagement goals of the Chesapeake 2000 Agreement. Projects chosen for award under this program support organizations that provide students meaningful watershed educational experiences and teachers related professional development opportunities related to the Chesapeake Bay watershed.

Funding Availability: This solicitation announces that approximately $3.5M may be available in FY 2009 in award amounts to be determined by the proposals and available funds. Funding is anticipated to maintain partnerships for up to 3 years duration, but is dependent on funding made available annually by Congress. Project proposals accepted for funding with a project period over one year do not have to compete for the additional years of funding. However, funding for the additional years is contingent upon the availability of funds and satisfactory performance and is at the sole discretion of the agency. 1. Approximately $2.5M of the $3.5M available in FY 2009 will be for exemplary programs that successfully integrate teacher professional development on the Chesapeake Bay watershed with in-depth classroom study and outdoor experiences for their students. 2. Approximately $500K of the $3.5M available in FY 2009 will be for proposals that provide opportunities either for students to participate in MWEEs related to Chesapeake Bay or related Professional Development for teachers. 3. Approximately $500K of the $3.5M available in FY 2009 will be for proposals that incorporate CBIBS into meaningful watershed educational experiences for students or related professional development for teachers. The NCBO anticipates that typical awards for B–WET Exemplar Programs that successfully integrate teacher professional development with in-depth classroom student and outdoor experiences for their students will range from $50,000 to $200,000. Projects that represent either meaningful watershed educational experiences for students or teacher professional development in watershed education will range from $25,000 to $75,000. Projects focusing on the Chesapeake Bay Interpretive Buoy system will range from $25,000 to $200,000. Actual funding availability for this program is contingent upon Fiscal Year 2009 Congressional appropriations. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

Statutory Authority: Under 33 U.S.C. 893a(a), the Administrator of the National Oceanic and Atmospheric Administration is authorized to conduct, develop, support, promote, and coordinate formal and informal educational activities at all levels to enhance public awareness and understanding of ocean, coastal, Great Lakes, and atmospheric science and stewardship by the general public and other coastal stakeholders, including underrepresented groups in ocean and atmospheric science and policy careers. In conducting those activities, the Administrator shall build upon the educational programs and activities of the agency.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.457, Chesapeake Bay Studies.

Application Deadline: Proposals must be received by 5 p.m. eastern time on Friday, October 3, 2008.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: Shannon Sprague, B–WET Program Manager, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403

Information Contacts: Please visit the B–WET Web site for further information at: *http://noaa.chesapeakebay.net/educationgrants.aspx* or contact the NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403, or by phone at 410–267–5660. Potential applicants are also invited to contact the staff before submitting an application to discuss the applicability of partnership ideas to B–WET goals and objectives. B–WET contacts are as follows: Virginia/West Virginia: Ann Marie Chapman (*annmarie.chapman@noaa.gov*—757–627–3823), Maryland's Eastern Shore/Delaware: Doug Levin (*doug.levin@noaa.gov*—410–226–5193), Maryland (other than Eastern Shore)/Washington, DC: Kevin Schabow (*kevin.schabow@noaa.gov*—410–267–3145), Pennsylvania/New York: Shannon Sprague (*shannon.sprague@noaa.gov*—410–267–5664).

Eligibility: Eligible applicants are K-through-12 public and independent schools and school systems, institutions of higher education, community-based and nonprofit organizations, state or local government agencies, interstate agencies, and Indian tribal governments in the Chesapeake Bay watershed. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. The NCBO encourages proposals involving any of the above institutions.

Cost Sharing Requirements: No cost sharing is required under this program, however, the NCBO strongly encourages applicants applying for either area of interest to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process. Priority selection will be given to proposals that propose cash rather than in-kind contributions.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

5. FY 2009 Open Rivers Initiative

Summary Description: The NOAA Open Rivers Initiative (ORI) provides funding to catalyze the implementation of locally-driven projects to remove dams and other river barriers, in order to benefit living marine and coastal resources, particularly diadromous fish. Projects funded through the Open Rivers Initiative have strong on-the-ground habitat restoration components that foster economic, educational, and social benefits for citizens and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. Through the ORI, NOAA provides funding and technical assistance for barrier removal projects. Proposals selected for funding through this solicitation will be implemented through a cooperative agreement. Funding of up to $7,000,000 is expected to be available for ORI Project Grants in FY 2009. The NOAA Restoration Center (RC) within the Office of Habitat Conservation will administer this grant initiative, and anticipates that typical awards will range from $50,000 to $250,000. Although a select few may fall outside of this range, project proposals requesting less than $30,000 or greater than $1,000,000 will not be accepted or reviewed.

Funding Availability: This solicitation announces that funding of up to $7,000,000 is expected to be available for Open Rivers Initiative Project Grants in FY 2009. Actual funding availability

for this program is contingent upon Fiscal Year 2009 Congressional appropriations. NOAA anticipates that typical project awards will range from $50,000 to $250,000; proposals requesting less than $30,000 or more than $1,000,000 will not be accepted under this solicitation. NOAA does not guarantee that sufficient funds will be available to make awards for all proposals. The number of awards to be made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested by the applicants, the merit and ranking of the proposals, and the amount of funds made available to the ORI by Congress. NOAA anticipates that between 10 and 20 awards will be made as a result of this solicitation. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to award any specific project or obligate all or any parts of any available funds.

Statutory Authority: The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970, to provide grants or cooperative agreements for fisheries habitat restoration. The Secretary of Commerce is also authorized under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (H.R. 5946) to provide funding and technical expertise for fisheries and coastal habitat restoration and to promote significant community support and volunteer participation in such activities.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.463, Habitat Conservation.

Application Deadline: Applications must be submitted through *www.grants.gov* by 11:59 p.m. EDT, October 31, 2008. If an applicant does not have Internet access, hard copy applications with the SF–424 Form bearing an original, ink signature must be postmarked, or provided to a delivery service and documented with a receipt, by October 31, 2008. No facsimile or electronic mail applications will be accepted.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: NOAA Restoration Center (F/HC3), Office of Habitat Conservation, NOAA Fisheries, 1315 East-West Highway, Rm. 14718, Silver Spring, MD 20910. ATTN: Open Rivers Initiative Project Applications.

Information Contacts: For further information contact Tisa Shostik (*Tisa.Shostik@noaa.gov*) or Melanie Gange (*Melanie.Gange@noaa.gov*) at (301) 713–0174. Potential applicants are invited to contact NOAA Restoration Center staff before submitting an application to discuss the applicability of project ideas to the goals and objectives of ORI. Additional information on the ORI can be found on the World Wide Web at *http://www.nmfs.noaa.gov/habitat/restoration*.

Eligibility: Eligible applicants are institutions of higher education, non-profits, industry and commercial (for profit) organizations, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments whose projects have the potential to benefit NOAA trust resources. Applications from federal agencies or employees of federal agencies will not be considered. Federal agencies are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic-serving institutions, tribal colleges and universities, and institutions that work in under-served areas. The ORI encourages proposals from or involving any of the above institutions.

Cost Sharing Requirements: A major goal of the ORI will be to provide seed money for projects that leverage funds and other contributions from a broad public and private sector to implement locally important barrier removals to benefit living marine and coastal resources. To this end, applicants are encouraged to demonstrate a 1:1 non-federal match for ORI funds requested to conduct the proposed project. NOAA strongly encourages applicants to leverage as much investment as possible. Applicants with less than 1:1 match will not be disqualified. However, applicants should note that cost sharing is an element considered in Evaluation Criterion #4 ''Project Costs'' (Section V.A.4.) in the FFO. Matching funds can come from a variety of public and private sources and can include in-kind goods and services and volunteer labor. Applicants are permitted to combine contributions from non-federal partners, as long as such contributions are not being used to match any other funds and are available within the project period stated in the application. Federal sources cannot be considered for matching funds, but can be described in the budget narrative to demonstrate additional leverage. Applicants are also permitted to apply federally negotiated indirect costs in excess of federal share limits as described in Section IV. E. 2. ''Indirect Costs'' of the FFO. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer. Successful applicants should be prepared to carefully document matching contributions, including the overall number of volunteers and in-kind participation hours devoted to individual barrier removal projects. Letters of commitment for any secured resources that will be used as match for an award under this solicitation should be submitted as an attachment to the application, see Section IV.B of the FFO.

Intergovernmental Review: Applications under this initiative are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a state's process under EO 12372, the names, addresses and phone numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html*.

6. FY 2009 Atlantic Salmon Conservation Grants

Summary Description: NOAA Atlantic Salmon Conservation Grants provide funding to catalyze the implementation of locally driven projects that address priority needs for Atlantic salmon recovery and restoration. Through these grants, NOAA provides funding and technical assistance to support restoration of habitat connectivity and function for the benefit of Atlantic salmon within their current and historical range in New England. Funded projects have strong on-the-ground habitat restoration or protection components that lead to long-term ecological habitat improvements for Atlantic salmon, and also provide educational and social benefits related to Atlantic salmon conservation for citizens and their communities. Proposals selected for funding through this solicitation will be implemented

through a cooperative agreement. The Atlantic Salmon Conservation Grants initiative is collaboratively managed by the NOAA Northeast Regional Office and the Office of Habitat Conservation. The NOAA Restoration Center (RC) within the Office of Habitat Conservation will administer the grant competition. Funding of up to $2,500,000 is expected to be available for Atlantic Salmon Conservation Grants in FY 2009. Typical awards will range from $50,000 to $250,000. Although a select few may fall outside of this typical award range, project proposals requesting less than $30,000 or more than $500,000 will not be accepted or reviewed.

Funding Availability: This solicitation announces that funding of up to $2,500,000 is expected to be available for the Atlantic Salmon Conservation Grants in FY 2009. Actual funding availability for this solicitation is contingent upon Fiscal Year 2009 Congressional appropriations. NOAA anticipates that typical project awards will range from $50,000 to $250,000; proposals requesting less than $30,000 or more than $500,000 will not be accepted under this solicitation. NOAA anticipates that between 25 and 40 awards will be made as a result of this solicitation. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to award any specific project or obligate all or any parts of any available funds.

Statutory Authority: The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970, to provide grants or cooperative agreements for fisheries habitat restoration. The Secretary of Commerce is also authorized under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (H.R. 5946) to provide funding and technical expertise for fisheries and coastal habitat restoration and to promote significant community support and volunteer participation in such activities.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.463, Habitat Conservation.

Application Deadline: Applications must be submitted through *www.grants.gov* by 11:59 p.m. EDT, November 14, 2008. If an applicant does not have Internet access, hard copy applications with the SF–424 Form bearing an original, ink signature must be postmarked, or provided to a delivery service and documented with a receipt, by November 14, 2008. No facsimile or electronic mail applications will be accepted.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: NOAA Restoration Center (F/HC3), Office of Habitat Conservation, NOAA Fisheries, 1315 East-West Highway, Rm. 14727, Silver Spring, MD 20910. ATTN: Atlantic Salmon Conservation Grant Applications.

Information Contacts: For further information contact Cathy Bozek (*Cathy.Bozek@noaa.gov*) or Craig Woolcott (*Craig.Woolcott@noaa.gov*) at (301) 713–0174. Potential applicants are invited to contact NOAA staff before submitting an application to discuss the applicability of project ideas to the goals and objectives of the grant solicitation.

Eligibility: Eligible applicants are institutions of higher education, other non-profits, industry and commercial (for profit) organizations, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments whose projects have the potential to benefit NOAA trust resources. Applications from federal agencies or employees of federal agencies will not be considered. Federal agencies are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic-serving institutions, tribal colleges and universities, and institutions that work in under-served areas. NOAA encourages proposals from or involving any of the above institutions.

Cost Sharing Requirements: A major goal of this grant solicitation will be to provide seed money for projects that leverage funds and other contributions from a broad segment of the public and private sector to implement locally important habitat restoration projects to benefit Atlantic salmon populations. To this end, applicants are encouraged to demonstrate a 1:1 non-federal match for NOAA funds requested to conduct the proposed project. NOAA strongly encourages applicants to leverage as much investment as possible, but applicants with little or no match will not be disqualified. Applicants should note that cost sharing is an element considered in Evaluation Criterion #4 ''Project Costs'' (Section V.A.4.) of the FFO; however matters related to the importance and scientific merits of the proposed project comprise the majority of the evaluation criteria. Match to NOAA funds can come from a variety of public and private sources and can include in-kind goods and services and volunteer labor.

Applicants are permitted to combine contributions from non-federal partners, as long as such contributions are not being used to match any other funds and are available within the project period stated in the application. Federal sources cannot be considered for matching funds, but can be described in the budget narrative to demonstrate additional leverage. Applicants are also permitted to apply federally negotiated indirect costs in excess of federal share limits as described in Section IV.E. ''Funding Restrictions'' of the FFO. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer. Successful applicants should be prepared to carefully document matching contributions, including the overall number of volunteers and in-kind participation hours devoted to individual restoration projects. Letters of commitment for any secured resources that will be used as match for an award under this solicitation should be submitted as an attachment to the application, see Section IV.B of the FFO.

Intergovernmental Review: Applications under this initiative are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a state's process under EO 12372, the names, addresses and phone numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

7. FY 2009 Community-based Marine Debris Prevention and Removal Project Grants

Summary Description: The NOAA Marine Debris Program (MDP), authorized in the Marine Debris Research, Prevention, and Reduction Act (MDRPR Act, 33 U.S.C. 1951 *et seq.*), provides funding to catalyze the

implementation of locally driven, community-based marine debris prevention, assessment and removal projects that will benefit coastal habitat, waterways, and NOAA trust resources. Projects funded through the MDP have strong on-the-ground habitat components involving the removal of marine debris and derelict fishing gear, as well as activities that provide social benefits for people and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. Through this solicitation the MDP identifies marine debris prevention, assessment and removal projects, strengthens the development and implementation of habitat restoration through the removal of marine debris within communities, and fosters awareness of the effects of marine debris to further the conservation of living marine resource habitats across a wide geographic area. Proposals selected for funding through this solicitation will be implemented through a cooperative agreement. Funding of up to $2,000,000 is expected to be available for Community-based Marine Debris Prevention and Removal Project Grants in FY 2009. The NOAA MDP anticipates that typical awards will range from $15,000 to $150,000.

Funding Availability: This solicitation announces that funding of up to $2,000,000 is expected to be available for Community-based Marine Prevention and Removal Project Grants in FY 2009. Actual funding availability for this program is contingent upon Fiscal Year 2009 Congressional appropriations. The NOAA Restoration Center anticipates that typical project awards will range from $15,000 to $150,000; NOAA will not accept proposals for under $15,000 or proposals for over $250,000 under this solicitation. There is no guarantee that sufficient funds will be available to make awards for all proposals. The number of awards to be made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for initiating marine debris removal projects by the applicants, the merit and ranking of the proposals, and the amount of funds made available to the MDP by Congress. The NOAA Restoration Center anticipates that between 10 and 25 awards will be made as a result of this solicitation. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to award any specific project or obligate all or any part of any available funds. In FY 2008, 10 applications were recommended for funding ranging from $39,000 to $175,000, for a total grant competition funding level of approximately $900,000. This is the fourth year of the Community-based Marine Debris Prevention and Removal Project Grants, a grant partnership between the NOAA Marine Debris Program and NOAA Restoration Center. These grants are funded through the NOAA Marine Debris Program with appropriations to the Office of Response and Restoration, National Ocean Service for this purpose. The NOAA Restoration Center will administer this grants program in the same manner that the Community-based Restoration Program is conducted.

Statutory Authority: The Administrator of the National Oceanic and Atmospheric Administration is authorized under the MDRPR Act to provide grants or cooperative agreements to identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.463, Habitat Conservation.

Application Deadline: Applications must be submitted through *www.grants.gov* by 11:59 p.m. EDT, October 31, 2008. If an applicant does not have Internet access, hard copy applications with the SF–424 Form bearing an original, ink signature must be postmarked, or provided to a delivery service and documented with a receipt, by October 31, 2008. No facsimile or electronic mail applications will be accepted.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: NOAA Restoration Center (F/HC3), Community-based Restoration Program, NOAA Fisheries, 1315 East-West Highway, Rm. 14727, Silver Spring, MD 20910. ATTN: MDP Project Applications.

Information Contacts: For further information contact David Landsman at 301–713–0174 or by e-mail at *David.Landsman@noaa.gov.*

Eligibility: Eligible applicants are institutions of higher education, other non-profits, commercial (for profit) organizations, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments whose projects have the potential to benefit NOAA trust resources. Applications from federal agencies or employees of federal agencies will not be considered. Federal agencies are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in under-served areas. The MDP encourages proposals involving any of the above institutions.

Cost Sharing Requirements: A major goal of the MDP is to provide seed money to projects that leverage funds and other contributions from a broad segment of the public and private sector to implement locally important marine debris prevention and removal activities to benefit living marine resources. To this end, the MDRPR Act requires applicants to demonstrate a minimum 1:1 non-Federal match for MDP funds requested to conduct the proposed project. In addition to formal match, NOAA strongly encourages applicants to leverage as much investment as possible. However, the MDRPR Act allows the Administrator to waive all or part of the matching requirement if the applicant can demonstrate that: (1) No reasonable means are available through which applicants can meet the matching requirement and (2) the probable benefit of such project outweighs the public interest in such matching requirement. In addition, the MDP may waive any requirement for matching funds by an Insular Area (Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands). Under 48 U.S.C. 10.1469a(d.ii.i), any department or agency may waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved. All applicants should note that cost sharing is an element considered in Evaluation Criterion #4, ''Project Costs'' of the FFO. Match can come from a variety of public and private sources and can include in-kind goods and services such as private boat use and volunteer labor. Applicants are permitted to combine contributions from non-federal partners, as long as such contributions are not being used to match any other funds and are available within the project period stated in the application. Federal sources cannot be

considered for matching funds, but can be described in the budget narrative to demonstrate additional leverage. Applicants are permitted to combine contributions from multiple non-federal partners in order to meet the 1:1 match recommendation, as long as such contributions are not being used to match any other funds. Applicants are also permitted to apply federally negotiated indirect costs in excess of federal share limits as described in Section IV. E. 2. ''Indirect Costs'' of the FFO. Applicants should also note that the following activities, in general, will not be considered as match under project awards: (1) Activities that constitute legally required mitigation for the adverse effects of an activity regulated or otherwise governed by local, state or Federal law; (2) activities that constitute restoration for natural resource damages under Federal, state or local law; and (3) activities that are required by a separate consent decree, court order, statute or regulation. However, the MDRPR Act allows the Administrator to authorize, as appropriate, the non-Federal share of the cost of a project to include money paid pursuant to, or the value of any in-kind service performed under, an administrative order on consent or judicial consent decree that will remove or prevent marine debris. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer. Successful applicants should be prepared to carefully document matching contributions, including the names of participating volunteers and the overall number of volunteer or community participation hours devoted to individual marine debris prevention or removal projects. Letters of commitment for any secured resources expected to be used as match for an award should be submitted as an attachment to the application.

Intergovernmental Review: Applications submitted by state and local governments are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

8. Marine Fisheries Initiative (MARFIN)

Summary Description: The National Marine Fisheries Service (NMFS), Southeast Region, is seeking proposals under the Marine Fisheries Initiative Program (MARFIN), for research and development projects that optimize the use of fisheries in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia, and Florida involving the U.S. fishing industry (recreational and commercial), including fishery biology, resource assessment, socioeconomic assessment, management and conservation, selected harvesting methods, and fish handling and processing. This program addresses NOAA's mission goal to ''Protect, Restore, and Manage the Use of Coastal and Ocean Resources Through an Ecosystem Approach to Management.''

Funding Availability: Approximately $2.0 million may be available in fiscal year (FY) 2009 for projects. This amount includes possible in-house projects. Actual funding availability for this program is contingent upon Fiscal Year 2009 Congressional appropriations. The NMFS Southeast Regional Office anticipates awarding projects that will range from $25,000 to $300,000. The average award is $150,000. Publication of this notice does not obligate NMFS to award any specific grant or cooperative agreement or any of the available funds. Project proposals accepted for funding with a project period over one year do not have to compete for the additional years of funding. However, funding for the additional years is contingent upon the availability of funds and satisfactory performance and is at the sole discretion of the agency.

Statutory Authority: Authority for the Marine Fisheries Initiative Program is provided by the following: 15 U.S.C. 713c–3(d).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.433, Marine Fisheries Initiative.

Application Deadline: Applications must be received by 5 p.m., Eastern Daylight Time on August 11, 2008 to be considered fur funding. Applications received after the deadline will be rejected/returned to the sender without further consideration.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov,* unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: National Marine Fisheries Service, State/Federal Liaison Branch, 263 13th Avenue South, St. Petersburg, FL 33701.

Information Contacts: For questions regarding the application process, you may contact: Robert Sadler, State/Federal Liaison Branch, (727) 824–5324, or *Robert.Sadler@noaa.gov.*

Eligibility: Eligible applicants may be institutions of higher education, nonprofits, commercial organizations, individuals, state, local and Indian tribal governments. Federal agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of this solicitation since the objective of the MARFIN program is to optimize research and development benefits from U.S. marine fishery resources.

Cost Sharing Requirements: Cost-sharing is not required for this program.

Intergovernmental Review: Applications submitted by state and local governments are subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs. Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

9. NOAA General Coral Reef Conservation Grants Program

Summary Description: The NOAA Coral Reef Conservation Program/General Coral Reef Conservation Grants Program (GCRCGP) provides funding to institutions of higher education, non-profit organizations, commercial organizations, Freely Associated State government agencies, and local and Indian tribal governments to support coral reef conservation projects in the United States and the Freely Associated States in the Pacific, as authorized under the Coral Reef Conservation Act of 2000. Projects funded through the GCRCGP support on-the ground efforts that: (1) Help preserve, sustain and restore the condition of coral reef ecosystems, (2) promote the wise management and sustainable use of coral reef resources, (3) increase public knowledge and awareness of coral reef ecosystems and issues regarding their conservation and (4) develop sound scientific information on the condition of coral reef ecosystems and the threats to such ecosystems. Projects should complement and fill gaps in state,

territorial and commonwealth coral reef programs, emphasize community-based conservation, or address local action strategy priorities.

Proposals selected for funding through this solicitation require a 1:1 match and will be implemented through a grant. Funding of up to $600,000 is expected to be available for GCRCGP in FY 2009. These funds will be divided approximately equally among the U.S. Pacific and Atlantic to maintain geographic balance, as outlined in the Coral Reef Conservation Act of 2000. Awards will range from $15,000–$50,000.

Funding Availability: NOAA announces the availability of up to $600,000 of Federal assistance may be available in FY 2009 for the GCRCGP to support financial assistance awards for coral conservation activities. Proposals can be submitted for a minimum of $15,000 to a maximum of $50,000; NOAA will not accept proposals requesting over $50,000 of Federal funds. There is no limit on the number of applications that can be submitted by the same applicant during the 2009 competitive grant cycle. However, multiple applications submitted by the same applicant must clearly identify different projects and must be successful in the competitive review process. The number of awards made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for each project, the merit and ranking of the proposals, and the amount of funds made available to the Program by Congress. In addition, funding will be divided between the U.S. Pacific and U.S. Atlantic to meet requirements for geographic distribution of funds, as described in the Coral Reef Conservation Act. Attempts will also be made to fund one or more projects in each jurisdiction, provided that the project addresses priorities outlined above, it is identified as having sufficient merit, and it meets all other requirements as stipulated in this solicitation. The funds have not yet been appropriated for this program, and there is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds.

Statutory Authority: Authority for the NOAA Coral Reef Conservation Grant Program is provided by Section 6403 (Coral Reef Conservation Program) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq.*).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.463, Habitat Conservation.

Application Deadline: Proposals must be received by 5 p.m. Eastern Time on November 3, 2008.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov.* If an applicant does not have Internet access, hard copy applications with the SF–424 Form bearing an original, ink signature must be postmarked November 3, 2008 and sent to: Jennifer Koss, NOAA Coral Reef Conservation Program, NOAA Fisheries, Office of Habitat Conservation (F/HC), 1315 East-West Highway, Silver Spring, MD 20910. ATTN: CRCGP Project Applications.

Information Contacts: Technical point of contact for NOAA Coral Reef Conservation Grant Program/General Grants is Jennifer Koss, 301–713–3459, extension 195 or E-mail at *Jennifer.Koss@noaa.gov*.

Eligibility: Institutions of higher education, non-profit organizations, commercial organizations, local and Indian tribal governments and Freely Associated State Government Agencies can apply for funding under the GCRCGP. U.S. federal, state, territory, and commonwealth governments and Regional Fishery Management Councils are not eligible for this program. NOAA employees are not allowed to help in the preparation of applications or write letters of support for any application. NOAA staff are available to provide information on programmatic goals and objectives, ongoing coral reef conservation programs, Regional funding priorities, and, along with other Federal Program Officers, can provide information on application procedures and completion of required forms. For activities that involve collaboration with current NOAA programs or staff, NOAA employees must provide a letter verifying that they are collaborating with the project. Federal employee travel and salaries are not allowable costs under this program.

Cost Sharing Requirements: As per section 6403(b)(1) of the Coral Reef Conservation Act of 2000, Federal funds for any coral conservation project funded under this Program may not exceed 50 percent of the total cost of the project. All GCRCGP projects submitted to this program require a 1:1 match obtained from non-Federal sources. Applicants must specify in their proposal the source of the match and provide letters of commitment to confirm stated match contributions. The match can include in-kind contributions and other non-cash support. Applicants are permitted to combine contributions from additional non-Federal partners in order to meet the 1:1 match expected, as long as such contributions are not being used to match any other funds. Federal funds may not be used as matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process, with cash being the preferred method of contribution. Applicants with less than 1:1 match will not be disqualified, if they provide justification for a lower amount of matching funds, however, applicants should note that cost sharing is an element considered in Evaluation Criterion d. Project Costs of the FFO. As per section 6403(b)(2) of the Coral Reef Conservation Act of 2000, the NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: (1) No reasonable means are available through which an applicant can meet the matching requirement; and (2) The probable benefit of such project outweighs the public interest in such matching requirement. In the case of a waiver request, the applicant must provide a detailed justification at the time the proposal is submitted explaining the need for the waiver including attempts to obtain sources of matching funds, how the benefit of the project outweighs the public interest in providing match, and any other extenuating circumstances preventing the availability of match. Notwithstanding any other provisions herein, and in accordance with 48 U.S.C. 1469a(d), the Program shall waive any requirement for local matching funds for any project under $200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Eligible applicants choosing to apply 48 U.S.C. 1469a(d) must include a letter requesting a waiver that demonstrates that their project meets the requirements of 48 U.S.C. 1469a(d).

Intergovernmental Review: Applications under this Program are subject to Executive Order 12372, Intergovernmental Review of Federal Programs. Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. *http://www.whitehouse.gov/omb/grants/spoc.html*.

10. Projects To Improve or Amend Coral Reef Fishery Management Plans

Summary Description: The NOAA Coral Reef Conservation Grant Program/Projects to Improve or Amend Coral Reef Fishery Management Plans (CRFMPGP) provides funding to the Regional Fishery Management Councils for projects to conserve and manage coral reef fisheries, as authorized under the Coral Reef Conservation Act of 2000. Projects funded through the CRFMPGP are for activities that: (1) Provide better scientific information on the status of coral reef fisheries resources, critical habitats of importance to coral reef fishes, and the impacts of fishing on these species and habitats; (2) identify new management approaches that protect coral reef biodiversity and ecosystem function through regulation of fishing and other extractive uses; and (3) incorporate conservation and sustainable management measures into existing or new Federal fishery management plans for coral reef species. Proposals selected for funding through this solicitation will be implemented through a Cooperative Agreement. The role of NOAA in the CRFMPGP is to help identify potential projects that reduce impacts of fishing on coral reef ecosystems, strengthen the development and implementation of the projects, and assist in coordination of these efforts with Federal, state, territory or commonwealth management authorities and various coral reef user groups. Funding up to $1,050,000 is expected to be available for CRFMPGP Cooperative Agreements in FY 2009. These funds will be divided equally among the Atlantic and Pacific to maintain the geographic split required by the Act. The NOAA Coral Reef Conservation Program anticipates that awards will range from $175,000–$525,000.

Funding Availability: This solicitation announces that approximately $1,050,000 is expected to be available for cooperative agreements in support of coral reef conservation activities for Projects to Improve or Amend Coral Reef Fishery Management Plans (CRFMPGP) in FY 2009. Actual funding availability for this program is contingent upon Fiscal Year 2009 Congressional appropriations. The NOAA Coral reef Conservation Program anticipates that typical project awards will range from about $175,000 to $525,000; NOAA will not accept proposals for over $525,000 under this solicitation. Equal funding will be provided to the Atlantic and Pacific, up to a maximum of $525,000 for activities in the Western Pacific, and a maximum of $525,000 for activities in the South Atlantic, the Gulf of Mexico, and the Caribbean. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Activities approved by NOAA will be awarded as new cooperative agreements through the NMFS Office of Habitat Conservation (HC). The number of awards made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for each project, the merit and ranking of the proposals, and the amount of funds made available to the Program by Congress. The funds have not yet been appropriated for this program, and there is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds.

Statutory Authority: Authority for the NOAA Coral Reef Conservation Grant Program is provided by Section 6403 (Coral Reef Conservation Program) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq.*).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.441, Regional Fishery Management Councils.

Application Deadline: Proposals must be received by 5 p.m. eastern time on November 3, 2008.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: Jennifer Koss, NOAA Coral Reef Conservation Program, NOAA Fisheries, Office of Habitat Conservation (F/HC1), 1315 East-West Highway, Silver Spring, MD 20910. ATTN: CRCGP Project Applications. Electronic copies of the project narrative and budget narrative are requested when submitting by mail (*liz.fairey@noaa.gov*), however E-mail applications submitted without a mailed hard copy with appropriate postal date stamp will not be accepted.

Information Contacts: Technical point of contact for NOAA Coral Reef Conservation Grant Program/Projects to Improve or Amend Coral Reef Fishery Management Plans Grants Program is Jennifer Koss, 301–713–3459, extension 195 or E-mail at *Jennifer.Koss@noaa.gov*.

Eligibility: Eligible applicants are limited to the Western Pacific Regional Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council.

Cost Sharing Requirements: No cost sharing or matching is required under this program. The Administrator has waived the matching requirement for the Fishery Management Councils as discussed in Section VII of the Coral Reef Conservation Grant Program Implementation Guidelines (**Federal Register** Vol. 67, No. 76, page 19396, Friday, April 19, 2002). This waiver is based on the fact that the Councils are funded solely by awards from the U.S. Federal Government, and therefore, do not have the ability to generate matching funds.

Intergovernmental Review: Applications under this CRFMPGP are subject to Executive Order 12372, Intergovernmental Review of Federal Programs. Specific information regarding Intergovernmental Review can be found above in Section IV. Application and Submission Information, D. Intergovernmental Review of the FFO.

11. Protected Species Cooperative Conservation

Summary Description: States play an essential role in the conservation and recovery of endangered and threatened species. Protected species under the National Marine Fisheries Service's (NMFS) jurisdiction may spend all or a part of their life-cycles in state waters, and success in conserving these species will depend in large part on working cooperatively with State agencies. The NMFS is authorized to provide Federal assistance to eligible States to support the development of conservation programs for marine and anadromous species that reside within that State. This assistance, provided in the form of grants through the Protected Species Cooperative Conservation program, can be used to support conservation of endangered, threatened, and candidate species, as well as post-delisting monitoring of recovered species. Funded activities may include development and implementation of management plans, scientific research, and public education and outreach; projects should address priority actions identified in either an ESA Recovery Plan or a State's ESA section 6 conservation program. Projects focusing on listed Pacific salmon will not be considered for funding under this grant program; such projects may be funded through the Pacific Coastal Salmon Recovery Fund. Any State agency that has entered into an agreement with the NMFS pursuant to section 6(c) of the ESA is eligible to apply to this grant program. This document describes how to submit proposals for funding in fiscal year (FY) 2009 and how NMFS will

determine which proposals will be funded; the document should be read in its entirety, as information may have changed from the previous year.

Funding Availability: This solicitation announces that a minimum of $330K and a maximum of $780K may be available for distribution under the FY 2009 PSCC program, in award amounts to be determined by the proposals and available funds; actual funding availability for this program is contingent upon Fiscal Year 2009 Congressional appropriations. As funds have not yet been appropriated for this program, there is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific grant proposal or to obligate any available funds. There is no set minimum or maximum amount, within the available funding, for any award. There is also no limit on the number of applications that can be submitted by the same applicant. Multiple applications submitted by the same applicant must clearly identify distinct projects, and single applications should not include multiple, unrelated projects. Project proposals accepted for funding with a project period over one year do not have to compete for the additional years of funding. However, funding for the additional years is contingent upon the availability of funds and satisfactory performance and is at the sole discretion of the agency.

Statutory Authority: 16 U.S.C. 661 *et seq.*; 1535.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.472, Unallied Science Program.

Application Deadline: Proposals submitted through Grants.gov must be received by 5 p.m. Eastern Daylight Time on September 17, 2008; proposals submitted by mail must be postmarked by September 17, 2008.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, 3 hard copies with original signatures may be sent to: NMFS Office of Protected Resources, Attn: Lisa Manning, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910. Paper applications should not be bound in any manner.

Information Contacts: If you have any questions regarding this proposal solicitation, please contact Lisa Manning at the NOAA/NMFS/Office of Protected Resources, Endangered Species Division, 1315 East-West Highway, Silver Spring, MD 20910, by phone at 301–713–1401, or by E-mail at *Lisa.Manning@noaa.gov*. You may also contact one of the following people in your region for further guidance: Karla Reece, Southeast Regional Office, Protected Resources Division (*Karla.Reece@noaa.gov*, 727–824–5312); Amanda Johnson, Northeast Regional Office, Protected Resources Division (*Amanda.Johnson@noaa.gov*, 978–281–9300 x6513); Jayne LeFors, Pacific Islands Regional Office, Protected Resources Division (*Jayne.LeFors@noaa.gov*, 808–944–2277); Scott Rumsey, Northwest Regional Office, Fish and Wildlife Administrator (*Scott.Rumsey@noaa.gov*, 503–872–2791).

Eligibility: Eligible applicants are state agencies that have entered into an agreement with NMFS pursuant to section 6(c) of the ESA. The terms ''state'' and ''state agency'' are used as defined in section 3 of the ESA (16 U.S.C. 1532). Currently eligible state agencies are from the following states: Delaware, Florida, Georgia, Hawaii, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Puerto Rico, South Carolina, the U.S. Virgin Islands, and Washington. Any state agency that enters into a section 6(c) agreement with NMFS prior to the application deadline (September 17, 2008) is also eligible to apply. States may apply for funding to conduct work on federally listed species that are included in their ESA section 6 agreement and any species that has become a candidate species by the grant application deadline. States may not apply for funding to conduct work on federally listed species that are not covered in their ESA section 6 agreement unless said species is added to the agreement by the grant application deadline. Federal agencies or institutions are not eligible to receive Federal assistance under this notice. In addition, NOAA and NMFS employees shall not provide assistance in writing applications, write letters of support for any application, or otherwise confer any unfair advantage on a particular application. However, for activities involving collaboration with current NMFS programs, NMFS employees can write a letter verifying that they are collaborating with the project.

Cost Sharing Requirements: In accordance with section 6(d) of the ESA, all proposals submitted must include a minimum non-Federal cost share of 25 percent of the total budget if the proposal involves a single state. If a proposal involves collaboration of two or more states, the minimum non-Federal cost share decreases to 10 percent of the total project budget. The project proposal and budget should reflect the work and responsibilities to be carried out by each of the cooperating states. Pursuant to Public Law 95–134, Title V, section 501 (1977), as amended (48 U.S.C. 1469a) the following Insular Areas are exempt from this matching requirement: American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands. The non-Federal cost share should be identified in the project budget (and on the SF–424A) and may include in-kind contributions according to the regulations at 15 CFR part 24.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

12. Saltonstall-Kennedy Grant Program (FY 2009)

Summary Description: The Saltonstall-Kennedy Act established a fund (known as the S–K fund) that the Secretary of Commerce uses to provide grants or cooperative agreements for fisheries research and development projects addressing aspects of U.S. fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures. U.S. fisheries include any fishery, commercial or recreational, that is, or may be, engaged in by citizens or nationals of the United States, or citizens of the Northern Mariana Islands (NMI), the Republic of the Marshall Islands, Republic of Palau, and the Federated States of Micronesia.

Funding Availability: Funding is contingent upon availability of Federal allocations. The S–K program has sought funding for $5 million in grant awards. We anticipate awarding 20–25 grants of approximately $100,000 to $250,000 each. Applicants are hereby given notice that funds have not yet been allocated for this program. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this notice does not obligate NOAA to award any specific project or to obligate any available funds. You should not initiate your project in expectation of Federal funding until you receive a grant award document signed by an authorized NOAA official. If one incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

Statutory Authority: Authority for the Saltonstall-Kennedy Grant Program is provided under the Saltonstall-Kennedy Act (S–K Act), as amended (15 U.S.C. 713c–3).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.427, Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program.

Application Deadline: Applications must be received by 5 p.m., Eastern Time on October 1, 2008. Applications received after the deadline will be rejected/returned to the sender without further consideration. No facsimile or electronic mail applications will be accepted.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: Mr. Steve Aguzin, S–K Program Manager, NOAA/NMFS (F/MB5), 1315 East-West Highway, Room 13134, Silver Spring, MD 20910–3282.

Information Contacts: The point of contact is: Steve Aguzin, S–K Program Manager, NOAA/NMFS (F/MB5), 1315 East-West Highway, Room 13134, Silver Spring, MD 20910–3282; or by Phone at (301) 713–2358 ext. 215, or fax at (301) 713–1306, or via E-mail at *Stephen.Aguzin@noaa.gov*.

Eligibility: You are eligible to apply for a grant or a cooperative agreement under the Saltonstall-Kennedy Grant Program if: 1. You are a citizen or national of the United States; 2. You are a citizen of the Northern Mariana Islands (NMI), or an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the constitution of the NMI; 3. You are a citizen of the Republic of the Marshall Islands, Republic of Palau, or the Federated States of Micronesia; or 4. You represent a corporation, partnership, association, or other non-Federal entity, non-profit or otherwise (including Indian tribes), that is based in the United States or NMI, within the meaning of section 2 of the Shipping Act, 1916, as amended (46 U.S.C. app. 802). We support cultural and gender diversity in our programs and encourage women and minority individuals and groups to submit applications. Furthermore, we recognize the interest of the Secretaries of Commerce and Interior in defining appropriate fisheries policies and programs that meet the needs of the U.S. insular areas, so we also encourage applications from individuals, government entities, and businesses in U.S. insular areas. We are strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities, in our programs, including S–K. Therefore, we encourage all applicants to include meaningful participation of MSIs. We encourage applications from members of the fishing community, and applications that involve fishing community cooperation and participation. We will consider the extent of fishing community involvement when evaluating the potential benefit of funding a proposal. You are not eligible to submit an application under this program if you are an employee of any Federal agency; a Fishery Management Council; or an employee of a Council. However, Council members who are not Federal employees can submit an application to the S–K Program.

Cost Sharing Requirements: We are requiring cost sharing in order to leverage the limited funds available for this program and to encourage partnerships among government, industry, and academia to address the needs of fishing communities. You must provide a minimum cost share of 10 percent of total project costs, but your cost share must not exceed 50 percent of total costs.

Intergovernmental Review: Applications submitted by state and local governments are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html*.

13. Prescott 2009

Summary Description: The Marine Mammal Health and Stranding Response Program of the National Marine Fisheries Service is charged under the Marine Mammal Protection Act with facilitating the collection and dissemination of reference data on stranded marine mammals and health trends of marine mammal populations in the wild. Through cooperation with NMFS Regional Coordinators, local organizations and state and local government officials respond to and collect valuable data from stranded marine mammals as participants in the national Marine Mammal Stranding Network. The John H. Prescott Marine Mammal Rescue Assistance Grant Program is conducted by NOAA to provide Federal assistance to eligible members of the Stranding Network to: (1) Support basic needs of organizations for response, treatment, and data collection from living and dead stranded marine mammals; (2) fund scientific research objectives designed to answer questions about marine mammal strandings, health, or rehabilitation techniques utilizing data from living and dead stranded marine mammals; and, (3) support facility operations directly related to the recovery or treatment of stranded marine mammals and collection of data from living or dead stranded marine mammals.

Funding Availability: This solicitation announces that approximately $4M may be available for distribution under the FY 2009 annual competitive Prescott Program. Actual funding availability for this program is contingent upon FY 2009 Congressional appropriations. Applicants are hereby given notice that these funds have not yet been appropriated for this program, and therefore exact dollar amounts cannot be given. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The maximum Federal award for each grant cannot exceed $100,000, as stated in the legislative language (16 U.S.C. 1421f–1). Funds will be set aside from the annual appropriation to provide for emergency assistance awards to eligible stranding network participants. These emergency funds will be available until expended. There is no limit on the number of proposals that can be submitted by the same stranding network participant during the 2009 competitive grant cycle. However, since there are insufficient funds to award financial assistance to every member of the network, organizations will receive no more than two awards per year as part of the competitive program. The two awards must be for projects that are clearly separate in their objectives, goals, and budget requests and must be successful in the competitive review process. The two projects should be completely independent (*i.e.*, you will be able to carry out either proposal even if the other does not receive funding). In addition, eligible researchers applying as Principal Investigators, but not independently authorized under the MMPA Section 112(c), the MMPA Section 109(h) (50 CFR 216.22), or the National Contingency Plan for Response

to Marine Mammal Unusual Mortality Events, can receive no more than one award per year as part of the competitive cycle.

Authorized stranding network participants and researchers may be identified as Co-Investigators or collaborators on as many proposals as needed as long as no more than 100 percent of their time is funded through the Prescott Program. In addition, Department of Commerce (DOC) and Department of Interior (DOI) employees may act as collaborators if they are responsible for performing analyses on data or samples collected under a Prescott award. See section I.F. of the FFO for Eligibility requirements. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional funding in connection with that award in subsequent years beyond the award period. If one incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award. Notwithstanding any verbal or written assurance that applicants have received, pre-award costs are not allowed under the Grants Officer approves them in accordance with 15 CFR 14.28.

Statutory Authority: 16 U.S.C. 1421f–1.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.439, Marine Mammal Data Program.

Application Deadline: Proposals must be postmarked or submitted online by 11:59 p.m. EDT on Wednesday, October 1, 2008.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov,* unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: NOAA/NMFS/Office of Protected Resources, Marine Mammal Health and Stranding Response Program, 1315 East-West Highway, Room 13620, Silver Spring, MD 20910–3283.

Information Contacts: Please visit the Prescott Grant Program Web site at: *http://www.nmfs.noaa.gov/pr/health/prescott/* or contact Michelle Ordono at the NOAA/NMFS/Office of Protected Resources, Marine Mammal Health and Stranding Response Program, 1315 East-West Highway, Room 13620, Silver Spring, MD 20910–3283, by phone at (301) 713–2322, or by fax at (301) 427–2525, or by E-mail at *PrescottGrantFR.comments@noaa.gov.*

Eligibility: There are three categories of eligible stranding network participants that may apply for funds under this Program: (1) Stranding Agreement (SA) holders or their designee organizations; (2) holders of researcher authorization letters issued by a NMFS Regional Administrator; and, (3) state, local, eligible federal government or tribal employees or personnel. All applicants must currently be: (1) Active as an authorized participant or researcher in the marine mammal stranding network; (2) In good standing and; (3) Not a current full or part-time employee or contractor of DOC or DOI. To be ''in good standing'', you must meet all of the following criteria: (1) If the applicant is a designated Principal Investigator of an MMPA or Endangered Species Act (ESA) scientific research or enhancement permit holder, the applicant must have fulfilled all permit requirements, including but not limited to submission of all reports, and must have no pending or outstanding enforcement actions under the MMPA or ESA. (2) Have complied with the terms and responsibilities of the appropriate SA, MMPA Section 109(h) authorization, or researcher authorization letter. This includes, but is not limited to, the following reporting requirements: (a) Timely reporting of strandings to NMFS; (b) timely submission of complete reports on basic or Level A data to the Regional Coordinator (includes investigator's name, species, stranding location, number of animals, date and time of stranding and recovery, length and condition, and sex; marine mammal parts retention or transfer; annual reports); and (c) collecting information or samples as necessary and as requested. This also includes the following coordination/cooperation requirements: (a) Cooperation with state, local, and Federal officials; (b) cooperation with state and local officials in the disposition of stranded marine mammals; and (c) cooperation with other stranding network participants. (3) Have cooperated in a timely manner with NMFS in collecting and submitting Level B (supplementary information regarding sample collection related to life history and to the stranding event) and Level C (necropsy results) data and samples, when requested. (4) Have no current enforcement investigation for the take of marine mammals contrary to the MMPA/ESA regulations. (5) Have no record of a pending NMFS notice of violation(s) regarding the policies governing the goals and operations of the Stranding Network and Stranding Agreement, if applicable (e.g., probation, suspension, or termination). In addition to these general criteria, organizations and individuals must meet the following eligibility criteria specific to their category of participation: (1) SA Holder Participant or SA Designee Participant. SA participants must be holding a current (active) SA for stranding response (either live or dead animal response) or rehabilitation from a NMFS Regional Administrator or the Assistant Administrator. SA Designee participants must be holding a current (active) letter of designation from a NMFS SA holder, and designees cannot request authorization for activities beyond the scope of what is authorized by the SA to the letter holder. (2) Researcher Participant. Researcher participants must be holding a current (active) authorizing letter for the proposed award period from the NMFS Regional Administrator or the Assistant Administrator to salvage stranded marine mammal specimens and parts or samples for the purpose of utilization in scientific research (50 CFR 216.22). Persons authorized to salvage dead marine mammal specimens under this section must register the salvage with the appropriate NMFS Regional Office within 30 days after the taking occurs. Researchers who are authorized under an MMPA/ESA Scientific Research Permit must still obtain an authorizing letter from the Regional Stranding Coordinator in order to use parts or specimens from stranded animals. Researcher participants that would not require an authorizing letter from the NMFS Regional Administrator (i.e., they will be working with data only and not possessing samples or specimens) must still provide a letter of eligibility from the Regional Stranding Coordinator (see IV.B.8 of the FFO). Researcher participants must also have designated Co-Investigator(s) that are active NMFS authorized stranding network participants in good standing, and provide documentation to this effect. (3) State, Local, Federal Government Employees or Tribal Participants, State and local government officials or employees participating pursuant to MMPA Section 109(h) (16 U.S.C. 1379(h)) for marine mammal species not listed under the ESA fulfilling reporting obligations outlined in 50 CFR 216.22 (i.e., submission of written report to NMFS every six months containing description of animal(s) involved, circumstances of taking, method of taking, name and position of official or employee involved, and disposition of animal(s)). Government officials must be involved in areas of geographic need (i.e., municipality or larger region with no existing SA holder responder).

Applicants must submit the required documentation in their proposal (see Section IV, Application and Submission Information of the FFO) as evidence that they are an SA holder or designee participant, researcher participant, or a state, local, or Federal government employee, or tribal participant at the time of the submission and during the award period. All eligibility criteria specified for the participant's category must be met in order for a proposal to be considered for funding. We support cultural and gender diversity in our programs and encourage eligible women and minority individuals and groups to submit proposals. Furthermore, we recognize the interest of the Secretaries of Commerce and Interior in defining appropriate marine management policies and programs that meet the needs of the U.S. insular areas, so we also encourage proposals from eligible individuals, government entities, universities, colleges, and businesses in U.S. insular areas as defined by the MMPA (Section 3(14), 16 U.S.C. 1362). This includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands. We are strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities, and institutions that work in undeserved areas in our programs.

The DOC/NOAA/NMFS vision, mission, and goals are to achieve full participation by MSIs, to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. Therefore, Prescott Grant Program encourages all eligible applicants to include meaningful participation of MSIs whenever practicable. Applicants are not eligible to submit a proposal under this program if they are an employee of the DOC or DOI. NOAA/NMFS employees (whether full-time, part-time, or intermittent) are not allowed to help in the preparation of proposals, except for providing information on data or sample analyses as an identified collaborator/Co-Investigator in the proposal. Since this is a competitive program, NMFS and NOAA employees cannot provide assistance in conceptualizing, developing, or structuring proposals, or write letters of support for any proposal. However, for activities that involve collaboration with current NOAA programs that include, but are not limited to, the National Marine Mammal Tissue Bank (NMMTB) or laboratories conducting analysis of tissues for contaminants, employees of NOAA or the National Institute of Standards and Technology can write a letter verifying that they are collaborating with the project, or that the organization or individual applying is trained to participate in the NMMTB or is currently participating in the National Marine Analytical Quality Assurance Program. In addition, proposals encompassing activities conducted under the authority of a MMPA Scientific Research Permit issued to a DOC or DOI organization (e.g., NMFS Regional Science Center) should include a copy of the permit and a letter from the Principal Investigator (DOC/DOI employee) verifying that the work is being conducted with their approval. Federal employee travel costs or salaries are not allowable costs under this program. MMHSRP staff (at the regional and national level) are available to provide information regarding statistics on strandings, MMHSRP programmatic goals and objectives, ongoing marine mammal programs, regional funding priorities for the current and previous Prescott solicitations, and, along with other Federal Program Officers, can provide guidance on application procedures and proper completion of required forms. Unsatisfactory performance under prior or current Federal awards, including delinquency in submitting progress and financial reports, may result in proposals not being considered for funding under the 2009 Prescott Grant Program.

Cost Sharing Requirements: All proposals submitted must provide a minimum non-Federal cost share of 25 percent of the total budget (i.e., .25 × total project costs = total non-Federal share). Therefore, the total Federal share will be 75 percent or less of the total budget. For a proposed total Federal share of $100,000, the minimum non-Federal share is $33,334 (total budget of $133,334; .25 × $133,334 = $33,334). For a proposed total Federal share of $80,000, the minimum non-Federal share is $26,667 (total budget of $106,667; .25 × $106,667 = $80,000). Cost share must be an integer, so please round up. The applicant can include a non-Federal cost share for more than 25 percent of the total budget, but this obligation will be binding. In order to reduce calculation error in determining the correct cost share amounts, we urge all applicants to use the cost share calculator on the Prescott Program Web page (*http://www.nmfs.noaa.gov/pr/health/prescott/proposals/costshare.htm*). Legislation under which the Prescott Program operates requires this cost sharing, or non-Federal match, in order to leverage the limited funds available for this program and to encourage partnerships among government, private organizations, non-profit organizations, the stranding network, and academia to address the needs of marine mammal health and stranding response. If a proposal does not comply with these cost share requirements, it will not be returned and considered in this annual funding cycle. Pursuant to 48 U.S.C. 1469a, match may be waived for applicants that are residents in the U.S. insular areas (Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands). The Federal Program Officer will determine the appropriateness of all non-Federal cost sharing proposals, including the valuation of in-kind contributions, according to the regulations codified at 15 CFR 14.23 and 24.24. An in-kind contribution is a non-cash contribution, donated or loaned, by a third party to the applicant. In general, the value of in-kind services or property used to fulfill a non-Federal cost share will be the fair market value of the services or property. Thus, the value is determined by the cost of obtaining such services or property if they had not been donated, or of obtaining such services or property for the period of the loan. The applicant must document the in-kind services or property used to fulfill the non-Federal cost share. If we decide to fund a proposal, we will require strict accounting of the in-kind contributions within the total non-Federal cost share included in the award document. The Grants Officer (i.e., the DOC official responsible for all business management and administrative aspects of a grant and with delegated authority to award, amend, administer, close out, suspend, and/or terminate awards) is the final approving authority for the award, including the budget and any cost-sharing proposals.

Intergovernmental Review: Applications submitted under this program are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone

numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

National Ocean Service (NOS)

1. 2009 CRCP Coral Reef Ecosystem Monitoring

Summary Description: The NOAA Coral Reef Monitoring Grant Program, as authorized under the Coral Reef Conservation Act of 2000, provides matching grants to Governor-appointed point of contact agencies for the jurisdictions of Puerto Rico, the U.S. Virgin Islands (USVI), Florida, Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), the Republic of Palau, the Federated States of Micronesia (including Chuuk, Yap, Kosrae, and Pohnpei), and the Republic of the Marshall Islands to support State and Territory Coral Reef Monitoring activities in these jurisdictions.

Funding Availability: NCCOS may provide approximately $1,100,000 in funding for FY 2009 to support coral reef ecosystem monitoring activities under this program. FY 2009 awards to Puerto Rico, Florida, U.S. Virgin Islands, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are expected to range from $50,000 to $130,000. FY 2009 awards to the Federated States of Micronesia (FSM—including Chuuk, Yap, Kosrae, and Pohnpei), Republic of Palau, and the Republic of the Marshall Islands (RMI) are expected to be approximately $30,000 per year. Funding will be subject to the availability of federal appropriations. FY 2009 grant seekers may submit proposals up to three years in duration, at funding levels specified above (i.e., up to $90,000 for three year proposals for Palau, FSM, and RMI, and up to $390,000 for three year proposals for all other eligible applicants). In certain instances, when requested by the applicant and agreed upon by NOAA, NOAA may hold back a portion of any awarded funds in order to provide specific technical assistance in the form of contractual or other services. This will only be allowed where such priority technical assistance and/or the lack of sufficient means to deliver it are unavailable at the local level. Such requests proposed herein will be reviewed on a case by case basis with respect to the specific management objectives of this and the local coral reef program. If all available funds are not awarded, NOAA will consult with the eligible applicants on the use of any residual funds. NOAA will work with each jurisdiction to ensure the greatest degree of success in meeting local, state, territorial, and national coral reef monitoring needs.

Statutory Authority: Authority for the NOAA Coral Reef Conservation Grant Program is provided by Section 6403 (Coral Reef Conservation Program) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq.*).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.426, Financial Assistance for National Centers for Central Coastal Ocean Science.

Application Deadline: Preproposals due: 5 p.m. on EST November 14, 2008. Comments on preproposals provided to the applicants on January 9, 2009. Final proposals due: 5 p.m. EST on February 20, 2009.

Address for Submitting Proposals: Pre-applications must be sent to *coral.grants@noaa.gov* or to Jenny Waddell, NOAA National Ocean Service, N/SCI–1, 1305 East-West Highway, Silver Spring, MD 20910. Final applications must be submitted through *www.grants.gov,* unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: Jenny Waddell, NOAA National Ocean Service, N/SCI–1, 1305 East-West Highway, Silver Spring, MD 20910.

Information Contacts: The technical point of contact for State and Territory Coral Reef Monitoring is Jenny Waddell. She can be reached at 301–713–3028 extension 174 or by e-mail at *jenny.waddell@noaa.gov.*

Eligibility: Eligible applicants are limited to a natural resource management agency in each U.S. State or Territory, or an appropriate non-governmental agency in the case of the Freely Associated States, with jurisdiction over and an ability to monitor the condition of coral reefs, as designated by the respective governors or other applicable senior jurisdictional official. Applicants from the Freely Associated States must also provide a letter of support from their respective officially-designated coral reef point of contact to ensure that the proposed activities are coordinated with other ongoing coral reef conservation efforts. NOAA is requesting proposals from Puerto Rico, Florida, U.S. Virgin Islands, Hawaii, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Republic of Palau, and the Republic of the Marshall Islands. Federal agencies are not eligible for funding under this Program. Furthermore, to be eligible for FY 2009 funding, applicants previously receiving funds under this program must have made significant progress implementing those tasks and met data submission deadlines, including all performance and fiscal reporting requirements and data transfers.

Cost Sharing Requirements: As per section 6403(b)(1) of the Coral Reef Conservation Act of 2000, Federal funds for any coral conservation project funded under this Program may not exceed 50 percent of the total cost of the projects. Therefore, any coral conservation project under this program requires a 1:1 match. Matching funds must be from non-Federal sources and can include in-kind contributions and other non-cash support.

NOAA strongly encourages applicants to leverage as much investment as possible. Federal funds may not be considered as matching funds. As per section 6403(b)(2) of the Coral Reef Conservation Act of 2000, the NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: 1. No reasonable means are available through which an applicant can meet the matching requirement, and, 2. The probable benefit of such project outweighs the public interest in such matching requirement. Applicants must specify in their proposal the source and may be asked to provide letters of commitment to confirm stated match contributions.

In the case of a waiver request, the applicant must provide a detailed justification explaining the need for the waiver including attempts to obtain sources of matching funds, how the benefit of the project outweighs the public interest in providing match, and any other extenuating circumstances preventing the availability of match. Notwithstanding any other provisions herein, and in accordance with 48 U.S.C. 1469a(d), the Program shall waive any requirement for local matching funds for any project under $200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Please Note: eligible applicants choosing to apply 48 U.S.C. 1469a(d) should note the use and amount in the matching funds section of the respective application.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

2. 2009 CRCP—Coral Reef Management

Summary Description: The NOAA Coral Reef Management Grant Program, as authorized under the Coral Reef Conservation Act of 2000, provides matching grants to the Governors appointed point of contact agencies for the jurisdictions of Puerto Rico, the U.S. Virgin Islands (USVI), Florida, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and American Samoa for State and Territory Coral Reef Management activities. The objective of the State and Territory Coral Reef Management Grant program is to support comprehensive management programs for the conservation of coral reef ecosystems in these jurisdictions.

Funding Availability: Funding up to $3,000,000 is expected to be available for cooperative agreements to support priority coral reef management activities that address areas 1–10 in the Federal Funding Opportunity. There is no appropriation of funds at this time and the final funding amount will be subject to the availability of federal appropriations. Support in out-years following FY2009 is likewise contingent upon the availability of future funding and the requirements of the Federal agency supporting the project (Department of Commerce or Department of the Interior (DOI)). Each eligible jurisdiction can apply for a maximum of $600,000. A minimum of 40% of the final award amount must be dedicated to the implementation and support of the Local Action Strategy initiative in each jurisdiction. In certain instances, when requested by the applicant and agreed upon by NOAA and DOI, NOAA may hold back a portion of any awarded funds in order to provide specific coral reef conservation technical assistance in the form of contractual or other services. This will only be allowed where such priority technical assistance and/or the lack of sufficient means to deliver it are unavailable at the local level. Such requests proposed herein will be reviewed on a case by case basis with respect to the specific management objectives of this and the local coral reef program. If all funds that become available after Congressional appropriation are not awarded, NOAA and DOI will consult with the eligible applicants on the use of any residual funds. NOAA and DOI will work with each jurisdiction to ensure the greatest degree of success in meeting local, state, territorial and national coral reef management needs.

Statutory Authority: Authority for the NOAA Coral Reef Conservation Grant Program is provided by Section 6403 (Coral Reef Conservation Program) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq.*)

Catalog of Federal Domestic Assistance (CFDA) Number: 11.419, Coastal Zone Management Administration Awards.

Application Deadline: Pre-applications must be received no later than 11:59 p.m. Eastern Standard Time on Monday, December 1, 2008. Final applications must be received no later than 11:59 p.m. Eastern Standard Time on Thursday, March 12, 2009.

Address for Submitting Proposals: Final applications should be submitted electronically to: *www.grants.gov*, the Federal grants portal. If Internet access is unavailable hard copies can be submitted to David Kennedy, NOAA National Ocean Service, NOAA Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, Room 10102, 1305 East-West Highway, Silver Spring, MD 20910.

Information Contacts: Technical point of contact for State and Territory Coral Reef Management is Dana Wusinich-Mendez at 301–713–3155, extension 159 or e-mail at *dana.wusinich-mendez@noaa.gov*, FAX: 301–713–4367. Address: OCRM/NOAA, N/–ORM3, 1305 East-West Highway, Silver Spring, MD 20910.

Eligibility: Eligible applicants are the governor-appointed point of contact agencies for coral reef activities in each of the jurisdictions of American Samoa, Florida, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands.

Cost Sharing Requirements: As per section 6403(b)(1) of the Coral Reef Conservation Act of 2000, Federal funds for any coral conservation project funded under this Program may not exceed 50 percent of the total cost of the projects. Therefore, any coral conservation project under this program requires a 1:1 match. Match can come from a variety of public and private sources and can include in-kind goods and services such as private boat use and volunteer labor. Federal sources cannot be considered for matching funds, but can be described in the budget narrative to demonstrate additional leverage. Applicants are permitted to combine contributions from multiple non-federal partners in order to meet the 1:1 match requirement, as long as such contributions are not being used to match any other funds. Applicants must specify in their proposal the source(s) of match and may be asked to provide letters of commitment to confirm stated match contributions. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer. Applicants should be prepared to carefully document matching contributions for each project selected to be funded. As per section 6403(b)(2) of the Coral Reef Conservation Act of 2000, the NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: 1. No reasonable means are available through which an applicant can meet the matching requirement, and, 2. The probable benefit of such project outweighs the public interest in such matching requirement. In the case of a waiver request, the applicant must provide a detailed justification explaining the need for the waiver including attempts to obtain sources of matching funds, how the benefit of the project outweighs the public interest in providing match, and any other extenuating circumstances preventing the availability of match. Match waiver requests including the appropriate justification should be submitted as part of the final application package. Notwithstanding any other provisions herein, and in accordance with 48 U.S.C. 1469a(d), the Program shall waive any requirement for local matching funds for any project under $200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Please Note: Eligible applicants choosing to apply 48 U.S.C. 1469a(d) should note the use of the waiver and the total amount of funds requested to be waived in the matching funds section of the respective application.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

3. Bay Watershed Education and Training (B–WET) Hawaii Program

Summary Description: The purpose of this notice is to solicit proposals for grants to support NOAA's goal of developing a well-informed citizenry involved in decision-making that positively impact our coastal, marine and watershed ecosystems in the state of Hawaii. This opportunity is an annually awarded, competitively-based grant that provides initial funding to: (1) Assist in the development of new programs; (2)

encourage innovative partnerships among environmental education programs throughout Hawaii; and (3) support geographically targeted programs to advance environmental education efforts that complement appropriate school requirements. Funded projects provide meaningful science-based outdoor experiences for K–12 students and professional development opportunities for teachers in the area of environmental education as defined in this announcement.

Funding Availability: This solicitation announces that approximately $1,000,000 may be available in FY 2009 in award amounts to be determined by the proposals and available funds. The NOAA Pacific Services Center anticipates that approximately 5 to 15 grants will be awarded with these funds, pending availability of funds. Applicants are hereby given notice that funds have not yet been appropriated for this program. It is anticipated that typical project awards for Priority 1 and 2 (see FFO) will range from approximately $10,000 to $100,000. Applications requesting Federal support from NOAA of more than $100,000 total will not be considered for review or funding. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so at their own risk of not being reimbursed by the government.

Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

Statutory Authority: 15 U.S.C. 1540; 33 U.S.C. 892a.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.473, Coastal Services Center.

Application Deadline: Full proposals must be received must be received by 5:59 Hawaii Time on August 15, 2008.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures must be postmarked on or before August 15, 2008, and sent to: NOAA Pacific Services Center, 737 Bishop Street, Suite 1550, Honolulu, Hawaii 96813, ATTN: Stephanie Bennett. The postmark will be used to determine the timeliness of the proposal. Applicants submitting hard copy applications must submit one (1) hard copy of the entire application package, a CD copy of the package, including all forms with original signatures. Facsimile transmissions and electronic mail submissions will not be accepted.

Information Contacts: For administrative and technical questions, contact Stephanie Bennett, Federal Program Officer at NOAA Pacific Services Center, 737 Bishop Street, Suite 1550, Honolulu, Hawaii 96813 or by phone at (808) 522–7481, or via e-mail at *Stephanie.Bennett@noaa.gov*.

Eligibility: Eligible applicants for Priority 1 and 2 are K–12 public and independent schools and school systems, institutions of higher education, commercial and nonprofit organizations, state or local government agencies, and Indian tribal governments. Individual applicants and Federal agencies are not eligible. Federal agencies are not allowed to receive funds under this announcement but may serve as collaborative project partners. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically Black Colleges and Universities, Hispanic-serving institutions, Tribal colleges and universities, Alaskan Native and Native Hawaiian institutions, and institutions that service undeserved areas.

Cost Sharing Requirements: No cost sharing is required under this program, however, the NOAA Pacific Services Center strongly encourages applicants to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process with cash being the preferred method of contribution.

Intergovernmental Review: Funding applications under the Center are subject to Executive Order 12372, Intergovernmental Review of Federal Programs. It is the state agency's responsibility to contact their state's Single Point of Contact (SPCO) to find out about and comply with the state's process under EO 12372. To assist the applicant, the names and addresses of the SPOCs are listed on the Office of Management and Budget's Web site *http://www.whitehouse.gov/omb/grants/spoc.html.*

4. CSCOR FY 2009 NGOMEX and CRES

Summary Description: The purpose of this opportunity is to advise the public that NOAA/NOS/NCCOS/CSCOR is soliciting proposals for two separate programs. Program 1 is the Regional Ecosystem Prediction Program on Coral Reef Ecosystem Studies (CRES) From Science to Conservation: Linking Coral Reefs, Coastal Watersheds and their Human Communities in the Pacific Islands. Projects under this program will be 3 to 5 years in duration. The goal of this funding opportunity is to utilize existing scientific tools and approaches (e.g., biophysical models; coupled watershed and hydrodynamic models) within a social, cultural, and economic framework to develop and implement effective coastal ecosystem management practices in the Pacific Islands. Proposals should be regional in scale, interdisciplinary, comprehensive, integrated, and include multiple investigators to develop capabilities for innovative forecasts and predictions for improved management and control capabilities. Program 2 is the Northern Gulf of Mexico Ecosystems and Hypoxia Assessment Program (NGOMEX). NGOMEX has two components. The Modeling the Causes of Hypoxia component takes a regional ecosystem prediction approach to advance model development assessing the association between the northern Gulf hypoxic zone and causative factors. The proposed research for this competition should be 3–5 years in duration. The Modeling the Impacts of Hypoxia component takes an ecosystem stressors approach to advance understanding of hypoxia on ecologically and commercially important living resource populations of the northern Gulf of Mexico ecosystem. These projects should be 3 to 5 years of duration. Funding is contingent upon the availability of Fiscal Year 2009 Federal appropriations. It is anticipated that final recommendations for funding under this announcement will be made by February 2009 and that projects funded under this announcement will have a July 1, 2009 through August 1, 2009 start date. Background information about the NCCOS/CSCOR efforts can be found at *http://www.cop.noaa.gov.*

Funding Availability: Funding is contingent upon availability of Federal appropriations. NOAA is committed to continual improvement of the grants process and accelerating the award of financial assistance to qualified recipients in accordance with the recommendations of the Business Process Re-engineering Team. In order to fulfill these responsibilities, this solicitation announces that award

amounts will be determined by the proposals and available funds. Funds for the Coral Reef Ecosystem Studies From Science to Conservation: Linking Coral Reefs, Coastal Watersheds and their Human Communities in the Pacific Islands will not exceed $200,000 per project per year. (1) It is anticipated that only one project will be awarded for this program with project duration of 3 to 5 years. Funds for the Modeling the Causes of Hypoxia component of the Northern Gulf of Mexico Ecosystems and Hypoxia Assessment program will not exceed $1,000,000. (2) It is anticipated that only one project will be awarded for this program component with project duration of 3 to 5 years. Funds for the Modeling the Impacts of Hypoxia component of the Northern Gulf of Mexico Ecosystems and Hypoxia Assessment program will be up to $500,000 per project per year. (3) It is anticipated that 3 to 5 projects will be awarded for this program component with project duration of 3 to 5 years. Applicants are hereby given notice that funds have not yet been appropriated for this program. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not obligate NOAA to award any specific project or to obligate any available funds. If one incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award. Publication of this notice does not obligate any agency to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

Statutory Authority: For the Coral Reef Ecosystem Studies From Science to Conservation: Linking Coral Reefs, Coastal Watersheds and their Human Communities in the Pacific Islands program the program authority is 16 U.S.C. 6403, for the Northern Gulf of Mexico Ecosystems and Hypoxia Assessment Program the program authority is 33 U.S.C. 1442.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.478, Center for Sponsored Coastal Ocean Research—Coastal Ocean Program.

Application Deadline: The deadline for receipt of proposals at the NCCOS/CSCOR office is 3 p.m., Eastern Time for both of the programs. For the Coral Reef Ecosystem Studies proposals are due October 9, 2008. For the Northern Gulf of Mexico proposals are due October 20, 2008.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: Laura J. Golden 1305 East-West Hwy. Routing Code: N/SCI2, Building: SSMC4, Silver Spring, MD 20910–3278

Information Contacts: Technical Information: Program Managers contact information can be found under each program element listed in B. Program Priorities of the FFO. Business Management Information: Laurie Golden, NCCOS/CSCOR Grants Administrator, 301–713–3338/ext 151, Internet: *laurie.golden@noaa.gov*.

Eligibility: Eligible applicants are institutions of higher education, other non-profits, state, local, Indian Tribal Governments, commercial organizations and Federal agencies that possess the statutory authority to receive financial assistance. Please note that: (1) NCCOS/CSCOR will not fund any Federal Full Time Employee (FTE) salaries, but will fund travel, equipment, supplies, and contractual personnel costs associated with the proposed work. (2) Researchers must be employees of an eligible entity listed above; and proposals must be submitted through that entity. Non-Federal researchers should comply with their institutional requirements for proposal submission. (3) Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research. (4) NCCOS/CSCOR will accept proposals that include foreign researchers as collaborators with a research who has met the above stated eligibility requirements. (5) Non-Federal researchers affiliated with NOAA-University Cooperative/Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

5. FY 2009 California Bay Watershed Education and Training Program

Summary Description: The California B–WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the San Francisco Bay, Monterey Bay, and Santa Barbara Channel watersheds. Projects support organizations that provide students ''meaningful'' watershed educational experiences and teachers professional development opportunities in the area of environmental education related watersheds.

Funding Availability: This solicitation announces that approximately $2,000,000 may be available in FY 2009 in award amounts to be determined by the proposals and available funds. About $850,000 will be made available to the San Francisco Bay watershed area, about $700,000 will be made available to the Monterey Bay watershed area, and about $450,000 will be made available to the Santa Barbara Channel watershed area. The National Marine Sanctuary Program anticipates that approximately 35 grants will be awarded with these funds. The California B–WET Program should not be considered a long-term source of funds; applicants must demonstrate how ongoing programs, once initiated, will be sustained.

The National Marine Sanctuary Program anticipates that typical project awards for Meaningful Watershed Experiences and Professional Development in the Area of Environmental Education for Teachers will range from $30,000 to $60,000. Proposals will be considered for funds greater than the specified ranges if there is sufficient demonstration that the project requires additional funds and/or if the proposal includes multiple partners. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Office as part of the terms when the award is made.

Statutory Authority: 33 U.S.C. 893 a(a).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.429, Marine Sanctuary Program.

Application Deadline: Proposals must be received by 5 p.m. Pacific Daylight Time on October 6, 2008.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: Attn: Seaberry Nachbar, B–WET Program Manager, Monterey Bay National Marine Sanctuary Office, 299 Foam Street, Monterey, CA 93940.

Information Contacts: Please visit the National Marine Sanctuaries CA B–WET Web site at: *http://sanctuaries.noaa.gov/news/bwet/welcome.html* or contact Seaberry Nachbar, Monterey Bay National Marine Sanctuary office, 299 Foam Street, Monterey, CA 93940, or by phone at 831–647–4201, or fax to 831–647–4250, or via Internet at *seaberry.nachbar@noaa.gov*.

Eligibility: Eligible applicants are K-through-12 public and independent schools and school systems, institutions of higher education, nonprofit organizations, state or local government agencies, and Indian tribal governments. The Department of Commerce/ National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that service undeserved areas. The National Marine Sanctuary Program encourages proposals involving any of the above institutions.

Cost Sharing Requirements: No cost sharing is required under this program; however, the National Marine Sanctuary Program strongly encourages applicants applying for either area of interest to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process with cash being the preferred method of contribution.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

6. International Coral

Summary Description: The NOAA Coral Reef Conservation Grant Program, as authorized under the Coral Reef Conservation Act of 2000, provides matching grants of financial assistance for international coral reef conservation projects. The Program solicits proposals under four funding categories: (1) Promote Watershed Management in the Wider Caribbean, Brazil, and Bermuda; (2) Support Planning for Effective Marine Protected Area Management; (3) Encourage the Development of National Networks of Marine Protected Areas in the Wider Caribbean, Bermuda, Brazil, Southeast Asia, and the South Pacific; and (4) Promote Regional Socio-Economic Training and Monitoring in Coral Reef Management in the Wider Caribbean, Brazil, Bermuda, the Western Indian Ocean, the Red Sea, the South Pacific, South Asia, and Southeast Asia. Each funding category has specific applicant and project eligibility criteria.

Funding Availability: NOAA announces the availability of up to $500,000 in FY 2009 to support grants and cooperative agreements under the International Coral Reef Grant Program. These funds will be used to support financial assistance awards under the program categories listed in section I.B. Program Priorities and III.C. Other Criteria that Affect Eligibility of the FFO. Applicants that are invited to submit a final application may be requested to revise award objectives, work plans, or budgets prior to submittal of the final application. The amount of funds to be awarded and the final scope of activities will be determined in pre-award negotiations among the applicant, NOAA Grants Management Division (GMD) and relevant NOAA staff. Up to approximately $500,000 may be available in FY 2009 to support grants and cooperative agreements under this program. Approximately $75,000–$100,000 may be allocated to each of the four project categories listed below, with the following award ranges: 1. Watershed Management: $30,000–$50,000; 2. Planning for Effective Marine Protected Area Management: Single sites: Up to $50,000; Multiple sites: Up to $80,000; 3. MPA National Networks: $40,000–$50,000; 4. Regional Socio-Economic Monitoring projects: $15,000–$30,000 Pre- and final applications with requests over the limit of each category will NOT be accepted. Pre- and final applications must be submitted under only one of the above mentioned categories. Funding will be subject to the availability of federal appropriations. Support in outyears after FY 2009 is contingent upon the availability of funds. Applicants should never begin a project in expectation of funds under this program. The International Program Office reserves the right to transfer any given proposal to another category within the International program if the proposal better addresses the criteria of another category.

Statutory Authority: Authority for the NOAA Coral Reef Conservation Grant Program is provided by Section 6403 (Coral Reef Conservation Program) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq.*).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.463, Habitat Conservation.

Application Deadline: Pre-applications must be received by NOAA by 5 p.m., U.S. Eastern Time, on Monday, November 3, 2008. Final applications must be received by NOAA by 5 p.m. U.S. Eastern Time, on Friday, February. 13, 2009.

Address for Submitting Proposals: 1. Pre-application Submission Information: Pre-applications may be submitted by surface mail or e-mail by 5 p.m., U.S. Eastern Time, November 3, 2008. Submissions by e-mail are preferred to *coral.grants@noaa.gov*. Acceptable electronic formats for narratives, attachments, and images are limited to Adobe Acrobat (.PDF), or Microsoft Word files. If submitting by surface mail, please include an electronic copy of the pre-application on CD. Federal financial assistance forms are NOT required to be submitted with the pre-application. If surface mail is selected, paper pre-applications must be submitted to: David Kennedy, NOAA Coral Reef Conservation Program Coordinator, Office of Response and Restoration, N/ORR, Room 10102, NOAA National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910. Fax submittals will also be accepted for pre-applications (Fax: 301–713–4389). b. Please note that late applications cannot be considered under any circumstances including e-mail transmission malfunctions.

Electronic files of pre-applications must arrive without viruses. If attachments cannot be opened due to a virus or they arrive with a virus, the pre-applications will be disqualified. You may call us at 301–713–3078 x218 before the deadline to ensure that your pre-application arrived.

2. Final Application Submission Information: Applicants who are invited to submit a final application may be required to make modifications or revisions to the project and budget narratives and must submit these narratives with a Federal financial assistance award application package (federal forms described below). Only applicants who submitted pre-applications by the deadline will be

eligible to be considered for invitations to submit a final application by 5 p.m., U.S. Eastern Time, on February 13, 2009. The applicant may submit the final application (narratives, federal forms, and supporting documentation) in one of two ways: Applications must be submitted through *http://www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: Scot Frew, NOAA/NOS International Program Office, 1315 East-West Highway, 5th Floor, N/IP, Room 5735, Silver Spring, MD 20910.

Applicants should consider the delivery time when submitting their pre- and final applications from international or remote areas. Late applications by any method cannot be accepted under any circumstances.

Information Contacts: Technical point of contact for International Coral Reef Conservation is Scot Frew, NOAA/NOS International Program Office, 301–713–3078, extension 220 or e-mail at *scot.frew@noaa.gov*.

Eligibility: Eligible applicants include institutions of higher education, U.S. and international non-profit organizations, and commercial organizations. U.S. federal agencies and individuals are not eligible. For specific country eligibility per category, please refer to individual category descriptions in Section V of the Federal Funding Opportunity. The proposed work must be conducted at a non-U.S. site. Eligible countries are defined as follows: The Wider Caribbean includes the 37 States and territories that border the marine environment of the Gulf of Mexico, the Caribbean Sea, and the areas of the Atlantic Ocean adjacent thereto, and Brazil and Bermuda, but excluding areas under U.S. jurisdiction. The South Pacific Region includes South Pacific Regional Environment Program's Pacific island countries and territories, including the Federated States of Micronesia, Republic of Palau, and the Republic of the Marshall Islands, but excluding U.S. territories and four developed country members. South Asia includes India, Sri Lanka, the Maldives, Pakistan, and Bangladesh. Southeast Asia Region includes Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Timor-Leste, and Vietnam. The Western Indian Ocean Region includes Comoros, France (La Reunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, the United Republic of Tanzania, and South Africa. The Red Sea Region includes five member countries of the Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden (PERSGA): Djibouti, Egypt, Jordan, the Kingdom of Saudi Arabia, and Yemen.

Cost Sharing Requirements: The International Coral Grant Program is subject to the matching fund requirements described below. As per section 6403(b)(1) of the Coral Reef Conservation Act of 2000, Federal funds for any coral conservation project funded under this Program may not exceed 50 percent of the total cost of the projects. Therefore, any coral conservation project under this program requires a 1:1 match. Match can come from a variety of public and private sources and can include in-kind goods and services such as private boat use and volunteer labor. Federal sources cannot be considered for matching funds, but can be described in the budget narrative to demonstrate additional leverage. Applicants are permitted to combine contributions from multiple non-federal partners in order to meet the 1:1 match recommendation, as long as such contributions are not being used to match any other funds.

Applicants must specify in their proposal the source(s) of match and may be asked to provide letters of commitment to confirm stated match contributions. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer. Applicants should be prepared to carefully document matching contributions for each project selected to be funded. As per section 6403(b)(2) of the Coral Reef Conservation Act of 2000, the NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: 1. No reasonable means are available through which an applicant can meet the matching requirement, and, 2. The probable benefit of such project outweighs the public interest in such matching requirement. In the case of a waiver request, the applicant must provide a detailed justification explaining the need for the waiver including attempts to obtain sources of matching funds, how the benefit of the project outweighs the public interest in providing match, and any other extenuating circumstances preventing the availability of match. Match waiver requests including the appropriate justification should be submitted as part of the final application package. Notwithstanding any other provisions herein, and in accordance with 48 U.S.C. 1469a(d), the Program shall waive any requirement for local matching funds for any project under $200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Please Note: Eligible applicants choosing to apply 48 U.S.C. 1469a(d) should note the use of the waiver and the total amount of funds requested to be waived in the matching funds section of the respective pre- and final applications.

Intergovernmental Review: Applications under the International Coral Reef Grant program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

7. NOAA's National Height Modernization Program

Summary Description: The purpose of this notice is to solicit proposals for cooperative agreements and/or grants between NOAA and partnering entities in the United States, implementing NOAA's National Height Modernization Program (NHMP) Plan. Proposals submitted in response to this announcement should contribute to the beneficial public outcomes associated with the five priority issues in this plan which consists of enhancing the vertical component of the National Spatial Reference System (NSRS); enabling users to access the vertical component of the NSRS; outreach and education regarding geospatial issues and activities as they relate to NHMP; capacity building and technology transfer as they relate to NHMP; coordination, cooperation, and collaboration with other entities to accomplish common goals as they relate to NHMP. This competition is focused on the geography of the United States and its territories in response to NOAA's NHMP Regional Implementation Plan and subsequent congressional appropriations. The program priorities for this opportunity support NOAA's mission support goal of: Commerce and Transportation, Enable safe, secure, and seamless movement of goods and people in the United States transportation system. Priorities addressing this mission goal also frequently are found to support NOAA's other mission goals: Improve protection, restoration, and management of coastal and ocean resources through ecosystem-based management; increase understanding of climate variability and change; and improve accuracy and

timeliness of weather and water information.

Funding Availability: Total anticipated funding for all awards is approximately $2,500,000 and is subject to the availability of FY 2009 appropriations. The anticipated federal funding per award (min-max) is approximately $50,000 to $1,200,000 per year. The anticipated number of awards ranges from 10 to 20, approximately, and will be adjusted based on available funding and quality of received proposals.

Statutory Authority: 33 U.S.C. 883a and 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.400, Geodetic Surveys and Services (Applications of the National Geodetic Reference System).

Application Deadline: Letters of Intent (LOIs) must be received by the National Ocean Service by 4 p.m. ET on August 1, 2008. Full proposals must be received no later than 4 p.m. ET, September 2, 2008.

Address for Submitting Proposals: A letter of intent (LOI) may be sent via e-mail to *Gilbert.Mitchell@noaa.gov*. Insert FY 2009 National NHMP Program as the subject line of the e-mail containing the LOI. Applicants submitting multiple LOIs must use a unique project title for each LOI and may send all LOIs in one e-mail or in multiple e-mails. If hard copy LOIs are submitted, an original and two copies should be sent to the attention of Gilbert Mitchell at 1315 East-West Highway, N/NGS1, Room 9356, SSMC3, Silver Spring, MD 20910 contact him at 301–713–3228x114 or e-mail *Glbert.Mitchell@NOAA.gov*. Full proposal application packages must be submitted through Grants.gov. If an applicant does not have Internet access, one set of originals (signed) and two copies of the hard copy proposals and related forms should be mailed to the attention of Gilbert Mitchell at 1315 East-West Highway, N/NGS1, Room 9356, SSMC3, Silver Spring, MD 20910 contact him at 301–713–3228x114 No e-mail or fax copies will be accepted.

Information Contacts: For administrative questions, contact Gilbert Mitchell, NOAA NOS, SSMC3; 1315 East-West Highway, Silver Spring, MD 20910, or by phone at 301–713–3228 Extension 114, or by fax 301–713–4176, or via e-mail at *Gilbert.Mitchell@noaa.gov*. For technical questions regarding this announcement, contact Renee Shields, NOAA NOS SSMC3; 1315 East-West Highway, Silver Spring, MD 20910; or contact her by phone at 301–713–3231 Extension 115, or by fax 301–713–4176, or via e-mail at *Renee.Shields@noaa.gov.*

Eligibility: Eligible funding applicants are institutions of higher education, state, local and Indian tribal governments.

Cost Sharing Requirements: There is no requirement for cost sharing.

Intergovernmental Review: Funding applications under the National Ocean Service are subject to Executive Order 12372, Intergovernmental Review of Federal Programs. It is the state agency's responsibility to contact their state's Single Point of Contact (SPCO) to find out about and comply with the state's process under EO 12372. To assist the applicant, the names and addresses of the SPOCs are listed on the Office of Management and Budget's Web site *http://www.whitehouse.gov/omb/grants/spoc.html.*

8. National Coastal and Estuarine Research and Technology Program

Summary Description: The National Oceanic and Atmospheric Administration (NOAA) seeks to establish a national estuarine research and technology program which operates in partnership with the National Estuarine Research Reserve System (NERRS). Funds will be used to conduct collaborative research and transform the best available science into practical innovative tools that coastal managers can use to detect, prevent, and reverse the impacts of coastal pollution and habitat degradation. Additionally, the program will provide coastal and estuarine managers a better understanding of what tools are available, how well they work, and how best to apply them to detect, prevent, and reverse the impacts of coastal pollution and habitat degradation.

Funding Availability: Funding is contingent upon the availability of Federal appropriations. NOAA's Estuarine Reserves Division anticipates up to $5,232,000 will be available to fund a National Coastal and Estuarine Research and Technology Program under this competition. Applicants are hereby given notice that funds have not yet been appropriated for this program. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

Statutory Authority: Section 310 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456c.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.419, Coastal Zone Management Administration Awards.

Application Deadline: Applications must be submitted no later than 5 p.m. (EDT) on September 9, 2008. No facsimile or electronic mail applications will be accepted.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov,* unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: Erica Seiden, 1305 East-West Highway, N/ORM5, SSMC4 10542, Silver Spring, MD 20910. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Information Contacts: Technical Information: Erica Seiden, OCRM/ERD Project Manager, *Erica.Seiden@noaa.gov,* 301–563–1172. Business Management Information: Erica Seiden, OCRM/ERD Project Manager, *Erica.Seiden@noaa.gov,* 301–563–1172.

Eligibility: Eligible applicants are non-Federal institutions of higher education, other non-profits, commercial organizations, and state and local governments that possess the statutory authority to receive financial assistance. Please note that: (1) The Office of Ocean and Coastal Resource Management, Estuarine Reserves Division (OCRM/ERD) will not fund any Federal Full Time Employee (FTE) salaries, but will fund travel, equipment, supplies, and contractual personnel costs associated with the proposed work. (2) Researchers must be employees of an eligible entity listed above; and proposals must be submitted through that entity. Non-Federal researchers should comply with their institutional requirements for proposal submission. (3) OCRM/ERD will accept proposals that include foreign researchers as collaborators with a researcher who has met the above stated eligibility requirements.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

9. National Estuarine Research Reserve Graduate Research Fellowship Program FY2009

Summary Description: The National Estuarine Research Reserve System of NOAA announces the availability of graduate research fellowships. The National Estuarine Research Reserve System (NERRS) consists of estuarine areas of the United States and its territories which are designated and managed for research and educational purposes. Each reserve within the system is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921. Each reserve supports a wide range of beneficial uses of ecological, economic, recreational, and aesthetic values which are dependent upon the maintenance of a healthy ecosystem. The sites provide habitats for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For detailed descriptions of the sites, refer to the NERR Web site at *http://www.nerrs.noaa.gov/fellowship* or contact the site staff.

Funding Availability: The Estuarine Reserves Division anticipates that 25 Graduate Research Fellowships will be competitively awarded to provide funding to qualified graduate students whose research occurs within the boundaries of at least one reserve. Minority students are encouraged to apply for these fellowships. The amount of the fellowship is $20,000; at least 30% of total project cost match is required by the applicant (i.e. $8,572 match for $20,000 in federal funds for a total project cost of $28,572).

Statutory Authority: Section 315 of the Coastal Zone Management Act of 1972, as amended CZMA), 16 U.S.C. 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461(e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a National Estuarine Research Reserve that are consistent with the research guidelines developed under subsection (c).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.420, Coastal Zone Management Estuarine Research Reserves.

Application Deadline: Applications must be submitted through *www.grants.gov* no later than 11 p.m. (EST) November 1, 2008 or postmarked no later than November 1, 2008.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov,* unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: Alison Krepp, Graduate Research Fellowship Coordinator, NOAA Estuarine Reserves Division, 1305 East West Highway, N/ORM 5, SSMC 4 Station 10503 Silver Spring MD 20910.

Information Contacts: For questions regarding the program and application process, please contact Alison Krepp (301–713–3155 ext. 105) at NOAA/Estuarine Reserves Division, 1305 East-West Highway, N/ORM 5, SSMC 4, Station 10503, Silver Spring, MD 20910 or via e-mail: *Alison.Krepp@noaa.gov,* or fax: 301–713–4012. The program Web site can be accessed at *http://www.nerrs.noaa.gov/fellowship.* If the Web page does not provide sufficient information and Alison Krepp is unavailable, please contact Erica Seiden at (301) 713–3155 ext. 172 or *erica.seiden@noaa.gov.* For further information on specific research opportunities at National Estuarine Research Reserves, contact the site staff listed in Appendix I of the FFO.

Eligibility: Awards are normally made to the fellow's graduate institution through the use of a grant. However, institutions eligible to receive awards include institutions of higher education, other non-profits, commercial organizations, and state and local governments. All reserve staff are ineligible to submit an application for a fellowship under this announcement. Funds are expected to be available on a competitive basis to qualified graduate students for research within a reserve(s) leading to a graduate degree. Applicants must be admitted to or enrolled in a full-time master's or doctoral program at a U.S. accredited university in order to be eligible to apply. Applicants should have completed a majority of their graduate course work at the beginning of their fellowship and have an approved thesis research program. Minority students are encouraged to apply.

Cost Sharing Requirements: Requested federal funds must be matched by at least 30 percent of the TOTAL cost, not the federal share, of the project (i.e. $8,572 match for $20,000 in federal funds for a total project cost of $28,572). Requested overhead costs and institutional fees that do not qualify as direct costs under fellowship awards are limited to 10% of the federal amount. Waived overhead costs may be used as match.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants should contact their State Single Point of Contact (SPOC) to find out about and comply with the State's process under EO12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's Web site at *http://www.whitehouse.gov/omb/grants/spoc.html.*

10. National Estuarine Research Reserve Land Acquisition and Construction Program FY 2009

Summary Description: This funding opportunity announces funding for land acquisition/construction awards. The National Estuarine Research Reserve System consists of estuarine areas of the United States and its territories which are designated and managed for research and educational purposes. Each reserve within the system is chosen to represent different bio-geographic regions and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921. Through the funding of designated reserve agencies and universities to undertake land acquisition and construction projects that support the NERRS purpose, NOAA will strengthen protection of key land and water areas; enhance long-term protection of the area for research and education; and provide for facility and exhibit construction.

Funding Availability: This funding opportunity announces that approximately $6.89 million may be available to designated reserve agencies or universities through this announcement for fiscal year 2009, subject to availability of funding. It is anticipated that 5 to 23 total projects may be funded. Awards will be issued as competitive grants. It is anticipated that the awards will run for up to two years. In the past, funding for land acquisition/construction awards has ranged in amount from approximately $50,000 to $3 million.

Statutory Authority: Authority for the NERR program is provided by 16 U.S.C. 1461(e)(1)(A)(i),(ii), and (iii).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.420, Coastal Zone Management Estuarine Research Reserves.

Application Deadline: Complete grant applications must be received or postmarked by 5 p.m., Eastern Standard Time, November 30, 2008.

Address for Submitting Proposals: Applications must be submitted through *www.grants.gov,* unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: NOS/OCRM/ERD, Nina Garfield, 1305 East-West Highway, Room 10505, Silver Spring, MD 20910.

Information Contacts: Administrative and Technical questions regarding the program and application process, please contact Nina Garfield, program coordinator, at NOAA/Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, SSMC4, Station 10505, Silver Spring, MD 20910 or via phone: 301–563–1171 ext. 171, e-mail: contact *Nina.Garfield@noaa.gov,* or fax: 301–713–4363. The program Web site can be accessed at *http://www.ocrm.nos.noaa.gov/nerr.html.* Other questions should be directed to Nina Garfield of ERD at 301–563–1171 ext. 171, or fax 301–713–4012, or via Internet at *Nina.Garfield@noaa.gov* or Laurie McGilvray at (301) 713–3155 ext. 158, *laurie.mcgilvray@noaa.gov.*

Eligibility: Eligible applicants are NERR lead state agencies or universities in coastal states. Eligible applicants should have completed all requirements as stated in the NERRS regulations at Title 15—Commerce and Foreign Trade, Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce, Part 921—National Estuarine Research Reserve System Regulations (15 CFR part 921) *http://nerrs.noaa.gov/Background_Regulations.html.*

Cost Sharing Requirements: The amount of federal funds requested must be matched by the applicant: 30 percent total project match for construction awards and 50 percent total project match for land acquisition awards. Cash or in-kind contributions directly benefiting the project may be used to satisfy the matching requirements. If using Reserve land acquisition banked match, a list of the banked match must be included with the application. Applicants must identify all match sources and amounts equal to that requested above.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants should contact their State Single Point of Contact (SPOC) to find out about and comply with the States process under EO12372. The names and addresses of the SPOCs are listed in the Office of Management and Budgets Web site at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Oceanic and Atmospheric Research (OAR)

1. Climate Program Office for FY 2009

Summary Description: NOAA'S Climate Mission Goal is to understand climate variability and change to enhance society's ability to plan and respond. The long-term climate efforts of NOAA are designed to develop a predictive understanding of variability and change in the global climate system, and to advance the application of this information in climate-sensitive sectors through a suite of process research, observations and modeling, and application and assessment activities. The NOAA Climate Program Office coordinates climate activities across all NOAA in fulfillment of NOAA's Climate Mission Goal. The Program partners with Federal, academic, private, and international research institutions and is a key contributing element of the U.S. Climate Change Science Program (CCSP).

Funding Availability: In FY 2007, approximately $8M in first-year funding was available for 94 new awards. Similar funds and number of awards are anticipated in FY 2009. Please be advised that the number of new awards and funding levels will depend upon the final FY 2009 budget appropriations. It is anticipated that awards will be up to three years in length and cost between $50,000 and $200,000 per year. Federal funding for FY 2010 may be used to fund some awards submitted under this Competition. Current or previous grantees are eligible to apply for a new award that builds on, but does not replicate, activities covered in the current or previous award. Current grantees should not apply for supplementary funding through this announcement.

Statutory Authority: 49 U.S.C. 47720(b), 15 U.S.C. 2904, 15 U.S.C. 2931–2934.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.431, Climate and Atmospheric Research.

Application Deadline: Full applications for all Competitions must be received by 5 p.m. Eastern Time, October 9, 2008. Letters of Intent for all Competitions, although not required, should be received by 5 p.m. Eastern Time, August 11, 2008. LOIs should be submitted by e-mail to the identified Competition Manager.

Address for Submitting Proposals: 1. Letter of Intent Submission LOIs should be submitted by e-mail to the identified NOAA Competition Manager listed with each Competition in the Program Priorities section. If an applicant does not have Internet access, LOI hard copies may be sent to the Competition Managers. Hard copies should be sent to NOAA Climate Program Office (R/CP1), SSMC3, Room 12112, 1315 East-West Highway, Silver Spring, MD 20910 or faxed to 301–713–0518. Please allow two weeks after receipt for a response. 2. Full Applications must be submitted through *www.grants.gov.* If an applicant does not have Internet access, the CPO Grants Manager Diane Brown should be contacted by mail at NOAA Climate Program Office (R/CP1), SSMC3, Room 12112, 1315 East-West Highway, Silver Spring, MD 20910 for hard copy submission instructions. Please allow two weeks after receipt for a response.

Information Contacts: Please visit the CPO Web site for further information *http://www.climate.noaa.gov/* or contact the CPO Grants Manager, Diane Brown by mail (see Address above). Please allow up to two weeks after receipt for a response.

Eligibility: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of federal programs.

2. 2009 NMFS-Sea Grant Fellowships in Marine Resource Economics

Summary Description: The Graduate Fellowship Program generally awards two new PhD fellowships each year to students who are interested in careers related to the development and implementation of quantitative methods for assessing the economics of the conservation and management of living marine resources. Fellows will work on thesis problems of public interest and relevance to NMFS under the guidance of NMFS mentors at participating NMFS Science Centers or Laboratories. The NMFS-Sea Grant Fellowships in Marine Resource Economics meets NOAA's Mission goal of ''Protect, Restore and Manage the Use of Coastal and Ocean Resources Through Ecosystem-Based Management.''

Funding Availability: The NMFS-Sea Grant Joint Graduate Fellowship Program in Marine Resource Economics

expects to support two new fellowships for up to 2 years for each fellowship.

Statutory Authority: Authority for the Resource Economics Graduate Fellowship Program is provided by the following: 33 U.S.C. 1127(a).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Applications must be received by 4 pm, Eastern Time February 20, 2009 by the National Sea Grant Office (NSGO). For applications submitted through *www.grants.gov,* a date and time receipt indication is included and will be the basis of determining timeliness. The State Sea Grant programs are encouraged to ask for applications from fellowship applicants a month before the due date to facilitate the entry of non-electronic applications into Grants.gov.

Address for Submitting Proposals: Applications from Sea Grant programs must be submitted through *www.grants.gov.* Facsimile transmission and electronic mail submission of applications will not be accepted.

Information Contacts: Contact Miguel Lugo, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 734–1075; e-mail: *Miguel.Lugo@noaa.gov.*

Eligibility: Prospective Fellows must be United States citizens. At the time of application, prospective Marine Resource Economics Fellows must be admitted to a PhD degree program in natural resource economics or a related field at an institution of higher education in the United States or its territories or submit a signed letter from the institution indicating provisional acceptance to a PhD degree program conditional on obtaining financial support such as this fellowship. Applications must be submitted by the institution of higher education, which may be any such institution in the United States or its territories.

Cost Sharing Requirements: Of the $38,500 award, 50 percent ($19,250) will be contributed by NMFS, 33 ⅓ percent ($12,833) by the National Sea Grant Office (NSGO), and 16 ⅔ percent ($6,417) by the institution of higher education as the required 50 percent match of NSGO funds.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

3. 2009 NMFS-Sea Grant Fellowships in Population Dynamics

Summary Description: The Graduate Fellowship Program generally awards two new PhD fellowships each year to students who are interested in careers related to the development and implementation of quantitative methods for assessing the economics of the conservation and management of living marine resources. Fellows will work on thesis problems of public interest and relevance to NMFS under the guidance of NMFS mentors at participating NMFS Science Centers or Laboratories. The NMFS-Sea Grant Fellowships in Population Dynamics meets NOAA's Mission goal of ''Protect, Restore and Manage the Use of Coastal and Ocean Resources Through Ecosystem-Based Management.''

Funding Availability: The Graduate Fellowship Program awards at least two new PhD fellowships each year to students who are interested in careers related to the population dynamics of living marine resources and the development and implementation of quantitative methods for assessing their status. The award for each Fellowship, contingent upon the availability of Federal funds, will be a multi-year cooperative agreement in the amount of $38,500 per year for up to three years. This involvement includes serving for 10–20 days aboard a research or commercial vessel during a scientific survey or experimental activity. Additionally, the Fellow may work on his/her thesis research or related activity at a participating NMFS facility. The Fellow's work will be overseen by a NMFS mentor who will provide advice and guidance.

Statutory Authority: Authority for the Population Dynamics Graduate Fellowship Program is provided by the following: 33 U.S.C. 1127(a).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Applications must be received by 4 p.m., Eastern Time February 20, 2009 by the National Sea Grant Office (NSGO). For applications submitted through Grants.gov APPLY, a date and time receipt indication is included and will be the basis of determining timeliness. The State Sea Grant programs are encouraged to ask for applications from fellowship applicants a month before the due date to facilitate the entry of non-electronic applications into Grants.gov.

Address for Submitting Proposals: Applications from Sea Grant programs must be submitted through *www.grants.gov.* Facsimile transmission and electronic mail submission of applications will not be accepted.

Information Contacts: Contact Miguel Lugo, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 734–1075; e-mail: *Miguel.Lugo@noaa.gov.*

Eligibility: Prospective Fellows must be United States citizens. At the time of application, prospective Population Dynamics Fellows must be admitted to a PhD degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology at an institution of higher education in the United States or its territories, or submit a signed letter from the institution indicating provisional acceptance to a PhD degree program conditional on obtaining financial support such as this fellowship. Applications must be submitted by the institution of higher education, which may be any such institution in the United States or its territories.

Cost Sharing Requirements: Of the $38,500 award, 50 percent ($19,250) will be contributed by NMFS, 33 ⅓ percent ($12,833) by the National Sea Grant Office (NSGO), and 16 ⅔ percent ($6,417) by the institution of higher education as the required 50 percent match of NSGO funds.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

4. 2010 Dean John A. Knauss Marine Policy Fellowship (Knauss Fellowship Program)

Summary Description: This notice announces that applications may be submitted for the Dean John A. Knauss Marine Policy Fellowship (Knauss Fellowship). The Knauss Fellowship is a program initiated by the National Oceanic and Atmospheric Administration (NOAA) National Sea Grant Office (NSGO), in fulfilling its broad educational responsibilities and legislative mandate of the Sea Grant Act, to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine and aquatic-related fields. The Knauss Fellowship meets NOAA's Mission goal of Protect, Restore and Manage the Use of Coastal and Ocean Resources Through Ecosystem-Based Management.

Funding Availability: The SGCP program receives and administers the overall cooperative agreement of $44,000 per student on behalf of each Fellow selected from their program. Of this amount, the local Sea Grant program provides $34,000 to each Fellow for stipend and living expenses (per diem). $8,000 will be used to cover mandatory health insurance for the

Fellow and moving expenses. Any remaining funds of the $8,000 shall be used for the fellow during the Fellowship year, first to satisfy academic degree-related activities, and second for Fellowship-related activities. Finally, up to $2,000 from the total $44,000 can be used to cover placement week costs. Indirect costs are not allowable from the Federal funds either for the Fellowships or for any costs associated with the Fellowships, including the $2,000 budgeted for placement week. These costs, though, can be denoted as matching funds. During the Fellowship, the host may provide supplemental funds for work-related travel by the Fellow. The SGCP awards 30–50 agreements each year. Not less than 30 applicants will be selected, of which the selected applicants assigned to the Congress maybe limited to 10.

Statutory Authority: 33 U.S.C. 1127(b).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Applications from prospective fellows to the State Sea Grant College Programs (SGCP) are due February 20, 2009. Contact your state Sea Grant program (see IV.A. of the Federal Funding Opportunity for program contact information) for information on deadlines. Selected applications from the sponsoring SGCP are to be received in the National Sea Grant Office (NSGO) through Grants.gov no later than 5 p.m. Eastern Daylight Time (EDT) on April 03, 2009. For applications submitted through Grants.gov, a date and time receipt indication is included and will be the basis of determining timeliness.

Address for Submitting Proposals: Eligible graduate students must submit applications to the SGCP. The addresses and contact information for each SGCP can be found at *http://www.seagrant.noaa.gov/other/programsdirectors.html.* The addresses can also be received from Miguel Lugo, Knauss Fellowship Program Manager, National Sea Grant College Program, 1315 East-West Highway, R/SG, Rm 11718, Silver Spring, MD 20910. After the State Sea Grant Program review, selected applications from the sponsoring SGCP must be submitted through *www.grants.gov.* SGCP without Internet access may send hard copy proposals to Miguel Lugo at the above address.

Information Contacts: Contact Miguel Lugo, Knauss Fellowship Program Manager, National Sea Grant College Program, 1315 East-West Highway, R/SG, Rm 11718, Silver Spring, MD 20910; tel: (301) 734–1077 x1075.

Eligibility: Any student, regardless of citizenship, who, on February 20, 2009, is in a graduate or professional program in a marine or aquatic-related field at a United States accredited institution of higher education in the United States or U.S. Territories may apply.

Cost Sharing Requirements: There will be the one-third required cost share of the total cost of the award for those applicants selected as legislative fellows.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

5. FY 2009 Joint Hurricane Testbed

Summary Description: The Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), is soliciting LOIs (Letters of Intent) under the United States Weather Research Program (USWRP), as administrated by the USWRP Joint Hurricane Testbed (JHT). This notice also provides guidelines for the submission of full proposals. This notice describes opportunities and application procedures for the transfer of relevant research and technology advances into tropical cyclone analysis and forecast operations. This notice calls for researchers to submit proposals to test and evaluate, and modify if necessary, in a quasi-operational environment, their own scientific and technological research applications. Projects satisfying metrics for success and operational constraints may be selected for operational implementation by the operational center(s) after the completion of the JHT-funded work. The period of the award is from one to two years. This opportunity addresses the NOAA mission goal of ''Serving Society's Needs for Weather and Water Information.''

Funding Availability: The estimate for total JHT funding that will be available in FY 2009 is $1,250,000, which will likely be used to fund 10–15 new projects. Award amounts for previous JHT grants have been mostly between $50,000 and $200,000 per year. A similar range is expected for this announcement. Initial and renewal funding of any JHT proposals is contingent upon availability of these funds. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs.

Statutory Authority: 49 U.S.C. 44720(b), 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.431, Climate and Atmospheric Research.

Application Deadline: Letters of Intent (LOIs) submitted by Principal Investigators (PIs) must be received no later than 5 p.m. Eastern Daylight Time (EDT) on 31 July 2008. LOIs received after the deadline will not be reviewed, but in such cases PIs are still permitted to submit a full proposal. Response letters will be sent from NOAA no later than 22 September 2008. Full proposals must be received no later than 5 p.m. Eastern Daylight Time (EDT) on 30 October 2008. Full proposals received after the deadline will not be considered for funding.

Address for Submitting Proposals: Letters of Intent (LOs) should be submitted to the JHT Director—Dr. Jiann-Gwo Jiing—preferably by e-mail at: *Jiann-Gwo.Jiing@noaa.gov.* Those without e-mail access should send a printed copy to: Dr. Jiann-Gwo Jiing, Director, Joint Hurricane Testbed, Tropical Prediction Center, 11691 SW. 17th Street, Miami, FL 33165. Full proposal packages must be submitted through the *www.grants.gov* Web site. For those without Internet access or for federal agency submissions, hard copy proposal packages with original signatures should be addressed to Dorothy Fryar, DOC/NOAA, Office of Weather & Air Quality Research, Routing Code R/WA, 1315 East-West Highway, Room 11209, Silver Spring, MD 20910. Ms. Fryar's phone number is 301–734–1179.

Information Contacts: Please visit the Joint Hurricane Testbed Web site for further information at: *http://www.nhc.noaa.gov/jht/index.shtml* or contact Dr. Jiann-Gwo Jiing, Director, Joint Hurricane Testbed, Tropical Prediction Center, 11691 SW. 17th Street, Miami, FL 33165, phone (305) 229–4443, or via e-mail at *Jiann-Gwo.Jiing@noaa.gov.* Any technical questions addressed by Dr. Jiing (or his authorized representative) about this JHT funding opportunity and the answers will be posted on the JHT Web site.

Eligibility: Eligible applicants are institutions of higher education; other nonprofits; commercial organizations; foreign governments; organizations under the jurisdiction of foreign governments; international organizations; state, local and Indian tribal governments; and Federal agencies. Applications from non-Federal and Federal applicants will be competed against each other.

Cost Sharing Requirements: No cost sharing is required under this program.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

6. FY 2009 Ocean Exploration Omnibus—Education

Summary Description: In prior years, OE has funded the development of educational products to enable teachers to bring NOAA science into classrooms throughout the country. With this announcement, OE is seeking proposals that will facilitate the use of NOAA science in formal and informal education environments by extending the use of existing OE education products, located on its Web site *http://oceanexplorer.noaa.gov,* in school districts and other learning centers throughout the country. OE is seeking pre-proposals and full proposals to support its mission, consistent with NOAA's Strategic Plan (*http://www.nrc.noaa.gov*), to further ocean science education and ocean literacy. It is anticipated that a total of approximately $300,000 will be available through this Ocean Exploration Education announcement. Only ocean education proposals will be funded, any other kind of project will not be reviewed. Applicants are encouraged to visit the Ocean Explorer Web site (*http://www.oceanexplorer.noaa.gov*) to familiarize themselves with past and present OE-funded activities.

Funding Availability: In anticipation of the FY09 President's Budget, OE anticipates a total of approximately $300,000 will be available through this Ocean Exploration Education announcement. Depending on the quality and quantity of proposals received, a minimum of six projects are expected to be funded, resulting in an average award level of approximately $50,000. The OE Director may hold-over select proposals submitted for 2009 funding for consideration in 2010. The amount of funding available through this announcement is subject to the final FY09 appropriation for Ocean Exploration. Publication of this announcement does not obligate NOAA to fund any specific project or to obligate all or any part of available funds. There is no guarantee that sufficient funds will be available to initiate or continue research activities where funding has been recommended by OE. The exact amount of funds that OE may recommend be granted will be determined in pre-award negotiations between the applicant and NOAA representatives. Future opportunities for submitting proposals may be available and will depend on OE funding levels.

Statutory Authority: 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.460, Special Oceanic and Atmospheric Projects.

Application Deadline: Completed pre-proposals are required for all categories and must be received by 5 p.m. (EDT) on August 29, 2008. Full proposal submissions must be received by 5 p.m. (EDT) on October 21, 2008. Applications received after the above deadlines will not be considered.

Address for Submitting Proposals: Pre-proposal submissions can be either by e-mail (preferred, send to (*OAR.OE.FAQ@noaa.gov*) or by hard-copy (see address below). If by e-mail, please put your last name in the subject heading along with the words OE Pre-proposal, *e.g.*, ''Smith OE Pre-proposal.'' Adobe PDF format is preferred. No facsimile pre-proposals will be accepted. Full proposal submissions must be through Grants.gov, except for those non-Federal applicants without Internet access and Federal applicants, who may submit hard copies to ATTN: Dr. Nicolas Alvarado, Proposal Manager, NOAA Office of Ocean Exploration & Research, SSMC3, 10th Floor, 1315 East-West Highway, Silver Spring, Maryland 20910. (see Address below.) No e-mail or facsimile proposal submissions will be accepted.

Information Contacts: For further information contact the NOAA Office of Ocean Exploration at (301) 734–1015 or submit inquiries via e-mail to the Frequently Asked Questions address: *OAR.OE.FAQ@noaa.gov.;* e-mail inquiries should include the Principal Investigator's name in the subject heading. Inquiries can be mailed to: ATTN: Dr. Nicolas Alvarado, NOAA Office of Ocean Exploration, 1315 East-West Highway, SSMC3, 10th Floor, Silver Spring, Maryland 20910.

Eligibility: Eligible applicants are institutions of higher education; other nonprofits; commercial organizations; foreign governments; organizations under the jurisdiction of foreign governments; international organizations; state, local and Indian tribal governments; and Federal agencies. PLEASE NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Cost Sharing Requirements: Cost-sharing is not required.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOC's are listed in the Office of Management and Budget's Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

7. FY 2009 Ocean Exploration Omnibus—Marine Archaeology

Summary Description: Proposals for exploration and discovery of significant maritime heritage sites are the priority. Submerged, previously subaerial, landscapes, shipwrecks, and other maritime cultural sites are typical focus subjects of the program. Proposals will emphasize the early phases of field archaeology: searching, locating, evaluating or inventorying sites. This Announcement does not invite proposals to support later phases of archaeological research, such as intensive site excavations, and major conservation projects. All applicants must convincingly describe: The archaeological significance of their site(s), and their importance to human history; how their research fits within the realm of exploration; why their methodologies are innovative and make the most economical use of current marine technology. OE is seeking pre-proposals and full proposals to support its mission, consistent with NOAA's Strategic Plan (*http://www.nrc.noaa.gov*), to search, investigate, and document marine archaeological resources. OE is seeking proposals for exploration and discovery of significant maritime heritage sites, including submerged, previously subaerial, landscapes, shipwrecks, aircraft, and other maritime cultural sites. Competitive OE proposals will be bold, innovative and interdisciplinary in their approach and objectives. Proposals will emphasize the early phases of field archaeology: searching, locating, evaluating or inventorying sites. Marine Archaeology projects may be conducted in any of the world's oceans, coasts or Great Lakes regions, on any suitable platform, vessel or other charter. It is anticipated that a total of approximately $400,000 will be available through this announcement. Only marine archaeology proposals will be funded. Any other kind of project will not be reviewed. Applicants are encouraged to visit the Ocean Explorer

Web site (*http://www.oceanexplorer.noaa.gov*) to familiarize themselves with past and present OE-funded activities. Background on how to apply and the required proposal cover sheets are accessible through the OE Office Web site at *http://www.explore.noaa.gov/opportunity/welcome.html.* The program priorities for this opportunity support NOAAs mission support goal of: Ecosystems—Protect, Restore, and Manage Use of Coastal and Ocean Resources through Ecosystem-Based Management. Full proposal submissions for non-Federal applicants must be submitted through Grants.gov. Federal applicants or applicants without Internet access may submit hard-copies to: ATTN: Dr. Nicolas Alvarado, Proposal Manager, NOAA Office of Ocean Exploration & Research, SSMC III, 10th Floor, 1315 East-West Highway, Silver Spring, MD 20910. No E-mail or facsimile full proposal submissions will be accepted.

Funding Availability: In anticipation of the FY09 President's Budget, OE anticipates a total of approximately $400,000 will be available through this announcement for Marine Archaeology. OE anticipates supporting approximately four awards through this solicitation, averaging $100,000. The OE Director may hold-over select proposals submitted for 2009 funding for consideration in 2010. The amount of funding available through this announcement is subject to the final FY09 appropriation for Ocean Exploration. Publication of this announcement does not obligate NOAA to fund any specific project or to obligate all or any part of available funds. There is no guarantee that sufficient funds will be available to initiate or continue research activities where funding has been recommended by OE. The exact amount of funds that OE may recommend be granted will be determined in pre-award negotiations between the applicant and NOAA representatives. Future opportunities for submitting proposals may be available and will depend on OE funding levels.

Statutory Authority: 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.460, Special Oceanic and Atmospheric Projects.

Application Deadline: Completed pre-proposals are required for all categories and must be received by 5 p.m. (EDT) on August 29, 2008. Full proposal submissions must be received by 5 p.m. (EDT) on October 21, 2008. Applications received after the above deadlines will not be considered.

Address for Submitting Proposals: Pre-proposal submissions can be either by E-mail (preferred, send to *OAR.OE.FAQ@noaa.gov*) or by hard-copy (send three copies to the mailing address below). If by E-mail, please put your last name in the subject heading along with the words OER Pre-proposal, *e.g.*, ''Smith OER Pre-proposal.'' Adobe PDF format is preferred. No facsimile pre-proposals will be accepted. Full proposal submissions for non-Federal applicants must be submitted through Grants.gov. Federal applicants or applicants without Internet access may submit hard-copies to: ATTN: Dr. Nicolas Alvarado, Proposal Manager, NOAA Office of Ocean Exploration & Research, SSMC III, 10th Floor, 1315 East-West Highway, Silver Spring, MD 20910. No E-mail or facsimile full proposal submissions will be accepted.

Information Contacts: For further information contact the NOAA Office of Ocean Exploration at (301) 734–1015 or submit inquiries via E-mail to the Frequently Asked Questions address: *oar.oe.FAQ@noaa.gov.;* E-mail inquiries should include the Principal Investigator's name in the subject heading. Inquiries can be mailed to ATTN: Dr. Nicolas Alvarado (Proposal Manager), NOAA Office of Ocean Exploration, 1315 East-West Highway, SSMC3, 10th Floor, Silver Spring, MD 20910.

Eligibility: Eligible applicants are institutions of higher education; other nonprofits; commercial organizations; foreign governments; organizations under the jurisdiction of foreign governments; international organizations; state, local and Indian tribal governments; and Federal agencies. PLEASE NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Cost Sharing Requirements: Cost-sharing is not required.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOC's are listed in the Office of Management and Budget's Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

8. FY 2009 Ocean Exploration Omnibus—Ocean Exploration

Summary Description: OE is seeking pre-proposals and full proposals to support its mission, consistent with NOAA's Strategic Plan (*http://www.nrc.noaa.gov*), to search, investigate, and document poorly-known and unknown areas of the ocean and Great Lakes through interdisciplinary exploration, and to advance and disseminate knowledge of the ocean environment and its physical, chemical, and biological resources. Competitive OE proposals will be bold, innovative and interdisciplinary in their approach to Ocean Exploration. NOAA OE anticipates a total of approximately $1,400,000 including costs for ship and submersible assets will be available through this announcement. Only exploratory proposals will be funded, any other kind of project will not be reviewed. Applicants are encouraged to visit the Ocean Explorer Web site (*http://www.oceanexplorer.noaa.gov*) to familiarize themselves with past and present OE-funded activities. Background on how to apply and the required proposal cover sheets are accessible through the OE Office Web site at *http://www.explore.noaa.gov.* The program priorities for this opportunity support NOAA's mission support goal of: Ecosystems—Protect, Restore, and Manage Use of Coastal and Ocean Resources through Ecosystem-Based Management. Pre-proposal submissions can be either by E-mail (preferred, send to *OAR.OE.FAQ@noaa.gov* or by hard-copy (send three copies to the mailing address below). If by E-mail, please put your last name in the subject heading along with the words OER Pre-proposal, e.g., ''Smith OER Pre-proposal.'' Adobe PDF format is preferred. No facsimile pre-proposals will be accepted. Full proposal submissions for non-Federal applicants must be submitted through Grants.gov. Federal applicants or applicants without Internet access may submit hard-copies to: ATTN: Dr. Nicolas Alvarado, Proposal Manager, NOAA Office of Ocean Exploration & Research, SSMC III, 10th Floor, 1315 East-West Highway, Silver Spring, Maryland 20910. No E-mail or facsimile full proposal submissions will be accepted.

Funding Availability: In anticipation of the FY09 President's Budget, OE anticipates a total of approximately $1,400,000 will be available through this announcement. Depending on the quality and quantity of proposals received, OE anticipates supporting approximately 4 awards through this solicitation, resulting in an average

award level of approximately $350,000. The OE Director may hold-over select proposals submitted for 2009 funding for consideration in 2010. The amount of funding available through this announcement is subject to the final FY09 appropriation for Ocean Exploration. Publication of this announcement does not obligate NOAA to fund any specific project or to obligate all or any part of available funds. There is no guarantee that sufficient funds will be available to initiate or continue research activities where funding has been recommended by OE. The exact amount of funds that OE may recommend be granted will be determined in pre-award negotiations between the applicant and NOAA representatives. Future opportunities for submitting proposals may be available and will depend on OE funding levels.

Statutory Authority: 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.460, Special Oceanic and Atmospheric Projects.

Application Deadline: Completed pre-proposals are required for all categories and must be received by 5 p.m. (EDT) on August 29, 2008. Full proposal submissions must be received by 5 p.m. (EDT) on October 21, 2008. Applications received after the above deadlines will not be considered.

Address for Submitting Proposals: Pre-proposal submissions can be either by E-mail (preferred, send to *OAR.OE.FAQ@noaa.gov* or by hard-copy (send three copies to the mailing address below). If by E-mail, please put your last name in the subject heading along with the words OER Pre-proposal, e.g., ''Smith OER Pre-proposal.'' Adobe PDF format is preferred. No facsimile pre-proposals will be accepted. Full proposal submissions for non-Federal applicants must be submitted through Grants.gov. Federal applicants or applicants without Internet access may submit hard-copies to: ATTN: Dr. Nicolas Alvarado, Proposal Manager, NOAA Office of Ocean Exploration & Research, SSMC III, 10th Floor, 1315 East-West Highway, Silver Spring, Maryland 20910. No E-mail or facsimile full proposal submissions will be accepted.

Information Contacts: For further information contact the NOAA Office of Ocean Exploration at (301) 734–1015 or submit inquiries via E-mail to the Frequently Asked Questions address: *OAR.OE.FAQ@noaa.gov.* E-mail inquiries should include the Principal Investigator's name in the subject heading. Inquiries can be mailed to: ATTN: Dr. Nicolas Alvarado (Proposal Manager) NOAA Office of Ocean Exploration 1315 East-West Highway SSMC3, 10th Floor, Silver Spring, Maryland 20910.

Eligibility: Eligible applicants are institutions of higher education; other nonprofits; commercial organizations; foreign governments; organizations under the jurisdiction of foreign governments; international organizations; state, local and Indian tribal governments; and Federal agencies. PLEASE NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Cost Sharing Requirements: Cost-sharing is not required.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOC's are listed in the Office of Management and Budget's Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV. NOAA Non-Competitive Project

The following entry provides the description and requirements of NOAA's noncompetitive project.

1. NOAA Coral Reef Conservation Grant Program—Coral Reef Ecosystem Research Grants

Summary Description: The NOAA Coral Reef Conservation Grant Program announces that it is providing funding to the NOAA Undersea Research Program (NURP) Centers for: the Southeastern U.S., Florida, and Gulf of Mexico Region, the Southeast U.S. and Gulf of Mexico Center; and the Hawaii and Western Pacific Region, the Hawaii Undersea Research Laboratory, to administer two external, competitive coral reef ecosystem research grants programs. Research supported through these programs will address priority information needs identified by coral reef ecosystem managers and scientists. Broad coral reef research priorities supported through these programs may include research on coral disease and bleaching, fisheries population dynamics and ecology, coral reef restoration and mitigation approaches, effects of anthropogenic stressors on benthic invertebrates, impacts and spread of invasive species, and evaluation of management actions and strategies. Specific priorities within these broad areas, and geographic preferences, will be indicated in each NURP Center's request for proposals. The NURP Center external coral reef research grants programs are part of the NOAA Coral Reef Conservation Grants Program under the Coral Reef Conservation Act of 2000. The program priorities for this opportunity support NOAA's mission support goal of: Ecosystems—Protect, Restore, and Manage Use of Coastal and Ocean Resources through Ecosystem-Based Management.

Funding Availabilty: Approximately $600,000 may be available in FY 2009 to support awards under this program.

Statutory Authority: Statutory authority for this program is provided under 16 U.S.C. 6403.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.430, National Undersea Research Program.

Information Contact: Kimberly Puglise, 301–734–1007 or E-mail at *kimberly.puglise@noaa.gov.* Announcements requesting proposals will be announced on: *http://www.uncw.edu/nurc,* for the NURP Center for the Southeastern U.S. and the Gulf of Mexico; on *http://www.soest.hawaii.edu/HURL,* for the NURP Center for Hawaii and the Western Pacific, the Hawaii Undersea Research Laboratory.

Cost Sharing Requirements: The awards require a 1:1 federal to non-federal match.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2009 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the

application process. See the October 30, 2002 **Federal Register**, (67 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet *http://www.dunandbradstreet.com.*

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216—6—TOC.pdf,* NEPA Questionnaire, *http://www.nepa.noaa.gov/questionnaire.pdf,* and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc— ceq.htm.* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Compliance With Department of Commerce Bureau of Industry and Security Export

Administration Regulations (a) This clause applies to the extent that this financial assistance award involves access to export-controlled information or technology. (b) In performing this financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-NOAA facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology. (c) Definitions (1) Deemed export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is ''deemed'' to be an export to the home country of the foreign national. 15 CFR 734.2(b)(2)(ii). (2) Export-controlled information and technology. Export-controlled information and technology is information and technology subject to the EAR (15 CFR parts 730 *et seq.*), implemented by the DOC Bureau of Industry and Security, or the International Traffic I Arms Regulations (ITAR) (22 CFR parts 120–130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-us items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR. (d) The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations. (e) Nothing in the terms of this financial assistance award is intended to change, supersede, or waive and of the requirements of applicable Federal laws, Executive Orders or regulations. (f) The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under the financial assistance award that may involve access to export-controlled information technology.

NOAA implementation of Homeland Security Presidential Directive—12

If the performance of a financial assistance award, if approved by NOAA, requires recipients to have physical access to Federal premises for more than 180 days or access to a Federal information system, any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive—12, FIPS PUB 201, and the Office of Management and Budget Memorandum M–05–24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, 424C, 424D, and SF–LLL has been approved by OMB under the respective control numbers 4040–0004, 0348–0044, 4040–0007, 0348–0041, 4040–0009, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866. Executive Order 13132 (Federalism). It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public

property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: July 3, 2008.

Dan Clever,

Deputy Director, Acquisition and Grants Office, National Oceanic and Atmospheric Administration.

[FR Doc. E8–15720 Filed 7–10–08; 8:45 am]

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Federal Register

Friday,
July 11, 2008

Part IV

Securities and Exchange Commission

17 CFR Parts 229, 230, et al.

References to Ratings of Nationally Recognized Statistical Rating Organizations; Security Ratings; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 242, and 249

[Release No. 34–58070; File No. S7–17–08]

RIN 3235–AK17

References to Ratings of Nationally Recognized Statistical Rating Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: This is one of three releases that the Securities and Exchange Commission (''Commission'') is publishing simultaneously relating to the use in its rules and forms of credit ratings issued by nationally recognized statistical rating organizations (''NRSROs''). In this release, the Commission proposes to amend various rules and forms under the Securities Exchange Act of 1934 (''Exchange Act'') that rely on NRSRO ratings. The proposed amendments are designed to address concerns that the reference to NRSRO ratings in Commission rules and forms may have contributed to an undue reliance on NRSRO ratings by market participants.

DATES: Comments should be received on or before September 5, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–17–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–17–08. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, Thomas K. McGowan, Assistant Director, Randall W. Roy, Branch Chief, and Joseph I. Levinson, Attorney (Net Capital Requirements and Customer Protection) at (202) 551–5510; Michael Gaw, Assistant Director, Brian Trackman, Special Counsel, and Sarah Albertson, Attorney (Alternative Trading Systems) at (202) 551–5602; Paula Jenson, Deputy Chief Counsel, Joshua Kans, Senior Special Counsel, Linda Stamp Sundberg, Senior Special Counsel (Confirmation of Transactions) at (202) 551–5550; Josephine J. Tao, Assistant Director, Elizabeth A. Sandoe, Branch Chief, and Bradley Gude, Special Counsel (Regulation M) at (202) 551–5720; or Catherine Moore, Counsel to the Director at (202) 551–5710, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 16, 2008, in furtherance of the Credit Rating Agency Reform Act of 2006,[1] the Commission published for notice and comment two rulemaking initiatives.[2] The first proposes additional requirements for NRSROs[3] that were directed at reducing conflicts of interests in the credit rating process, fostering competition and comparability among credit rating agencies, and increasing transparency of the credit rating process.[4] The second is designed to improve investor understanding of the risk characteristics of structured finance products. Those proposals address concerns about the integrity of the credit rating procedures and methodologies of NRSROs in light of the role they played in determining the credit ratings for securities that were the subject of the recent turmoil in the credit markets.

Today's proposals comprise the third of these three rulemaking initiatives relating to credit ratings by an NRSRO that the Commission is proposing. This release, together with two companion releases, sets forth the results of the Commission's review of the requirements in its rules and forms that rely on credit ratings by an NRSRO. The proposals also address recent recommendations issued by the President's Working Group on Financial Markets (''PWG''), the Financial Stability Forum (''FSF''), and the Technical Committee of the International Organization of Securities Commissions (''IOSCO'').[5] Consistent with these recommendations, the Commission is considering whether the inclusion of requirements related to ratings in its rules and forms has, in effect, placed an ''official seal of approval'' on ratings that could adversely affect the quality of due diligence and investment analysis. The Commission believes that today's proposals could reduce undue reliance on credit ratings and result in improvements in the analysis that underlies investment decisions.

II. Background

The Commission first used the term NRSRO in our rules in 1975 in the net capital rule for broker-dealers, Rule 15c3–1 under the Exchange Act (''Net Capital Rule'')[6] as an objective benchmark to prescribe capital charges for different types of debt securities. Since then, we have used the designation in a number of regulations under the federal securities laws. Although we originated the use of the term NRSRO for a narrow purpose in our own regulations, ratings by NRSROs today are used widely as benchmarks in federal and state legislation, rules issued by other financial regulators, in the United States and abroad, and private financial contracts.

[1] Public Law 109–291, 120 Stat. 1327 (2006).

[2] Proposed Rules for Nationally Recognized Statistical Rating Organizations, Securities Exchange Act Release No. 57967 (June 16, 2008), 73 FR 36212 (June 25, 2008).

[3] As described in more detail below, an NRSRO is an organization that issues ratings that assess the creditworthiness of an obligor itself or with regard to specific securities or money market instruments, has been in existence as a credit rating agency for at least three years, and meets certain other criteria. The term is defined in section 3(a)(62) of the Securities Exchange Act. A credit rating agency must apply with the Commission to register as an NRSRO, and currently there are nine registered NRSROs.

[4] See Press Release No. 2008–110 (June 11, 2008).

[5] See President's Working Group on Financial Markets, *Policy Statement on Financial Market Developments* (March 2008), available at *http://www.ustreas.gov* (''PWG Statement''); *The Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience* (April 2008), available at *http://www.fsforum.org* (''FSF Report''); Technical Committee of the International Organization of Securities Commissions, *Consultation Report: The Role of Credit Rating Agencies in Structured Finance Markets* (March 2008), page 9, available at *http://www.iosco.org*.

[6] 17 CFR 240.15c3–1.

Referring to NRSRO ratings in regulations was intended to provide a clear reference point to both regulators and market participants. Increasingly, we have seen clear disadvantages of using the term in many of our regulations. Foremost, there is a risk that investors interpret the use of the term in laws and regulations as an endorsement of the quality of the credit ratings issued by NRSROs, which may have encouraged investors to place undue reliance on the credit ratings issued by these entities. In addition, as demonstrated by recent events,[7] there has been increasing concern about ratings and the ratings process. Further, by referencing ratings in the Commission's rules, market participants operating pursuant to these rules may be vulnerable to failures in the ratings process. In light of this, the Commission proposes to amend the regulations.

We have identified a small number of rules and forms, however, where we believe it is appropriate to retain the reference to NRSRO ratings. These rules and forms generally relate to non-public reporting or recordkeeping requirements we use to evaluate the financial stability of large brokers or dealers or their counterparties and are unlikely to contribute to any undue reliance on NRSRO ratings by market participants.[8]

III. Proposed Amendments

We are proposing to remove references to NRSROs in the following rules and forms: Rule 3a1–1, Rule 10b–10, Rule 15c3–1, Rule 15c3–3, Rules 101 and 102 of Regulation M, Regulation ATS, Form ATS–R, Form PILOT, and Form X–17A–5 Part IIB.

A. Proposed Amendments to Rule 3a1–1, Regulation ATS, Form ATS–R, and Form PILOT

In 1998, we established a new framework for the regulation of exchanges and alternative trading systems (''ATSs'').[9] That framework allowed an ATS to choose whether to register as a national securities exchange or to register as a broker-dealer and comply with the requirements of Regulation ATS. As part of this framework, we adopted Rule 3a1–1 under the Exchange Act,[10] Regulation ATS,[11] and Forms ATS and ATS–R.

Rule 3a1–1(a) provides an exemption from the Exchange Act definition of ''exchange''—and thus the requirement to register as an exchange—for a trading system that, among other things, is in compliance with Regulation ATS.[12] Rule 3a1–1(b) contains an exception to the exemption from the exchange definition. Under this exception, the Commission may require a trading system that is a ''substantial market'' to register as a national securities exchange if it finds that such action is necessary or appropriate in the public interest or consistent with the protection of investors.[13] Specifically, the Commission may—after notice to an ATS and an opportunity for it to respond—require the ATS to register as an exchange if, during three of the preceding four calendar quarters, the ATS had: (1) 50% or more of the average daily dollar trading volume in any security and 5% or more of the average daily dollar trading volume in any class of securities; or (2) 40% or more of the average daily dollar volume in any class of securities.[14]

As the Commission explained in the Regulation ATS Adopting Release, it was reserving the right to require a ''dominant'' ATS to register as an exchange.[15] The Commission noted, for example, that ''it may not be consistent with the protection of investors or in the public interest for a trading system that is the dominant market, in some important segment of the securities market, to be exempt from registration as an exchange if competition cannot be relied upon to ensure fair and efficient trading structures.'' [16] The Commission also stated that it might be necessary to require an ATS to register as an exchange if it ''would create systemic risk or lead to instability in the securities markets' infrastructure.'' [17] The Commission made clear that its authority under Rule 3a1–1 was discretionary: ''Although the standard for denying or withholding the exemption is based on objective factors, the Commission has discretion to initiate any process to consider whether to revoke a particular entity's exemption under the rule.'' [18] Thus, while observing that some ATSs likely were above the volume thresholds of Rule 3a1–1, the Commission did not at the time believe it was appropriate to revoke the exemption for any such ATS.[19]

The Commission set forth eight classes of securities in any one of which an ATS might achieve ''dominant'' status: (1) Equity securities; (2) listed options; (3) unlisted options; (4) municipal securities; (5) investment grade corporate debt securities; (6) non-investment grade corporate debt securities; (7) foreign corporate debt securities; and (8) foreign sovereign debt securities.[20] Under the definitions provided in Rule 3a1–1, investment grade and non-investment grade corporate debt securities have three elements in common. They are securities that: (1) Evidence a liability of the issuer of such security; (2) have a fixed maturity date that is at least one year following the date of issuance; and (3) are not exempted securities, as defined in Section 3(a)(12) of the Exchange Act.[21] The distinguishing characteristic of an investment grade corporate debt security under our current rules is that it has been rated in one of the four highest categories by at least one NRSRO. A non-investment grade corporate debt security under our current rules is a corporate debt security that has not received such a rating.

We preliminarily believe that distinguishing investment grade corporate debt securities and non-investment grade corporate debt securities as separate classes of securities under Rule 3a1–1 is not necessary to fulfill the purposes of that rule. We preliminary believe instead that combining all corporate debt securities into a single class for purposes of assessing whether an alternative trading system is ''dominant'' is appropriate. Accordingly, we propose to amend Rule 3a1–1 by replacing paragraphs (b)(3)(v) and (b)(3)(vi) which define investment grade corporate debt securities and non-investment grade debt securities, respectively, with a single category ''corporate debt securities'' in paragraph (b)(3)(v).[22] This new definition would retain verbatim the three elements common to the existing definitions of investment grade and non-investment grade debt securities. The 5% and 40% thresholds also would remain

[7] *See* Proposed Rules for National Recognized Statistical Rating Organizations, Securities Exchange Act Release No. 57967.

[8] These include Rules 15c3–1g(c)(1)(i), 15c3–1g(e)(2)(i), 17i–5, and 17i–8, which impose certain recordkeeping and reporting requirements for ultimate holding companies of broker-dealers and of supervised investment bank holding companies, and Forms 17–H and X–17A–5 Part IIB, which require reports regarding the risk exposures of large broker-dealers and OTC derivatives dealers.

[9] *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (''Regulation ATS Adopting Release'').

[10] 17 CFR 240.3a1–1.

[11] 17 CFR 242.300 to 242.303.

[12] *See* 17 CFR 240.3a1–1(a)(2).

[13] *See* 17 CFR 240.3a1–1(b); Regulation ATS Adopting Release, 63 FR at 70857.

[14] *See* 17 CFR 240.3a1–1(b)(1).

[15] *See* 63 FR at 70857.

[16] *Id.* at 70858.

[17] *Id.*

[18] *Id.* at 70857–58.

[19] *See id.* at 70858.

[20] *See* 17 CFR 240.3a1–1(b)(3).

[21] *Compare* 17 CFR 240.3a1–1(b)(3)(v) *with* 17 CFR 240.3a1–1(b)(3)(vi).

[22] Existing paragraphs (b)(3)(vii) and (b)(3)(viii) would be unchanged but redesignated as paragraphs (b)(3)(vi) and (b)(3)(vii), respectively.

unchanged. Under the proposed amendment to Rule 3a1–1, the Commission could, for example, determine that an ATS must register as an exchange if the system had—during three of the preceding four calendar quarters—50% or more of the average daily dollar trading volume in any security and 5% or more of the average daily dollar trading volume in corporate debt securities, or 40% of the average daily dollar trading volume in corporate debt securities.[23]

The Commission preliminarily believes that exceeding a volume threshold for a combined class of all corporate debt securities would be a sufficient indication that an ATS should be required to register as an exchange, and that it is not necessary or appropriate to assess trading volumes in the narrower segments of investment grade and non-investment grade corporate debt securities. While the proposed amendment could reduce the likelihood that an ATS could be required to register as an exchange,[24] we preliminarily believe that this change would nevertheless be appropriate. At this time, there does not appear to be a continuing need to analyze ''dominance'' in separate classes of investment grade and non-investment grade corporate debt securities, particularly in view of the fact that the Commission would continue to analyze for dominance in six other classes of securities (in addition to the new single class for corporate debt securities). The Commission notes that, in over nine years since the adoption of Rule 3a1–1, the Commission has never determined to require an ATS to register as an exchange because it had become ''dominant.'' Moreover, the Commission would continue to be able to exercise discretion about whether to revoke the exemption for any ATS that exceeded either threshold in Rule 3a1–1. The Commission seeks comment on whether, in light of the proposed combination of investment grade and non-investment grade corporate debt securities into a single class, it should adopt lower thresholds at which an ATS that trades corporate debt securities should be required to register as an exchange. If so, what should those thresholds be and why?

We are proposing similar changes to Regulation ATS, which establishes certain requirements applicable to ATSs that choose to register as broker-dealers and comply with Regulation ATS in lieu of exchange registration. Rule 301(b)(5) of Regulation ATS imposes a ''fair access'' requirement, whereby an ATS that exceeds certain volume thresholds in any class of securities must establish written standards for granting access to trading on its system and not unreasonably prohibit or limit any person in respect to access to the services it offers.[25] The fair access standard applies if an ATS has 5% or more of the average daily volume during at least four of the preceding six calendar months in any of the following: (1) Any individual NMS stock;[26] (2) any individual equity security that is not an NMS stock and for which transactions are reported to a self-regulatory organization; (3) municipal securities; (4) investment grade corporate debt securities; and (5) non-investment grade corporate debt securities.[27] The terms investment grade and non-investment grade debt security are defined in Rule 300 of Regulation ATS.

We propose to amend Rules 300 and 301(b)(5) to establish a single class of corporate debt securities and to eliminate the existing separate classes of investment grade and non-investment grade corporate debt securities. Accordingly, paragraphs (i) and (j) of Rule 300 would be replaced with a new paragraph (i) defining ''corporate debt security'' to mean any security that: (1) Evidences a liability of the issuer of such security; (2) has a fixed maturity date that is at least one year following the date of issuance; and (3) is not an exempted security, as defined in Section 3(a)(12) of the Exchange Act. Existing paragraphs (i)(D) and (i)(E) of Rule 301(b)(5) would be replaced with a new paragraph (i)(D) providing that an ATS must comply with the access requirements set out in Rule 301(b)(5) if, with respect to corporate debt securities, such system accounts for 5% or more of the average daily volume traded in the United States for the requisite number of months. The 5% threshold at which an ATS would have to grant fair access to its system also would remain unchanged.[28] As with the proposed changes to Rule 3a1–1, the other classes of securities would remain unchanged.

In addition, Rule 301(b)(6) of Regulation ATS[29] requires an ATS that exceeds certain volume thresholds in any class of securities to comply with standards regarding the capacity, integrity, and security of its automated systems. Five classes of securities are currently identified in Rule 301(b)(6): (1) NMS stocks; (2) equity securities that are not NMS stocks and for which transactions are reported to a self-regulatory organization; (3) municipal securities; (4) investment grade corporate debt securities; and (5) non-investment grade corporate debt securities.[30] Consistent with the other proposed changes to Regulation ATS, the Commission also proposes to eliminate separate classes for investment grade and non-investment grade debt securities in Rule 301(b)(6) and replace them with a single category for ''corporate debt securities,'' which would be defined in Rule 300. Existing paragraphs (i)(D) and (i)(E) of Rule 301(b)(6) would be replaced with a new paragraph (i)(D) providing that an ATS must comply with the capacity, integrity, and security requirements of Rule 301(b)(6) if, with respect to corporate debt securities, such system accounts for 20% or more of the average daily volume traded in the United States for the requisite number of months. The 20% threshold and the other three classes of securities would remain unchanged.

For the same reasons we are proposing to amend Rule 3a1–1, we preliminarily believe that these proposed amendments to Regulation ATS would be appropriate, and that a volume threshold for a combined class of all corporate debt securities would be sufficient for the fair access requirement and the capacity, integrity, and security requirements. The Commission preliminarily believes that the purposes of Regulation ATS would still be

[23] The other six classes of securities—equity securities, listed options, unlisted options, municipal securities, foreign corporate debt securities, and foreign sovereign debt securities—would remain unchanged. Therefore, as under existing Rule 3a1–1, the Commission also could determine that an ATS must register as an exchange if the system exceeded either volume threshold in any of these other classes of securities.

[24] For example, under existing Rule 3a1–1, an ATS that has 40% of the average daily dollar trading volume in non-investment grade corporate debt securities and 0% of the average daily dollar trading volume in investment grade corporate debt securities for three consecutive months could be required by the Commission to register as an exchange. Under the proposed amendment, the Commission could not do so because the ATS's combined average daily dollar trading volume in corporate debt securities would be less than 40%.

[25] *See* 17 CFR 242.301(b)(5).

[26] *See* 17 CFR 240.600(a)(47) (defining ''NMS stock'').

[27] In proposing Regulation ATS, the Commission requested comment ''on whether categories of debt securities should be further divided based on an instrument's maturity, credit rating, or other criteria.'' Securities Exchange Act Release No. 39884 (April 21, 1998), 63 FR 23504, 23519 (April 29, 1998). However, in adopting Regulation ATS, the Commission did not employ these narrower classes of debt securities. *See* Regulation ATS Adopting Release, 63 FR at 70873.

[28] When the Commission originally adopted Regulation ATS, it set the fair access threshold at 20%. It later lowered the threshold to 5% in connection with the adoption of Regulation NMS. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37550 (June 29, 2005).

[29] 17 CFR 242.301(b)(6).

[30] 17 CFR 242.301(b)(6)(i).

fulfilled if investment grade and non-investment grade corporate debt securities were combined into a single class. ATSs would continue to be subject to the fair access requirements and the capacity, integrity, and security requirements with respect to the other existing classes of securities and at the same volume thresholds (5% and 20%, respectively). The Commission seeks comment on whether, in light of the proposed combination of investment grade and non-investment grade corporate debt securities into a single class, it should adopt lower thresholds for fair access and the capacity, security, and integrity requirements under Regulation ATS. If so, what should those thresholds be and why?

We are also proposing revisions to Form ATS–R, which is used by ATSs to report certain information about their activities on a quarterly basis.[31] Currently, Form ATS–R requires each ATS to report the total unit volume and total dollar volume in the previous quarter for various categories of securities, including investment grade and non-investment grade corporate debt securities. Consistent with the proposed amendments to Regulation ATS described above, we also propose to revise Form ATS–R to eliminate the separate categories for investment grade and non-investment grade corporate debt securities, and instead create a single category for ''corporate debt securities.'' As with the proposed changes to Regulation ATS, ''corporate debt securities'' would be defined in the instructions to Form ATS–R to mean any security that: (1) Evidences a liability of the issuer of such security; (2) has a fixed maturity date that is at least one year following the date of issuance; and (3) is not an exempted security, as defined in Section 3(a)(12) of the Exchange Act. Because separate classes for investment grade and non-investment grade corporate debt securities are proposed to be eliminated for purposes of the thresholds in Rule 3a1–1 and Rules 301(b)(5) and 301(b)(6) of Regulation NMS, no purpose would be served by requiring ATSs to separately report their trading volumes for investment grade and non-investment grade debt securities on Form ATS–R. The figures for the separate classes would be added together and reported as a single item on the amended form. The Commission is not proposing any other changes to Form ATS–R.

We are also proposing to revise Form PILOT consistent with the proposed changes to Form ATS–R. Ordinarily, Section 19 of the Exchange Act[32] and Rule 19–4 thereunder[33] require a self-regulatory organization (''SRO'') to file with the Commission proposed rule changes on Form 19b–4 regarding any changes to any material aspect of its operations, including any trading system. Rule 19b–5 under the Exchange Act[34] sets forth a limited exception to that requirement by permitting an SRO to operate a pilot trading system without filing proposed rule changes with respect to that system if certain criteria are met. One of those criteria is that the SRO file a Form PILOT in accordance with the instructions on that form. Like Form ATS–R, Form PILOT currently requires quarterly reporting of trading activity by classes of securities, including investment grade and non-investment grade corporate debt securities. For the same reasons we propose to amend Rule 3a1–1 and Regulation ATS, we also propose to revise Form PILOT to eliminate these two categories, replacing them with a single category of ''corporate debt securities.'' Corporate debt securities would be defined identically in Form PILOT and Form ATS–R. The Commission preliminarily believes that it is appropriate to obtain trading volumes from pilot trading systems for the combined class of corporate debt securities, and that separate reporting of the two classes is not necessary to adequately monitor the development of pilot trading systems. The Commission notes that, in over nine years since Rule 19b–5 and Form PILOT were adopted, no SRO has ever established a pilot trading system pursuant to Rule 19b–5 to trade corporate debt securities.

We generally request comment on all aspects of the proposed elimination of the reference to NRSRO ratings in Rule 3a1–1, Regulation ATS, Form ATS–R, and Form PILOT. In addition, we request comment on the following specific questions:

- Would the proposed amendments to Rule 3a1–1 have any significant impact on investors, market participants, the national market system, or the public interest?
- Would the proposed amendments to Regulation ATS have any significant impact on investors, market participants, the national market system, or the public interest?
- Would the proposed amendments affecting the fair access standards have other consequences, whether on investors, market participants, the national market system, or the public interest? Have investors experienced difficulty obtaining access to ATSs trading corporate debt securities? Would the proposed amendments impair or limit current investor access to ATSs?
- Would the proposed changes to Regulation ATS as they relate to the capacity, integrity, and security requirements have any adverse impact on investors, market participants, or the national market system as a whole?
- In view of the proposed combination of investment grade and non-investment grade corporate debt securities into a single class for purposes of Rule 3a1–1 and Regulation ATS, should the Commission also lower the thresholds in those rules for the combined class of corporate debt securities? If so, what should those thresholds be? Why are those suggested thresholds appropriate?
- Should the Commission retain investment grade and non-investment grade corporate debt securities as separate classes of securities under Rule 3a1–1 and Regulation ATS and instead use different definitions of those terms that do not rely on NRSRO ratings? If so, how should investment grade and non-investment grade be defined?
- Would the proposed amendments to Form ATS–R or Form PILOT have any significant impact on investors, market participants, the national market system, or the public interest?

B. Proposed Amendments to Rule 10b–10

We propose to amend Rule 10b–10,[35] the transaction confirmation rule for broker-dealers, to delete paragraph (a)(8) of that rule.[36] Rule 10b–10 generally requires broker-dealers that effect transactions for customers in securities, other than U.S. savings bonds or municipal securities, which are covered by Municipal Securities Rulemaking Board rule G–15 (which applies to all municipal securities brokers and dealers), to provide customers with written notification, at or before the completion of each transaction, of certain basic transaction terms. This transaction confirmation must disclose, among other information: the date of the transaction; the identity, price, and

[31] Each ATS must file a Form ATS–R within 30 days of the end of each calendar quarter, and within ten days of a cessation of operations. *See* 17 CFR 242.301(b)(9).

[32] 15 U.S.C. 78s.

[33] 17 CFR 240.19b–4.

[34] 17 CFR 240.19b–5.

[35] 17 CFR 240.10b–10.

[36] Consistent with that change, we also are proposing to redesignate paragraph (a)(9) of the rule, related to broker-dealers that are not members of the Securities Investor Protection Corporation (''SIPC''), as paragraph (a)(8).

number of shares bought or sold;[37] the capacity of the broker-dealer;[38] the dollar price or yield at which a transaction in a debt security was effected;[39] and, under specified circumstances, the amount of compensation paid to the broker-dealer and whether the broker-dealer receives payment for order flow.[40]

The rule's requirements, portions of which have been in effect for over 60 years, provide basic investor protections by conveying information that allows investors to verify the terms of their transactions, alerts investors to potential conflicts of interest with their broker-dealers, acts as a safeguard against fraud, and provides investors a means to evaluate the costs of their transactions and the execution quality.[41]

Paragraph (a)(8) of Rule 10b–10 requires transaction confirmations for debt securities, other than government securities, to inform the customer if the security is unrated by an NRSRO. When we adopted paragraph (a)(8) in 1994, it was intended to prompt a dialogue between the customer and the broker-dealer if the customer had not previously been informed of the unrated status of the debt security. We stated that this disclosure was not intended to suggest that an unrated security is inherently riskier than a rated security.[42] Upon further consideration and in light of present concerns regarding undue reliance on NRSRO ratings and confusion about the significance of those ratings, we believe it would be appropriate to delete this requirement. However, in proposing to no longer require broker-dealers to include in transaction confirmations the information that a debt security is unrated, we do not mean to suggest that information about an issuer's creditworthiness is not a relevant subject for discussion and consideration prior to purchasing a debt security. We would encourage investors to seek to understand all of the risks of securities, including credit-related risks, before buying. In addition, we note that deleting this requirement would not prevent broker-dealers from voluntarily continuing to include this information in transaction confirmations.

We generally request comment on all aspects of the proposed elimination of the NRSRO reference in Rule 10b–10. In addition, we request comment on the following specific questions:

- Have investors found confirmation disclosure about the fact that a debt security is not rated by an NRSRO to be useful?
- Are there any possible alternatives to deletion that would address concerns about undue reliance on NRSRO ratings or avoid confusion about the significance of those ratings? For example, should the confirmation disclose that the security is rated or not rated by an NRSRO, as the case may be, instead of just that the security is not rated?

C. Proposed Amendments to Rule 15c3–1

Under the Net Capital Rule, broker-dealers are required to maintain, at all times, a minimum amount of net capital. The rule generally defines ''net capital'' as a broker-dealer's net worth (assets minus liabilities), plus certain subordinated liabilities, less certain assets that are not readily convertible into cash (*e.g.,* fixed assets), and less a percentage (haircut) of certain other liquid assets (*e.g.,* securities).[43] Broker-dealers are required to calculate net worth using generally accepted accounting principles.

In computing their net capital under the provisions of the Net Capital Rule, broker-dealers are required to deduct from their net worth certain percentages of the market value of their proprietary securities positions. A primary purpose of these ''haircuts'' is to provide a margin of safety against losses that might be incurred by broker-dealers as a result of market fluctuations in the prices of, or lack of liquidity in, their proprietary positions. We apply a lower haircut to certain types of securities held by a broker-dealer that were rated investment grade by a credit rating agency of national repute since those securities typically were more liquid and less volatile in price than securities that were not so highly rated.[44]

We are proposing to remove, with limited exceptions, all references to NRSROs from the Net Capital Rule.[45] The broker-dealers subject to the Net Capital Rule are sophisticated market participants regulated by at least one SRO.[46] As regulated entities, broker-dealers must meet certain financial responsibility requirements, including maintaining minimum amounts of liquid assets as net capital, safeguarding customer funds and securities, and making and preserving accurate books and records. Accordingly, we preliminarily believe that broker-dealers would be able to assess the creditworthiness of the securities they hold without undue hardship and, therefore, that exclusive reliance on NRSRO ratings for the purposes of the Net Capital Rule is no longer necessary, although broker-dealers that wish to continue to rely on such ratings may do so.

We are proposing the substitution of two new subjective standards for the NRSRO ratings currently relied upon under the Net Capital Rule. For the purposes of determining the haircut on commercial paper,[47] we propose to replace the current NRSRO ratings-based criterion—being rated in one of the three highest rating categories by at least two NRSROs—with a requirement that the instrument be subject to a minimal amount of credit risk and have sufficient liquidity such that it can be sold at or near its carrying value almost immediately. For the purposes of determining haircuts on nonconvertible debt securities as well as on preferred stock,[48] we propose to replace the current NRSRO ratings-based criterion—being rated in one of the four highest rating categories by at least two NRSROs—with a requirement that the instrument be subject to no greater than moderate credit risk and have sufficient liquidity such that it can be sold at or

[37] *See* 17 CFR 240.10b–10(a)(1) (the confirmation must also include either the time of the transaction or the fact that it will be furnished upon written request).

[38] *See* 17 CFR 240.10b–10(a)(2).

[39] *See* 17 CFR 240.10b–10(a)(5) and (6).

[40] *See, e.g.,* 17 CFR 240.10b–10(a)(2)(i)(B), (C) and (D).

[41] *See* Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612, 59613 (November 17, 1994).

[42] *See* Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612 (November 17, 1994) (File No. S7–6–94).

[43] *See* 17 CFR 240.15c3–1(c)(2).

[44] *See* 17 CFR 240.15c3–1(c)(2)(vi)(E) (haircuts applicable to commercial paper), 17 CFR 240.15c3–1(c)(2)(vi)(F) (haircuts applicable to nonconvertible debt securities), and 17 CFR 240.15c3–1(c)(2)(vi)(H) (haircuts applicable to cumulative nonconvertible preferred stock). The term NRSRO is also used in appendices to the Net Capital Rule. *See* 17 CFR 240.15c3–1a(b)(1)(i)(C) (defining the term ''major market foreign currency'') and 17 CFR 240.15c3–1f(d) (determining the capital charge for credit risk arising from certain OTC derivatives transactions).

[45] In 2003, the Commission published a concept release in which we sought comment on the use of NRSRO ratings in our rules, and specifically sought comment on eliminating the minimum quality standards established with the use of NRSRO ratings in Exchange Act Rule 15c3–1. *See* Rating Agencies and the Use of Credit Ratings Under the Federal Securities Laws, Securities Exchange Act Release No. 47972 (June 4, 2003), 68 FR 35258 (June 12, 2003). (Comments on the concept release are available at: *http://www.sec.gov/rules/concept/s71203.shtml.*) As discussed above, recent events have highlighted the need to revisit our reliance on NRSRO ratings in the context of these developments. *See also* the extensive discussion of market developments in the Release No. 57967.

[46] The SROs regulating broker-dealers include the Financial Industry Regulatory Authority, the Municipal Securities Rulemaking Board, and the national securities exchanges.

[47] *See* 17 CFR 240.15c3–1(c)(2)(vi)(E).

[48] *See* 17 CFR 240.15c3–1(c)(2)(vi)(F)(*1*) and (c)(2)(vi)(H).

near its carrying value within a reasonably short period of time. This latter formulation would apply as well to long or short positions that are hedged with short or long positions in securities issued by the United States or any agency thereof or nonconvertible debt securities having a fixed interest rate and a fixed maturity date and which are not traded flat or in default as to principal or interest.[49]

We preliminarily believe that these new standards would continue to advance the purpose the NRSRO ratings-based standards were designed to advance, which is to enable broker-dealers to make net capital computations that reflect the market risk inherent in the positioning of those particular types of securities. The prior standards—being rated in one of the three or four highest rating categories by at least two NRSROs—were designed based on the practice of many credit rating agencies to have at least eight categories for their debt securities with the top four commonly referred to as ''investment grade.'' [50] While the proposed standards, like the prior standards, do not use the term ''investment grade,'' they are meant to serve the same purpose as the prior standards. As such, the category of securities that have ''no greater than moderate credit risk'' and can be sold at or near their carrying value within a reasonably short period of time should encompass all investment grade securities. The proposed new criteria for commercial paper to be used for net capital purposes are securities that are ''subject to a minimal amount of credit risk'' and can be sold at or near their carrying value almost immediately. In each case, the proposed liquidity standard would reflect the fact that only liquid assets are relevant for the purposes of the Net Capital Rule.

We further believe that broker-dealers have the financial sophistication and the resources necessary to make the basic determinations of whether or not a security meets the requirements in the proposed amendments and to distinguish between securities subject to minimal credit risk and those subject to moderate credit risk. The broker-dealer would have to be able to explain how the securities it used for net capital purposes meet the standards set forth in the proposed amendments.

Notwithstanding our belief that broker-dealers have the financial sophistication and the resources to make these determinations, we believe it would be appropriate, as one means of complying with the proposed amendments, for broker-dealers to refer to NRSRO ratings for the purposes of determining haircuts under the Net Capital Rule. As such, if we adopt the proposed amendments, after considering comments, we expect to take the view in the adopting release that securities rated in one of the three highest categories by at least two NRSROs would satisfy the requirements of proposed new paragraph (c)(2)(vi)(E) and securities rated in one of the four highest rating categories by at least two NRSROs to satisfy the requirements of proposed new paragraphs (c)(2)(vi)(F) and (c)(2)(vi)(H). We emphasize, however, that references to such NRSRO ratings would be just one means of satisfying the requirements of the proposed amendments but would not the only means of doing so.

We are also proposing to remove references to NRSRO ratings from Appendices E and F to Rule 15c3–1 and make conforming changes to Appendix G of Rule 15c3–1 and the General Instructions to Form X–17 A–5, Part IIB.[51] Appendix E of the Net Capital Rule sets forth a program that allows a broker-dealer to use an alternative approach to computing net capital deductions, subject to certain conditions, most importantly the broker-dealer's ultimate holding company consenting to group-wide Commission supervision as a consolidated supervised entity (''CSE'').[52] Appendix F to the Net Capital Rule sets forth a similar program for OTC derivatives dealers. In each case, the program sets forth an alternative means of establishing net capital requirements under the Net Capital Rule by which the broker-dealer or OTC derivatives dealer, as applicable, may elect to determine counterparty risk. This may be done either based on NRSRO ratings by requesting Commission approval to determine credit risk weights based on internal calculations.

We are proposing to delete the provisions of Appendices E and F permitting reliance on NRSRO ratings for the purposes of determining counterparty risk. As a result of these deletions, a broker-dealer that is part of a CSE or a OTC derivatives dealer that wished to use the approach set forth Appendix E or F, respectively, to determine counterparty risks would be required, as part of its initial application to use the alternative approach or in an amendment, to request Commission approval to determine credit risk weights based on internal calculations. Based on the strength of the broker-dealer/CSE or OTC derivatives dealer's internal credit risk management system, we may approve the application. A broker-dealer or OTC derivatives dealer that obtained such approval would be required to make and keep current a record of the basis for the credit risk weight of each counterparty. To date, a total of seven entities have applied for and been granted permission to use the methods set forth in Appendix E, while five have applied for and been granted permission to use the methods set forth in Appendix F. We do not currently anticipate that any additional firms will apply for permission to use either Appendix E or Appendix F. All of the approved firms have already developed models to calculate market and credit risk under the alternative net capital calculation methods set forth in the appendices as well as internal risk management control systems.[53] As such, each firm already employs the non-NRSRO ratings-based method that would, under the proposed amendments, become the only option for determining counterparty credit risk under Appendices E and F. We are also proposing conforming amendments to Appendix G of Rule 15c3–1 and the General Instructions to Form X–17 A–5, Part IIB. The proposed amendments would delete references to the provisions of Appendices E and F, respectively, that are proposed to be deleted.

We generally request comment on all aspects of the proposed elimination of the use of NRSRO ratings in the Net Capital Rule. In addition, we request comment on the following specific questions:

- Would internal evaluations of individual debt securities by broker-dealers for purposes of determining the capital charges (''internal processes'') instead of reliance on NRSRO ratings accomplish the stated goals of the Commission's net capital requirements?
- What are the benefits, other than those we have identified, of the use of internal processes?
- Besides the use of internal processes by broker-dealers, are there potential alternate means of establishing creditworthiness for the purposes of the Net Capital Rule without reference to NRSRO ratings? Commenters who

[49] *See* 17 CFR 240.15c3–1(c)(2)(vi)(F)(2).

[50] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* Securities Exchange Act Release No. 55857 (June 5, 2007), 72 FR 33564 (June 18, 2007).

[51] 17 CFR 240.15c3–1e, 240.15c3–1f, and 240.15c3–1g; *see* 17 CFR 249.617.

[52] *See* 17 CFR 240.15c3–1e.

[53] *See, e.g., Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities,* Securities Exchange Act Release No. 49830 (June 8, 2004), 69 FR 33428 at 33456 (June 21, 2004).

believe that this is the case should include detailed descriptions of such alternate means.

• Are we correct in our preliminary belief that broker-dealers have the financial sophistication and the resources necessary to generate internal processes and make the basic determinations of whether or not a security is meets the requirements in the proposed amendments and to distinguish between securities subject to minimal credit risk and those subject to moderate credit risk? If not, how should the proposed rule be modified to address those concerns?

• What would be the potential consequences of using internal processes for purposes of the net capital rule and how could these be addressed? For example, one concern is that a broker-dealer would have an incentive to downplay the credit risk associated with a particular security in order to minimize capital charges. How could this concern be addressed?

• If we provided for the use of internal processes, should we require that the persons responsible for developing a broker-dealer's internal processes and applying them to individual securities for the purposes of the Net Capital Rule be separate from employees who perform other functions for the broker-dealer, such as making proprietary investment decisions for the broker-dealer?

• What would be the appropriate level of regulatory oversight for broker-dealers employing internal processes?

• Should we require any policies and procedures with regard to the basic determinations as to whether a security meets the standards in the proposed amendments?

• Should we explicitly define the terms used in the proposed new standards in Rules 15c3–1(c)(2)(vi)(E), (F), and (H)?

• If we adopt the proposed standards, would broker-dealers find it useful to employ market-based models, including models using credit spreads to satisfy the requirements of the proposed standards? Should we provide guidance about the use of these models?

• What is the likelihood that small broker-dealers would purchase credit ratings or the models used to develop those ratings from large broker-dealers?

• If we adopt the proposed amendments after considering comments, should we take the view in the adopting release that securities rated in one of the three highest categories by at least two NRSROs satisfy the requirements of proposed new paragraph (c)(2)(vi)(E) and securities rated in one of the four highest rating categories by at least two NRSROs to satisfy the requirements of proposed new paragraphs (c)(2)(vi)(F) and (c)(2)(vi)(H)? Commenters should include detailed descriptions of any subset of broker-dealers they believe should be able to continue to rely on NRSRO ratings and the rationale therefor.

• What factors should we take into account when considering the potential regulatory compliance costs of removing references to NRSROs from the Net Capital Rule? Commenters should include detailed descriptions of any potential costs.

D. Proposed Amendment to Rule 15c3–3

Note G to Exhibit A of Rule 15c3–3 under the Exchange Act (the ''Customer Protection Rule''), which provides the formula for the determination of broker-dealers' reserve requirements, allows a broker-dealer to include as a debit in the formula the amount of customer margin related to customers' positions in security futures products posted to a registered clearing or derivatives organization that maintains the highest investment grade rating from an NRSRO.[54] This standard, which is one of four different means by which a registered clearing or derivatives organization can be judged to meet the requirements of paragraph (b)(1) of Note G,[55] is consistent with the customer protection function of Rule 15c3–3 and is necessary because of the unsecured nature of the customer positions in security futures products margin debit. We propose to replace this standard with a requirement that the registered clearing or derivatives organization to which customers' positions in security futures products are posted has the highest capacity to meet its financial obligations and is subject to no greater than minimal credit risk.

We preliminarily believe that these new standards would continue to advance the purpose the NRSRO-ratings standard was designed to advance, namely to ensure both of the long-term financial strength of a clearing organization to which customers' positions in security futures products are posted and its general creditworthiness.[56] Although the rule was originally designed to provide an indication of long-term financial strength and general creditworthiness from an independent source,[57] we preliminarily believe that broker-dealers, as sophisticated market participants and regulated entities that are subject to financial responsibility requirements, have the financial sophistication and the resources necessary to make this determination. The broker-dealer would have to be able to explain how the registered clearing or derivatives organization to which customers' positions in security futures products are posted meets the standard in the proposed amendment.

We also believe, however, that it would be appropriate, as one means of complying with the proposed amendment, for broker-dealers to refer to NRSRO ratings for the purposes of paragraph (b) of Note G. As such, if we adopt the proposed amendments after considering comments, we expect to take the view in the adopting release that we would continue to consider a registered clearing agency or derivatives clearing organization that maintains the highest investment-grade rating from an NRSRO to satisfy the requirements of that provision. We emphasize, however, that the references to such NRSRO ratings would be just one means of satisfying the requirements of the proposed amendments and would not be the only means of doing so.

We request comment on the following specific questions in connection with Exhibit A to the Customer Protection Rule:

• As an alternative to relying on an NRSRO rating to distinguish the creditworthiness of a registered clearing agency or derivatives clearing organization, should we prescribe a minimum net worth or asset test for the organizations? Alternatively, should we prescribe a test based on a minimum level of members of the organization or minimum level of clearing deposits held by the organization? Commenters that support any of these proposals should provide details (*e.g.*, the minimum levels in dollar amounts) as to how they should be implemented.

• Would it be more appropriate to delete current paragraph (b)(1)(i) of Note G to Exhibit A to the Customer

[54] 17 CFR 240.15c3–3a(b)(1)(i).

[55] A broker-dealer may also include customer margin related to customers' positions in security futures products posted to a registered clearing or derivatives organization (1) that maintains security deposits from clearing members in connection with regulated options or futures transactions and assessment power over member firms that equal a combined total of at least $2 billion, at least $500 million of which must be in the form of security deposits; (2) that maintains at least $3 billion in margin deposits; or (3) which does not meet the other requirements but which the Commission has agreed, upon a written request from the broker-dealer, that the broker-dealer may utilize. 17 CFR 240.15c3–3a(b)(1)(ii)–(iv).

[56] *See Rule 15c3–3 Reserve Requirements for Margin Related to Security Futures Products,* Securities Exchange Act Release No. 50295 (August 31, 2004), 69 FR 54182, 54185 (September 7, 2004).

[57] *Id.*

Protection Rule in its entirety? Put differently, do the guidelines offered by current paragraphs (b)(1)(ii)–(iv) of Note G in and of themselves provide sufficient means by which a registered clearing or derivatives organization could be judged to meet the requirements of paragraph (b)(1) of Note G?

• If we adopted the proposed amendment to Note G to Exhibit A of Rule 15c3–3, should we explicitly define the terms used in the proposed new standard?

• Is it appropriate to allow broker-dealers to make the determination of whether a clearing organization possesses the highest capacity to meet its financial obligations and is subject to no greater than minimal credit risk? If not, what are suggested ways that the proposed rule could be amended to address that concern?

• Should we require any policies and procedures with regard to the determination whether a registered clearing or derivatives organization meets the standard in the proposed amendment?

• What would be the potential consequences of allowing broker-dealers to determine whether a clearing organization possessed the highest capacity to meet its financial obligations and was subject to no greater than minimal credit risk and how could these be addressed? For example, one concern is that a broker-dealer would have an incentive to downplay the credit risk associated with a particular clearing organization in order to be able to post customers' positions in security futures products to it. How could this concern be addressed?

• If we adopt the proposed amendments after considering comments, should we take the view in the adopting release that we would consider a registered clearing agency or derivatives clearing organization that maintains the highest investment-grade rating from an NRSRO to satisfy the requirements of that provision? Commenters should include detailed descriptions of any subset of broker-dealers they believe should be able to continue to rely on NRSRO ratings and the rationale therefore.

• What factors should we take into account when considering the potential regulatory compliance costs of removing references to NRSROs from paragraph (b)(1) of Note G to Rule 15c–3a? Commenters should include detailed descriptions of any potential costs.

E. Proposed Amendments to Rules 101 and 102 of Regulation M

1. Regulation M

As a prophylactic, anti-manipulation set of rules, Regulation M is designed to protect the integrity of the securities trading market as an independent pricing mechanism by prohibiting activities that could artificially influence the market for the offered security. Rules 101 and 102 of Regulation M specifically prohibit issuers, selling security holders, underwriters, brokers, dealers, other distribution participants, and any of their affiliated purchasers, from directly or indirectly bidding for, purchasing, or attempting to induce another person to bid for or purchase, a covered security until the applicable restricted period has ended.[58]

2. Current Rule 101(c)(2) and Rule 102(d)(2) Exceptions

Both rules currently except ''investment grade nonconvertible and asset-backed securities.'' [59] These exceptions apply to nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities that are rated by at least one NRSRO in one of its generic rating categories that signifies investment grade.[60] The current exceptions for certain investment grade debt and preferred securities rated by a NRSRO were originally based on the premise that these securities are traded on the basis of their yields and credit ratings, are largely fungible and, thus, are less likely to be subject to manipulation.[61] With respect to asset-backed securities, the current exceptions were premised on the fact that asset-backed securities also trade primarily on the basis of yield and credit rating and that asset-backed securities investors are concerned with ''the structure of the class of securities and the nature of the assets pooled to serve as collateral for those securities.'' [62]

3. Proposed Amendments' Elimination of the NRSRO Reference

In light of our effort to reduce undue reliance on NRSRO ratings, we believe that it is appropriate to alter the current exceptions in Rules 101 and 102 to eliminate the reference to NRSROs. We propose to remove Rules 101 and 102's current exceptions for investment grade nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities based on NRSRO ratings. In place of those exceptions, we propose new exceptions for nonconvertible debt securities and nonconvertible preferred securities based on the ''well-known seasoned issuer'' (''WKSI'') concept of Securities Act of 1933 (''Securities Act'') Rule 405.[63] We are also proposing to except asset-backed securities from Rules 101 and 102 if those securities are registered on Form S–3.[64]

The proposed exceptions continue to be based on the premise that these securities are traded on factors such as their yields and are largely fungible. In addition we believe that the marketplace is more likely to have access to a significant amount of useful and high-quality public information concerning these securities that may assist investors in assessing the creditworthiness of the issuer on their own without needing to unduly rely on a NRSRO.[65] We understand that WKSI and Form S–3 issuers are some of the largest and highest quality issuers of nonconvertible debt, nonconvertible preferred securities and asset-backed securities which makes default generally less likely. But the availability of this information or quality of underlying assets is not enough to justify the exceptions in and of itself, the security must also trade in such a way that it is resistant to manipulation. This is why we are proposing to continue to limit these exceptions to nonconvertible debt, nonconvertible preferred, and asset-backed securities as those securities trade largely on the basis of their yield and are largely fungible.

a. Proposed Rules 101(c)(2)(i) and 102(d)(2)(i)—Nonconvertible Debt and Preferred Securities

The proposed exceptions for nonconvertible debt and nonconvertible preferred securities would require that the issuer of such securities meet the requirements of the WKSI definition and meet the requirements for nonconvertible securities other than common equity in paragraph (1)(i)(B)(*1*)

[58] ''Covered security'' is defined as ''any security that is the subject of a distribution or any reference security.'' 17 CFR 242.100.

[59] 17 CFR 242.101(c)(2) and 242.102(d)(2).

[60] *Id.*

[61] Securities Exchange Act Release No. 19565 (March 4, 1983); 48 FR 10628 (March 14, 1983). *See also* Securities Exchange Act Release No. 18528 (March 3, 1982); 47 FR 11482 (March 16, 1982).

[62] Securities Exchange Act Release No. 38067 (December 20, 1996); 62 FR 520 (January 3, 1997).

[63] 17 CFR 230.405.

[64] Asset-backed securities are defined out of the WKSI standard at subparagraph (1)(iv) of the definition and, further, could not meet the requirements of (1)(i)(A) or (B) of the definition because they are generally one-time issuers. *Id.*

[65] *See* Securities Exchange Act Release No. 52056 (July 19, 2005); 70 FR 44722 (August 3, 2005). *See also* Note 61, *infra*.

of the definition of WKSI in Rule 405. As proposed, the exceptions would be available for nonconvertible debt or nonconvertible preferred securities issued by a WKSI issuer, regardless of the method the issuer used to attain WKSI status. However, in order to rely on the proposed exceptions, the security must be issued by an issuer who also meets the requirements of paragraph (1)(i)(B)(*1*) of the definition of WKSI in Rule 405.[66] This would require that the issuer have issued at least $1 billion aggregate principal amount of nonconvertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Securities Act.[67] This would limit the exceptions to securities whose issuers have an existing public market in nonconvertible securities other than common equity that is publicly known and followed and, thus, are less likely to be subject to manipulation.

With respect to these proposed exceptions for nonconvertible debt and non-convertible preferred securities utilizing a WKSI requirement, we have noted that WKSI issuers:

> [A]re followed by sophisticated institutional and retail investors, members of the financial press, and numerous sell-side and buy-side analysts that actively seek new information on a continual basis. Unlike smaller or less mature issuers, large seasoned public issuers tend to have a more regular dialogue with investors and market participants through the press and other media. The communications of these well-known seasoned issuers are subject to scrutiny by investors, the financial press, analysts, and others who evaluate disclosure when it is made.[68]

Thus, we believe that the nonconvertible debt and nonconvertible preferred securities that fall within the proposed exceptions should be resistant to manipulation because of their fungibility, trading based on yield, and this wide industry following.

b. Proposed Rules 101(c)(2)(ii) and 102(d)(2)(ii)—Asset-Backed Securities

The proposed changes to the asset-backed securities exceptions would require that the offer and sale of the security is registered using Form S–3.[69] We believe that the proposed amendments should provide exceptions to only those asset-backed securities that are approximately the equivalent quality of securities that are currently excepted from Rules 101 and 102. Additionally, the proposal is also based on the premise that asset-backed securities trade primarily on the basis of yield and that asset-backed securities investors are primarily concerned with the structure of the class of securities and the nature of the assets pooled to serve as collateral for those securities and, thus, such securities are less likely to be subject to manipulation.[70]

4. Bright-Line Alternative/Existing Benchmarks

We believe that the proposed amendments are appropriate replacements for the NRSRO investment grade standard for the following reasons. We believe that the proposals will capture securities that are more likely to be resistant to manipulation similar to the current exceptions because they are based on the same premises as the current exceptions (such as high liquidity and fungibility).[71] Second, the proposals provide a bright line demarcation and objective criteria for the exceptions. As both the WKSI and Form S–3 standards as utilized by this proposal are established benchmarks, they should be familiar to those persons subject to Rules 101 and 102 and easily applied by such persons seeking to rely on the proposed exceptions. Thus, we believe that the proposals are comparable in scope to the existing exceptions but use alternate benchmarks that provide an equally bright line that is not unduly reliant on NRSRO ratings.

5. Comments

We solicit comments on all aspects of this proposal. We ask that commenters provide specific reasons and information to support alternative recommendations. Please provide empirical data, when possible, and cite to economic studies, if any, to support alternative approaches.

- Are the WKSI requirements appropriate for use in a trading (as opposed to disclosure) context? What effect(s) of the proposed exceptions, if any, would you anticipate in the investment grade debt market and the high-yield debt market?
- Should the Rule 101(c)(2) and 102(d)(2) exceptions be based on criteria other than the WKSI requirements for nonconvertible debt and nonconvertible preferred securities and Form S–3 registration for asset-backed securities?
- Would the WKSI nonconvertible debt and nonconvertible preferred securities excepted in the proposal be as resistant to manipulation as those same securities that meet the existing investment grade standard?
- Please provide comment as to whether the proposal would capture the same type and quantity of securities that fall within the current Rule 101(c)(2) and Rule 102(d)(2) exceptions.
- Do the proposed WKSI and Form S–3 benchmarks adequately identify nonconvertible debt, nonconvertible preferred securities, and asset-backed securities that are of high quality with low default risk? Please distinguish the characteristics of nonconvertible debt, nonconvertible preferred securities, and asset-backed securities that meet these proposed benchmarks and those that do not.
- Is the proposed WKSI criterion easily applied by all persons subject to Rules 101 and 102 with respect to nonconvertible debt and nonconvertible preferred securities issued by issuers who are WKSI by virtue of $700 million market value of common equity?
- Would persons other than issuers who are subject to Rules 101 and 102 have access to adequate information to determine if a particular security fits into the exceptions?
- Should asset-backed securities registered on Form S–3 be excepted from Rules 101 and 102 of Regulation M? Have there been developments in the asset-backed securities market that might indicate whether such securities should be eliminated from the proposed exceptions or should continue to be excepted from Rules 101 and 102?
- How frequently is the current asset-backed exception from Rules 101 and 102 relied upon?
- Is it appropriate to also except asset-backed securities registered on Form F–3? If yes, please explain.
- We ask for specific comment as to any relevant changes to the debt market since Regulation M was adopted in 1996 and the way debt issues are brought to market and trade.
- Do nonconvertible debt securities continue to trade based on their yield

[66] A nonconvertible debt or nonconvertible preferred security issued by an issuer who is a WKSI based on the common equity calculation in paragraph (1)(i)(A) of the definition of WKSI in Rule 405 would still be able to rely on the proposed exception if the issuer can also meet the requirements of paragraph (1)(i)(B)(*1*) of the definition of WKSI in Rule 405.

[67] 17 CFR 230.405, paragraph (1)(i)(B)(*1*) of the definition of WKSI.

[68] Securities Exchange Act Release No. 52056 (July 19, 2005); 70 FR 44722 (August 3, 2005).

[69] The Commission is also proposing to revise the General Instruction I.B.5 to Form S–3 (which sets the eligibility requirements for asset-backed securities to use that form) to remove references to NRSROs. Securities Act Release No. 8940 (July 1, 2008) (File No. 27–18–08).

[70] These were the reasons that we originally excepted such securities. Securities Exchange Act Release No. 38067 (December 20, 1996); 62 FR 520 (January 3, 1997).

[71] *See* Securities Exchange Act Release Number 19565 (March 4, 1983); 48 FR 10628 (March 14, 1983); Securities Exchange Act Release Number 18528 (March 3, 1982); 47 FR 11482 (March 16, 1982); and Securities Exchange Act Release Number 38067 (December 20, 1996); 62 FR 520 (January 3, 1997).

and fungibility? Nonconvertible preferred securities? Asset-backed securities? Are there other factors that influence the trading of such securities?

IV. Request for Comment

We generally request comment on all aspects of our proposal to end our regulatory reliance on NRSRO credit ratings. In addition, we request comment on the following specific questions:

- Should we eliminate the NRSRO designation from all our rules or only from select rules? Commenters who believe that certain rules should retain references to NRSROs or NRSRO ratings should identify each rule they believe should retain the use of the NRSRO concept and explain the rationale for doing so.
- Does the use of the NRSRO designation in our rules cause investors to overly rely on NRSRO credit ratings? Would its elimination mitigate this over reliance?
- Does the use of the NRSRO designation in our rules adversely impact competition among credit rating agencies by favoring those agencies that are registered as NRSROs? Would its elimination mitigate this negative impact?

V. Paperwork Reduction Act

Certain provisions of the proposed amendments to the rules and forms contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[72] The hours and costs associated with preparing and filing the disclosure, filing the forms and schedules and retaining records required by these regulations constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The titles of the affected information forms are Rule 10b–10, ''Confirmation of Transactions,'' (OMB Control Number 3235–0444), Rule 15c3–1 (OMB Control Number 3235–0200), Rule 15c3–3 (OMB Control Number 3235–0078), Form ATS–R (OMB Control Number 3235–0509), Form PILOT (OMB Control Number 3235–0507), and Form X–17A–5, Financial and Operational Combined Uniform Single Report, Part IIB, OTC Derivatives Dealer (OMB Control Number 3235–0498). For the reasons discussed below, we do not believe the proposed amendments if adopted would result in a material or substantive revision to these collections of information.[73]

The proposed amendments to Form ATS–R and Form PILOT would revise the forms to provide that information which is currently reported as separate items, *i.e.*, investment grade debt corporate debt securities and non-investment grade corporate debt securities, would be combined and reported as a single item, *i.e.*, corporate debt securities. In all other respects, the information collected on these forms would remain unchanged. Accordingly, we do not believe the proposed amendment would result in a substantive revision to those collections of information if adopted.

The proposed amendment to Rule 10b–10 would eliminate a requirement for transaction confirmations for debt securities (other than government securities) to inform customers if a security is unrated by an NRSRO. This proposed amendment would alter neither the general requirement that broker-dealers generate transaction confirmations and send those confirmations to customers, nor the potential use of information contained in confirmations by the Commission, self-regulatory organizations, and other securities regulatory authorities in the course of examinations, investigations and enforcement proceedings. Moreover, the proposed amendment is not expected to change the cost of generating and sending confirmations, and, we believe that broker-dealers may not need to incur significant costs if they choose not to input information that a debt security is unrated into their existing confirmation systems. Accordingly, we do not believe the proposed amendment would result in a material or substantive revision to these collections of information if adopted.

The proposed amendment to Rule 15c3–1 would potentially modify broker-dealers' existing practices to impose additional recordkeeping burdens. The proposed amendment would replace NRSRO ratings-based criteria for evaluating creditworthiness with new subjective standards based on the broker-dealer's own evaluation of creditworthiness, although broker-dealers would still be able to refer to NRSRO ratings for those purposes. The broker-dealer would have to be able to explain how the securities it used for net capital purposes meet the standards set forth in the proposed amendments. As such, we believe that firms would be required to develop (if they have not already) criteria for assessing the creditworthiness of securities to be included in net capital calculations and apply those criteria to such securities. In addition, the expectation that the broker-dealer be able to explain that any securities used for net capital purposes meet the standards set forth in the proposed amendments would result in the creation and maintenance of records of those assessments.

We believe that all broker-dealers already have policies and procedures in place for evaluating the overall risk and liquidity levels of the securities they use for the purposes of the Net Capital Rule and that they keep records of the assessments of securities they make for net capital purposes; however, the proposed requirements, which specifically address credit risk, could result in additional burdens. The proposed amendments would apply to the approximately 550 broker-dealers that take haircuts on securities pursuant to the Net Capital Rule. We estimate that on average, broker dealers will spend ten hours developing a system of standards for evaluating creditworthiness for the purposes of the Net Capital Rule, resulting in an aggregate initial burden of 5,500 hours. This estimate is based on our belief that many of these broker-dealers already have their own criteria in place for evaluating creditworthiness, while others would continue to refer to NRSRO ratings as the basis of their creditworthiness decisions.

We further estimate that, on average, each broker-dealer will spend an additional ten hours a year reviewing, adjusting, and applying its own standards for evaluating creditworthiness, for a total of 5,500 annual hours across the industry. Once again, this estimate reflects our belief that many of these broker-dealers already have their own criteria in place, while others would continue to refer to NRSRO ratings. We also estimate that firms would employ compliance attorneys, in many cases relying on outside counsel, to review these standards, both initially and on an annual basis. We estimate the per-firm costs of outside counsel to be $2,700 initially and $1,350 on an annual basis, for an aggregate industry cost of $1,485,000 initially and $742,500 on an annual basis.[74]

[72] 44 U.S.C. 3501 *et seq.*

[73] 5 CFR 1320.5(g).

[74] For the purposes of this analysis, we are using salary data from the Securities Industry and Financial Markets Association (''SIFMA'') Report on Management and Professional Earnings in the Securities Industry 2007, which provides base salary and bonus information for middle management and professional positions within the securities industry, as modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size,

Continued

We generally request comment on all aspects of these proposed estimates. In addition, we request specific comment on the following items related to these estimates:

- Are we correct in our hours estimates and our belief that many broker-dealers already have their own criteria in place for evaluating creditworthiness?
- Are we correct in our belief that some broker-dealers would continue to refer to NRSRO ratings as the basis of their creditworthiness decisions?
- Are we correct in our estimation that broker-dealers would engage outside counsel to review their internally generated standards for creditworthiness? If not, how would firms review such standards and what would be the effect of such differing approaches on our burden estimates?

The proposed amendments to the appendices of Rule 15c3–1 include amendments to certain recordkeeping and disclosure requirements that are subject to the PRA. Specifically, the proposed amendments to Appendices E and F of Rule 15c3–1 and conforming amendments to Appendix G would remove the provisions permitting reliance on NRSRO ratings for the purposes of determining counterparty risk. As a result of these deletions, an entity that wished to use the approach set forth in these appendices to determine counterparty risks would be required, as part of its initial application to use the alternative approach or in an amendment, to request Commission approval to determine credit risk weights based on internal calculations and make and keep current a record of the basis for the credit risk weight of each counterparty.

We do not believe that the removal of the option permitting reliance on NRSRO ratings would affect the small number of entities that currently elect to compute their net capital deductions pursuant to the alternative methods set forth in Appendix E or F. Although the collection of information obligations imposed by the proposed amendments are mandatory, applying for approval to use the alternative capital calculation is voluntary. To date, a total of seven entities have applied for and been granted permission to use the methods set forth in Appendix E, while five have applied for and been granted permission to use the methods set forth in Appendix F. We do not currently anticipate that any additional firms will apply for permission to use either Appendix E or Appendix F. All of the approved firms have already developed models to calculate market and credit risk under the alternative net capital calculation methods set forth in the appendices as well as internal risk management control systems.[75] As such, each firm already employs the non-NRSRO ratings-based method that would, under the proposed amendments, become the only option for determining counterparty credit risk under Appendices E and F. Since each entity already employs its own models to calculate market and credit risk and keeps current a record of the basis for the credit risk weight of each counterparty, the proposed amendments would therefore not alter the paperwork burden currently imposed by Appendices E and F.

The proposed amendment to Note G of Exhibit A to Rule 15c3–3 would potentially modify broker-dealers' existing practices to impose additional recordkeeping burdens. Currently, Note G to Exhibit A of Rule 15c3–3 allows a broker-dealer to include, as a debit in the formula for determining its reserve requirements, the amount of customer margin related to customers' positions in security futures products posted to a registered clearing or derivatives organization that meets one of four standards, including maintaining the highest investment grade rating from an NRSRO.[76] The proposed amendment would replace the NRSRO ratings-based standard with a requirement that the registered clearing or derivatives organization has the highest capacity to meet its financial obligations and is subject to no greater than minimal credit risk. As such, we believe that firms that previously relied on NRSRO ratings for the purposes of Note G would be required to develop criteria for assessing the creditworthiness of registered clearing or derivatives organizations and apply those criteria to such securities, although one means of complying with the proposed amendment would be for broker-dealers to refer to NRSRO ratings. In addition, the expectation that the broker-dealer be able to explain that any such clearing or derivatives organizations meets the standard set forth in the proposed amendment would result in the creation and maintenance of records of those assessments.

In the final release adding Note G to Exhibit A of Rule 15c3–3, we estimated that approximately 102 firms would be required to comply with the provisions of the Note.[77] In addition, we estimated in that release that under subparagraph (c) to Note G, each broker-dealer would spend approximately 0.25 hours to verify that the clearing organizations they used met the conditions of Note G, for an aggregate one-time total of 25.5 hours;[78] we believe that this estimate would apply to the verification of that status under the proposed amendment as well. We believe that the proposed amendment would impose an additional one-time burden for broker-dealers that chose to rely on the new standard of proposed Rule 15c3–3a(b)(1)(i). Given the additional options set forth in Note G, we estimate that only half, or 51, of the broker-dealers would choose this option, which we believe would result in the broker-dealer spending, on average, ten hours developing a system of standards for evaluating creditworthiness for the purposes of Note G, resulting in an aggregate initial burden of 510 hours.[79] We also estimate that firms would employ compliance attorneys, in many cases relying on outside counsel, to review these standards. We estimate the one-time costs of outside counsel to be $1,350 per firm, resulting in an aggregate industry cost of $68,850.[80]

We generally request comment on all aspects of these proposed estimates. In addition, we request specific comment on the following items related to these estimates:

employee benefits and overhead. We believe that the legal reviews required by the proposed amendments would be performed by compliance attorneys at an average rate of $270 per hour. Furthermore, we believe that the review process will entail ten hours of initial work and five hours on an annual basis of $270 × 10 = $2,700 × 550 = $1,485,000; $270 × 5 = $1,350 × 550 = $742,500.

[75] *See, e.g., Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities,* Securities Exchange Act Release No. 49830 (June 8, 2004), 69 FR 33428 at 33456 (June 21, 2004).

[76] *See* 17 CFR 240.15c3–3a, Note G, (b)(1)(i). A broker-dealer may also include customer margin related to customers' positions in security futures products posted to a registered clearing or derivatives organization (1) that maintains security deposits from clearing members in connection with regulated options or futures transactions and assessment power over member firms that equal a combined total of at least $2 billion, at least $500 million of which must be in the form of security deposits; (2) that maintains at least $3 billion in margin deposits; or (3) which does not meet any of the other criteria but which the Commission has agreed, upon a written request from the broker-dealer, that the broker-dealer may utilize. 17 CFR 240.15c3–3a, Note G, (b)(1)(ii)—(iv).

[77] *See Reserve Requirements for Margin Related to Security Futures Products,* Exchange Act Release No. 34–50295 (August 31, 2004), 69 FR 54182 at 54188 (September 7, 2004).

[78] 0.25 × 102 = 25.5.

[79] 10 × 51 = 510.

[80] For the purposes of this analysis, we are using salary data from the SIFMA Report on Management and Professional Earnings in the Securities Industry 2007. We believe that the legal reviews required by the proposed amendments would be performed by compliance attorneys at an average rate of $270 per hour. Furthermore, we believe that the review process will entail five hours of initial work. $270 × 5 = $1,350 × 51 = $68,850.

• Are we correct in our estimate of the number of broker-dealers that would be affected by the proposed amendment to Note G?

• Are we correct in our estimate of the percentage of such broker-dealers that choose to rely on proposed Rule 15c3–3a(b)(1)(i)?

• Are we correct in our belief that broker-dealers would engage outside counsel to review their internally generated standards for creditworthiness? If not, how would firms review such standards and what would be the effect of such differing approaches on our burden estimates?

The instructions to Form X–17A–5 Part IIB currently include a summary of the credit risk calculation in paragraph (d) of Rule 15c3–1f. Paragraph (d) of Rule 15c3–1f is proposed to be amended to remove that part of the credit risk calculation that is summarized in Form X–17A–5 Part IIB. Accordingly, we have proposed a conforming amendment to the form that would remove the summary of the credit risk calculation. The summary in the instructions provides additional information for the benefit of the filer and is not related to the information reported on the forms. Accordingly, we do not believe the proposed amendment would result in a substantive revision to these collections of information if adopted.

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to:

(1) Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;

(2) Evaluate and provide relevant data regarding the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Budget (''OMB''), Room 3208, New Executive Office Building, Washington, DC 20503; and (2) Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–17–08. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–17–08, and be submitted to the Securities and Exchange Commission, Records Management Office, 100 F Street, NE., Washington, DC 20549–1110.

VI. Costs and Benefits of the Proposed Rulemaking

The Commission is sensitive to the costs and benefits imposed by its rules. We have identified certain costs and benefits of the proposed amendments and request comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. We seek comment and data on the value of the benefits identified. We also welcome comments on the accuracy of the cost estimates in each section of this analysis, and request that commenters provide data that may be relevant to these cost estimates. In addition, we seek estimates and views regarding these costs and benefits for particular covered institutions, including small institutions, as well as any other costs or benefits that may result from the adoption of these proposed amendments.

As discussed above, the proposed rule amendments are designed to address the risk that the reference to and use of NRSRO ratings in our rules is interpreted by investors as an endorsement of the quality of the credit ratings issued by NRSROs, and may encourage investors to place undue reliance on the NRSRO ratings. The proposed amendments to Rule 3a1–1, Rule 10b–10, Rule 15c3–1, Rule 15c3–3, Rules 101 and 102 of Regulation M, Rules 300 and 301 of Regulation ATS, and Form ATS–R, Form PILOT, and Form X–17A–5 Part IIB would eliminate the reference to and requirement for the use of NRSRO ratings in these rules.

A. Benefits

The Commission anticipates that one of the primary benefits of the proposed amendments, if adopted, would be the benefit to investors of reducing their possible undue reliance on NRSRO ratings that could be caused by references to NRSROs in our rules. An over-reliance on ratings can inhibit independent analysis and could possibly lead to investment decisions that are based on incomplete information. The purpose of the proposed rule amendments is to encourage investors to examine more than a single source of information in making an investment decision. Eliminating reliance on ratings in the Commission's rules could also result in greater investor due diligence and investment analysis. In addition, the Commission believes that eliminating the reliance on ratings in its rules would remove any appearance that the Commission has placed its imprimatur on certain ratings.

We expect that there would be little effect on broker-dealers or other market participants that are subject to the rules that are proposed to be amended. This is because the references to NRSROs in these rules would be no longer necessary, can be replaced with an alternative bright-line standard, or can be used as one possible interpretation of a subjective standard set forth in a proposed amendment to the rule.

The proposed amendments to Rule 3a1–1, Rules 300 and 301 of Regulation ATS, Form ATS–R, and Form PILOT would eliminate the separate definitions of and references to investment grade corporate debt securities and non-investment grade corporate debt securities and would replace them with a single category ''corporate debt securities.'' For reasons discussed above, the Commission preliminarily believes that it is not necessary or appropriate to assess trading volumes in the narrower segments of investment grade and non-investment grade corporate debt securities to fulfill the purposes of those rules. The other classes of securities and the threshold levels themselves would remain unchanged. Therefore, the proposed amendments to Rule 3a1–1 and Regulation ATS are not expected to significantly affect the regulatory treatment of ATSs. With respect to the proposed changes to Form ATS–R and Form PILOT, we expect that combining investment grade and non-investment grade corporate debt securities into a single class for purposes of those two forms would have only minimal impact, because the total units and total dollar volume of corporate debt securities transacted would still have to be reported.

The proposed amendments to Rule 10b–10 to eliminate a requirement for transaction confirmations for debt securities (other than government securities) to inform customers if a security is unrated by an NRSRO. The other requirements of Rule 10b–10 would remain unchanged. Eliminating

this requirement would avoid giving credit ratings an imprimatur that may inadvertently suggest to investors that an unrated security is inherently riskier than a rated security. Accordingly, we anticipate that investors and the marketplace would benefit from the elimination of this requirement, in light of concerns about promoting over-reliance on securities ratings or creating confusion about the significance of those ratings. More generally, eliminating this requirement is consistent with the goal of promoting a dialogue between broker-dealers and their customers—prior to purchase—regarding the creditworthiness of issuers, and should help avoid promoting the use of credit ratings as an oversimplified shorthand that replaces a more complete discussion of credit quality issues.

We preliminarily believe that the proposed amendments to the Net Capital Rule, its appendices, and Exhibit A to the Customer Protection Rule would result in a better overall assessment of the risks associated with securities held by broker-dealers for the purposes of net capital calculations as well as of the long-term financial strength and general creditworthiness of clearing organizations to which customers' positions in security futures products are posted. As the NRSROs themselves have stressed, the ratings they generate focus solely on credit risk, that is, the likelihood that an obligor or financial obligation will repay investors in accordance with the terms on which they made their investment.[81] Many broker-dealers already conduct their own risk evaluation. However, for those broker-dealers that do not, developing their own means of evaluating risk—including, as would be required by the proposed amendments to the Net Capital Rule, an evaluation of the degree of liquidity—would allow them to better incorporate the overall levels of various categories of risk associated with the securities they hold into their net capital calculations.

A separate evaluation of risk by the broker-dealer should lead to a better understanding of the risks associated with those securities which would, we believe, lead to increased operational efficiency and potentially lowered net capital charges for those broker-dealers that currently do not conduct their own risk evaluation. We believe that allowing broker-dealers to employ their own criteria in determining credit risk for net capital purposes would, by reducing the reliance on NRSRO ratings and therefore more closely aligning a broker-dealer's net capital-related risk assessments with its general internal risk assessments, increase operational efficiency. Furthermore, we believe that the proposed amendments could result in more closely tailored capital charges, and thus lowered costs, for broker-dealers while still being designed to ensure net capital requirements sufficient to require maintenance of capital to achieve the goals of the Net Capital Rule.

We believe that the same reasoning applies to the proposed amendment to Exhibit A of the Customer Protection Rule. Broker-dealers that utilize their own means of evaluating the long-term financial strength and general creditworthiness of clearing organizations to which customers' positions in security futures products are posted would better be positioned to incorporate the overall levels of various categories of risk associated with those organizations into their assessments.

In the case of the amendments to Rules 101 and 102 of Regulation M, we believe the proposed rule amendments would have benefits that justify any costs, if adopted. Because the exceptions in Rules 101 and 102 are narrowly-tailored, the proposed amendments should continue to promote investor confidence in the offering process and the market as a whole by only excepting those securities that are resistant to manipulation. Market integrity would also continue to be promoted, which benefits the market and all participants. Also, since the proposals would be a bright-line, compliance with the proposed amendments would be easy for issuers and other persons subject to the rules. In fact, this proposal may lower costs for these people by eliminating the need to obtain an investment grade rating from a nationally recognized statistical rating organization. We believe that replacing the NRSRO investment grade requirement with the proposed exceptions should not result in broker-dealers hiring new compliance staff or making extensive systems changes because the proposals utilize existing bright-line benchmarks.

B. Costs

We anticipate that broker-dealers and other market participants could incur certain costs if the proposed amendments are adopted. Investors could incur additional costs if they perform a more detailed and comprehensive analysis before making an investment decision. Broker-dealers could incur additional costs if they perform their own risk evaluation, if they do not currently do so. Furthermore, the purpose of the proposal is to encourage investors not to place undue reliance on NRSRO ratings in making investment decisions. Investors could still choose to rely solely on NRSRO ratings without incurring additional costs.

The proposed amendments to Rule 3a1–1, Rules 300 and 301 of Regulation ATS, Form ATS–R, and Form PILOT would eliminate the separate definitions of and references to investment grade corporate debt securities and non-investment grade debt securities and would replace them with a single category ''corporate debt securities.'' We preliminarily believe that these changes would not impose any significant costs on market participants.

The proposed amendments to Rule 3a1–1 and Regulation ATS would marginally reduce the likelihood of an ATS meeting the thresholds in those rules. For example, under existing Rule 3a1–1, an ATS that currently has 40% of the average daily dollar trading volume in non-investment grade corporate debt securities and 0% of the average daily dollar trading volume in investment grade corporate debt securities for at least four of the preceding six calendar months could be required to register as an exchange. Under the proposed amendment to Rule 3a1–1, the Commission would no longer be able to require the ATS to register as an exchange, because its average daily dollar trading volume in corporate debt securities combined would be less than 40%. A potential cost of the proposed amendments to Rule 3a1–1 and Regulation ATS is that an ATS that exceeds one of the existing thresholds and thus becomes subject to additional regulatory requirements (in the case of Regulation ATS) or must register as an exchange (in the case of Rule 3a1–1) would no longer exceed the threshold and would not have to meet the attendant requirements. However, the Commission preliminarily believes that this possibility is remote, and that the proposed amendments are unlikely to impose any costs on investors, market participants, or the national market system generally.

We believe that any costs associated with the proposed changes to Form ATS–R and Form PILOT would be minimal. Respondents already determine and report the total units and

[81] *See, e.g., Inside the Ratings: What Credit Ratings Mean*, Fitch, August 2007 (''Inside the Ratings''), p. 1; Testimony of Michael Kanef, Group Managing Director, Moody's Investors Service, Before the United States Senate Committee on Banking, Housing, and Urban Affairs (September 26, 2007), p. 2; Testimony of Vickie A. Tillman, Executive Vice President, Standard & Poor's Credit Market Services, Before the United States Senate Committee on Banking, Housing, and Urban Affairs (September 26, 2007), p. 3.

total trading volume for investment grade and non-investment grade corporate debt securities separately. On the revised forms, respondents would report them together as a single item for ''corporate debt securities.'' The cost of the proposed changes to these forms would be the cost of adding these previously separate items together.

We do not expect the proposed amendment to result in any significant changes in the costs associated with Rule 10b–10. Broker-dealers will continue to generate transaction confirmations and send those confirmations to customers, and the proposed amendment if adopted would not be expected to change the cost of generating and sending confirmations. Moreover, we believe that broker-dealers may not need to incur significant costs if they choose not to input information that a debt security is unrated into their existing confirmation systems.

We believe that the costs of compliance with the proposed amendments to the Net Capital Rule and its appendices as well as to Note G of Exhibit A of the Rule 15c3–3 would be minimal for entities that already employ their own criteria in determining credit risk for net capital purposes. In the event the broker-dealer inaccurately evaluates the creditworthiness and liquidity of its positions, a potential cost could be that the broker-dealer is required to take a larger haircut on its proprietary positions, and therefore reserve additional capital. This could affect its ability to hold its positions or to add to its positions. As for broker-dealers that do not currently employ such criteria, if the proposed amendments are adopted, after considering comment, we could take the view that securities rated by NRSROs would meet the standards in the rules as amended and this would provide a way for broker-dealers that do not determine credit risk on their own to avoid incurring any additional costs. If we were to adopt the view that NRSRO rated securities meet the standard in the proposed amendments, it would mean that any potential costs would be wholly voluntary. While we encourage broker-dealers that have not yet developed their own credit risk evaluation procedures to do so, such actions would proceed at the time and pace desired by the broker-dealers.

We expect the costs of the proposal to modify Rules 101 and 102 of Regulation M to be minimal to most persons subject to those rules who could rely on the proposed amendments as they relate to nonconvertible debt and preferred securities. The proposed exceptions are only triggered when the conditions in the exceptions are met which would only occur in a limited number of situations. It is only when there is an offering of nonconvertible debt or nonconvertible preferred securities which qualifies as a distribution under Regulation M where a covered person bids for, purchases or attempts to induce another person to bid for or purchase the covered security during the applicable restricted period. Thus, there may be offerings of nonconvertible debt or preferred securities that do not constitute a distribution for purposes of Regulation M. In such case, the prohibitions of Regulation M are not triggered and neither the current nor the proposed exceptions would be necessary. Additionally, even if a distribution of the nonconvertible debt or nonconvertible preferred securities exists, a person subject to Regulation M's prohibitions could structure buying activity before or after the applicable restricted period so as not to incur any costs, even if minimal, associated with relying on the proposed exceptions. This holds true for asset-backed securities as well.

We believe that many of the issuers of these securities would already know if they are WKSI issuers based on the non-common equity standard because this analysis would have been already done as part of the offering process. Persons other than issuers who would be subject to Rules 101 and 102 should have access to the issuer's WKSI status as well via the issuer's 10K filings. Such persons should also be in a position with the issuer to obtain any other information needed to make a determination as to whether the proposed exception would apply to the security at issue. Thus, we believe that these persons should incur no significant costs under the proposal. There may be, however, costs to any person subject to Rules 101 or 102 to make minor system changes should the Commission adopt this proposal because of the proposed new standard.

We do believe, however, that there may be increased costs for issuers and other persons subject to Rules 101 and 102 as they relate to nonconvertible debt and preferred securities if that issuer is WKSI based on the common equity standard.[82] Since the issuer in that case would not need to determine the aggregate principal amount of their nonconvertible securities other than common equity for purposes of Securities Act disclosure, new analysis would need to be conducted and communicated to other persons subject to Rules 101 and 102 to rely on the exception. This could likely result in increased costs not completely offset by not needing to obtain an investment grade rating.

With respect to asset-backed securities, we believe that there should not be any significant increased costs to persons subject to Rules 101 and 102. All persons who are subject to those rules should know what form the issuer is using to register the offering, including whether Form S–3 is being used. Thus, no new analysis would need to be conducted. We also expect that there could be a small number of securities taken out of this exception as a result of the proposed change. Costs for such issuers, selling shareholders, underwriters, brokers, dealers, any other distribution participants, or affiliated purchasers of any of these persons affected by this change would be more significant, but we do not expect there to be a significant number of these persons. There could also be minimal costs to train broker-dealer and self-regulatory organization staff and to update broker-dealer policies and procedures and make system changes regarding the new exceptions.

C. Request for Comment

We request data to quantify the costs and the benefits above. We seek estimates of these costs and benefits, as well as any costs and benefits not already described, which could result from the adoption of the proposed amendments. Specifically, would the proposal result in lower costs associated with debt and preferred securities covered by the new exception? What new costs, if any, would be associated with the proposal for persons subject to Rules 101 and 102 where the nonconvertible debt and nonconvertible preferred securities are issued by issuers who are WKSI based on the common equity standard? What costs, if any, would be related to the change for asset-backed securities? For these issues, what is the cost of determining the aggregate principal amount of nonconvertible debt securities other than common equity and then communicating the exception to other persons subject to Rules 101 and 102? Would any securities that currently fall within the existing exceptions not meet the exceptions as proposed? Would the proposal affect the cost to broker dealers of generating transaction confirmations? Do investors benefit from the notification on the transaction confirmation? Does the confirmation help promote conversations about broker-dealers and their customers

[82] 17 CFR 230.405. The common equity standard is at subparagraph (1)(i)(A) of the definition of ''well-known seasoned issuer.''

regarding unrated securities? Are there alternative means to promote such conversations that would not create over-reliance on NRSRO ratings?

VII. Consideration of the Burden on Competition, Promotion of Efficiency, and Capital Formation

Section 3(f) of the Exchange Act [83] requires the Commission, whenever it engages in rulemaking and is required to consider or to determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act [84] requires the Commission, when promulgating rules under the Exchange Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed amendments would remove the reference to NRSRO ratings in several of our rules and forms. These include Rules 3a1–1, 10b–10, 15c3–1, 15c3–3, Rules 101 and 102 of Regulation M, Rules 300 and 301 of Regulation ATS, and Forms ATS–R and PILOT. The purpose of the proposed amendments is to address concerns that the references to NRSRO ratings in our rules and forms contributed to any over-reliance on credit ratings by investors.

We preliminarily believe that the proposed amendments to Rule 3a1–1 and Rules 300 and 301 of Regulation ATS would be unlikely to create any adverse impact on efficiency, competition, or capital formation. The Commission preliminarily believes that combining investment grade and non-investment grade corporate debt securities into a single class of securities for purposes of the thresholds in those rules is unlikely to affect whether an ATS crosses one of those thresholds. Moreover, the other classes of securities for which the thresholds are applied—and the levels of the thresholds themselves—would remain unchanged.

The proposed changes to Form ATS–R and Form PILOT would simplify reporting for ATSs and self-regulatory systems that operate pilot trading systems. Form ATS–R and Form PILOT respondents are already required to determine and report the volumes of corporate debt securities. A single reporting item for ''corporate debt securities'' would replace the existing separate entries for ''investment grade corporate debt securities'' and ''non-investment grade corporate debt securities.'' Therefore, we preliminarily believe that the changes to Form ATS–R and Form PILOT would be unlikely to have any significant impact on efficiency, competition, or capital formation.

We do not believe that the proposed amendment to Rule 10b–10 would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed deletion of paragraph (a)(8) of that rule would not be expected to impose any significant additional costs upon broker-dealers (which in any event would not be prohibited from voluntarily including information that a particular debt security is unrated by an NRSRO). For similar reasons, we do not believe that this proposed amendment would impose any significant adverse effects on efficiency, competition or capital formation.

We preliminarily believe that the proposed amendments to the Net Capital Rule and its appendices or to Note G of Exhibit A of the Rule 15c3–3 would serve to promote efficiency and capital formation. As noted above, we believe that by relying on their own means of evaluating risk, broker-dealers would better incorporate the overall levels of risk associated with the securities they hold into their Net Capital Rule. In turn, we believe, this better understanding would more closely align a broker-dealer's net capital-related risk assessments with its general internal risk assessments and lead to increased operational efficiency, potentially lowered net capital charges, and a more efficient allocation of capital. In addition, broker-dealers that developed their own means of evaluating the long-term financial strength and general creditworthiness of clearing organizations to which customers' positions in security futures products are posted for purposes of Note G to Exhibit A of Rule 15c3–3 would better be positioned to incorporate the overall levels of various categories of risk associated with those organizations into their assessments, creating a more efficient means of evaluating those organizations for the sake of the Rule 15c3–3 than simply relying on NRSRO credit ratings alone. We do not anticipate that the proposed amendments to the Net Capital Rule and its appendices or to Note G of Exhibit A of Rule 15c3–3 would have any impact on competition.

We preliminarily believe that the proposed amendments to Rules 101 and 102 of Regulation M are intended to promote capital formation. The proposed amendments should promote continued investor confidence in the offering process by proposing an exception from Regulation M's Rule 101 and 102 prohibitions limited to those securities which are resistant to manipulation. Such investor confidence in our markets should promote continued capital formation. We believe that the proposals should foster continued market integrity which should also translate into capital formation by only allowing for non-manipulative buying activity during distributions. Issuers of nonconvertible debt, nonconvertible preferred securities and asset-backed securities who fall within the proposed exceptions may be encouraged to engage in capital formation knowing that the proposed exceptions are available for their buying activity as well as the buying activity of distribution participants. Because the proposal eliminates the need to obtain an investment grade rating by an NRSRO, a hurdle to both relying on the exception and capital formation would be eliminated, which would also promote capital formation.

The proposal would provide an alternative to obtaining an investment grade rating but still would provide clear guidance to all persons subject to those rules. We preliminarily believe that the proposed Regulation M amendments would promote market efficiency by providing continued clarity to issuers, distribution participants, and their affiliated purchasers as to the scope of permissible activity by providing a bright line test for compliance with the proposed exceptions comparable to the existing exception. In addition, the proposals continue to utilize existing benchmarks so as not to trigger inefficiencies that might result from use of a new standard. The proposal would also eliminate the need to obtain an investment grade rating from an NRSRO to rely on the exception, which will eliminate a potential inefficiency in the capital raising process. For these reasons, the Commission preliminarily believes that the proposed exceptions will promote efficient capital formation and competition.

We have considered the proposed amendments to Rules 101 and 102 of Regulation M in light of the standards cited in Section 23(a)(2) and believe preliminarily that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. We preliminary believe that the use of the existing WSKI and

[83] 15 U.S.C. 78c(f).

[84] 15 U.S.C. 78w(a)(2).

Form S–3 standards would mean that any additional burdens the proposal may place on market participants should be minimal as market participants are already familiar with and utilize these benchmarks in other contexts. Additionally, the proposals would apply equally to all issuers, distribution participants, and their affiliated issuers. Thus, no person covered by Regulation M should be put at a competitive disadvantage, and the proposal would not impose a significant burden on competition not necessary or appropriate in furtherance of the Act.

We generally request comment on the effects of the proposed amendments to Rules 3a1–1, 10b–10, 15c3–1, 15c3–3, Rules 101 and 102 of Regulation M, Rules 300 and 301 of Regulation ATS, and Forms ATS–R and PILOT on efficiency, competition, and capital formation. Commenters should provide analysis and empirical data to support their views.

VIII. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980 [85] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rule on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[86] Pursuant to Section 605(b) of the Regulatory Flexibility Act (''RFA''), the Commission hereby certifies that the proposed amendments to the rule, would not, if adopted, have a significant economic impact on a substantial number of small entities.

For purposes of Commission rulemaking in connection with the RFA, small entities include broker-dealers with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[87] or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[88]

An alternative trading system that complies with Regulation ATS must, among other things, register as a broker-dealer.[89] Thus, the Commission's definition of small entity as it relates to broker-dealers also would apply to ATSs. An ATS that approaches the volume thresholds for investment grade or non-investment grade corporate debt securities in Rule 3a1–1 or Regulation ATS would be very large and thus unlikely to be a small entity or small organization. With respect to the proposed changes to Form ATS–R, even if an ATS is a ''small entity'' or ''small organization'' for purposes of the RFA, the only change being proposed to the form is to eliminate the distinction between investment grade and non-investment grade corporate debt securities and to require reporting for the combined class of corporate debt securities. We believe this would impose only negligible costs on ATSs, even if they were small entities or small organizations.

Similarly, SROs are the only respondents to Form PILOT and are not ''small entities'' for purposes of the RFA. Accordingly, no small entities would be affected by the proposed amendments to Form PILOT.

We believe that the proposed amendment to Rule 10b–10 will not have a significant economic impact on a substantial number of small entities. While some broker-dealers that effect transactions in the debt securities currently subject to paragraph (a)(8) of that rule may be small entities, the proposed amendment should not result in any significant change to the cost of providing confirmations to customers in connection with those transactions.

The proposed amendments to the securities haircut provisions in paragraphs (E), (F), and (H) of Rules 15c3–1(c)(2)(vi), if adopted, would not have a significant economic impact on a small number of entities. If the Commission adopts the proposed amendments, we would take the view in the adopting release that securities rated by NRSROs as currently required would meet the amended standards. Thus, the proposed amendments would allow for compliance without reference to the standards that are currently in the rule (*i.e.*, NRSRO ratings), but broker-dealers that wish to use them would still be accommodated. Accordingly, the rule would not have any economic impact on small entities because they would not have to change their current practices.

The proposed amendments to the Appendices E and F to Rule 15c3–1 (which include conforming amendments to Appendix G of Rule 15c3–1 and the General Instructions to Form X–17A–5, Part IIB), if adopted, would not apply to small entities. Appendices E and G apply to broker-dealers that are part of a consolidated supervised entity and Appendix F and Form X–17A–5, Part IIB apply to OTC Derivatives Dealers that have applied to the Commission for authorization to compute capital charges as set forth in Appendix F in lieu of computing securities haircuts pursuant to Rule 15c3–1(c)(2)(vi). All of these brokers or dealers would be larger than the definition of a small broker dealer in Rule 0–10.

The proposed amendments to Rule 15c3–3a, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendments to Rule 15c3–3a would apply only to broker-dealers that clear and carry positions in security futures products in securities accounts for the benefit of customers. None of those broker-dealers affected by the rule is a small entity as defined in Rule 0–10 (confirming this with OEA).

With respect to the amendments to Rules 101 and 102 of Regulation M, it is unlikely that any broker-dealer that is defined as a ''small business'' or ''small organization'' as defined in Rule 0–10 [90] could be an underwriter or other distribution participant as they would not have sufficient capital to participate in underwriting activities. Small business or small organization for purposes of ''issuers'' or ''person'' other than an investment company is defined as a person who, on the last day of its most recent fiscal year, had total assets of $5 million or less.[91] We believe that none of the various persons that would be affected by this proposal would qualify as a small entity under this definition as it is unlikely that any issuer of that size had investment grade securities that could rely on the existing exception. Therefore, we believe that these amendments would not impose a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. The Commission solicits comment as to whether the proposed amendments to Rules 3a1–1, 10b–10, 15c3–1, 15c3–3, Rules 101 and 102 of Regulation M, Rules 300 and 301 of Regulation ATS, and Forms ATS–R and PILOT could have an effect on small entities that has not been considered. We request that commenters describe the nature of any

[85] 5 U.S.C. 603(a).

[86] 5 U.S.C. 605(b).

[87] *See* 17 CFR 240.17a–5(d).

[88] *See* 17 CFR 240.0–10(c).

[89] *See* 17 CFR 242.301(b)(1).

[90] 17 CFR 240.0–10.

[91] 17 CFR 240.0–10(a).

impact on small entities and provide empirical data to support the extent of such impact.

IX. Statutory Basis and Text of the Proposed Amendments

The amendments to Rules 3a1–1, 10b–10, 15c3–1, 15c3–3, Rules 101 and 102 of Regulation M, Rules 300 and 301 of Regulation ATS, and Forms ATS–R, Pilot, 17–H, and X–17A–5 Part IIB under the Act are being proposed pursuant to the Sections 7,[92] 17(a),[93] 19(a)[94] of the Securities Act, Sections 2,[95] 3,[96] 9(a),[97] 10,[98] 11,[99] 11A(c),[100] 12,[101] 13,[102] 14,[103] 15,[104] 15(c),[105] 15(g),[106] 17,[107] 17(a),[108] 23(a),[109] 30,[110] and 36(a)(1)[111] of the Exchange Act, and Sections 23,[112] 30,[113] and 38[114] of the Investment Company Act of 1940.

List of Subjects in 17 CFR Parts 240, 242, and 249

Broker, Reporting and recordkeeping requirements, Securities.

Text of Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend § 240.3a1–1 by revising paragraphs (b)(3)(v), (b)(3)(vi), and (b)(3)(vii) and by removing (b)(3)(viii) to read as follows:

§ 240.3a1–1 Exemption from the definition of ''Exchange'' under Section 3(a)(1) of the Act.

* * * * *

(b) * * *

(3) * * *

(v) Corporate debt securities, which shall mean any securities that:

(A) Evidence a liability of the issuer of such securities;

(B) Have a fixed maturity date that is at least one year following the date of issuance; and

(C) Are not exempted securities, as defined in section 3(a)(12) of the Act, (15 U.S.C. 78c(a)(12));

(vi) Foreign corporate debt securities, which shall mean any securities that:

(A) Evidence a liability of the issuer of such debt securities;

(B) Are issued by a corporation or other organization incorporated or organized under the laws of any foreign country; and

(C) Have a fixed maturity date that is at least one year following the date of issuance; and

(vii) Foreign sovereign debt securities, which shall mean any securities that:

(A) Evidence a liability of the issuer of such debt securities;

(B) Are issued or guaranteed by the government of a foreign country, any political subdivision of a foreign country, or any supranational entity; and

(C) Do not have a maturity date of a year or less following the date of issuance.

3. Section 240.10b–10 is amended by removing paragraph (a)(8) and redesignating paragraph (a)(9) as paragraph (a)(8).

4. Section 240.15c3–1 is amended by revising the introductory text of paragraphs (c)(2)(vi)(E), (c)(2)(vi)(F)(*1*), and (c)(2)(vi)(F)(*2*), and by revising paragraph (c)(2)(vi)(H) to read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(E) *Commercial paper, bankers acceptances and certificates of deposit.* In the case of any short term promissory note or evidence of indebtedness which has a fixed rate of interest or is sold at a discount, which has a maturity date at date of issuance not exceeding nine months exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited, and is subject to a minimal amount of credit risk and has sufficient liquidity such that it can be sold at or near its carrying value almost immediately, or in the case of any negotiable certificates of deposit or bankers acceptance or similar type of instrument issued or guaranteed by any bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, the applicable percentage of the market value of the greater of the long or short position in each of the categories specified below are:

* * * * *

(F) (*1*) *Nonconvertible debt securities.* In the case of nonconvertible debt securities having a fixed interest rate and a fixed maturity date, which are not traded flat or in default as to principal or interest and which are subject to no greater than moderate credit risk and have sufficient liquidity such that they can be sold at or near their carrying value within a reasonably short period of time, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

* * * * *

(*2*) A broker or dealer may elect to exclude from the above categories long or short positions that are hedged with short or long positions in securities issued by the United States or any agency thereof or nonconvertible debt securities having a fixed interest rate and a fixed maturity date and which are not traded flat or in default as to principal or interest, and which are subject to no greater than moderate credit risk and have sufficient liquidity such that they can be sold at or near their carrying value within a reasonably short period of time, if such securities have maturity dates:

* * * * *

(H) In the case of cumulative, non-convertible preferred stock ranking prior to all other classes of stock of the same issuer, which is subject to no greater than moderate credit risk and has sufficient liquidity such that it can be sold at or near its carrying value within a reasonably short period of time and which are not in arrears as to dividends, the deduction shall be 10% of the market value of the greater of the long or short position.

* * * * *

5. Section 240.15c3–1e is amended by removing paragraphs (c)(4)(vi)(A) through (c)(4)(vi)(D) and redesignating paragraphs (c)(4)(vi)(E), (F), and (G) as paragraphs (c)(4)(vi)(A), (B), and (C).

6. Section 240.15c3–1f is amended by:

a. Removing the phrase ''by a nationally recognized statistical rating

[92] 15 U.S.C. 77g.
[93] 15 U.S.C. 77q(a).
[94] 15 U.S.C. 77s(a).
[95] 15 U.S.C. 78b.
[96] 15 U.S.C. 78c.
[97] 15 U.S.C. 78i(a).
[98] 15 U.S.C. 78j.
[99] 15 U.S.C. 78k.
[100] 15 U.S.C. 78k–1(c).
[101] 15 U.S.C. 78*l*.
[102] 15 U.S.C. 78m.
[103] 15 U.S.C. 78n.
[104] 15 U.S.C. 78*o*.
[105] 15 U.S.C. 78*o*(c).
[106] 15 U.S.C. 78*o*(g).
[107] 15 U.S.C. 78q.
[108] 15 U.S.C. 78q(a).
[109] 15 U.S.C. 78w(a).
[110] 15 U.S.C. 78dd.
[111] 15 U.S.C. 78mm(a)(1).
[112] 15 U.S.C. 80a–23.
[113] 15 U.S.C. 80a–29.
[114] 15 U.S.C. 80a–37.

organization (''NRSRO'')'' in paragraph (d)(2)(i);

b. Removing the phrase ''by an NRSRO'' in paragraphs (d)(2)(ii), (d)(3)(i), and (d)(3)(ii); and

c. Revising the first and second sentences of paragraph (d)(4).

The revision reads as follows:

§ 240.15c3–1f Optional market and credit risk requirements for OTC derivatives dealers (Appendix F to 17 CFR 240.15c3–1).

* * * * *

(d) * * *

(4) Counterparties may be rated by the OTC derivatives dealer, or by an affiliated bank or affiliated broker-dealer of the OTC derivatives dealer, upon approval by the Commission on application by the OTC derivatives dealer. Based on the strength of the OTC derivatives dealer's internal credit risk management system, the Commission may approve the application. * * *

* * * * *

7. Section 240.15c3–1g is amended by revising paragraph (a)(3)(i)(F) to read as follows:

§ 240.15c3–1g Conditions for ultimate holding companies of certain brokers or dealers (Appendix G to 17 CFR 240.15c3–1).

* * * * *

(a) * * *

(3) * * *

(i) * * *

(F) Credit risk weights shall be determined according to the provisions of paragraphs (c)(4)(vi)(A) of § 240.15c3–1e.

* * * * *

8. Section 15c3–3a is amended by revising Note G paragraph (b)(1)(i) to read as follows:

§ 240.15c3–3a Exhibit A—formula for determination reserve requirement of brokers and dealers under § 240.15c3–3.

* * * * *

Note G. * * *

(b) * * *

(1) * * *

(i) Has the highest capacity to meet its financial obligations and is subject to no greater than minimal credit risk; or

* * * * *

PART 242—REGULATIONS M, SHO, ATS, AC, AND NMS AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

9. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

10. Section 242.101 is amended by revising paragraph (c)(2) to read as follows:

§ 242.101 Activities by distribution participants.

* * * * *

(c) * * *

(2) *Nonconvertible and asset-backed securities.* Nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities, if:

(i) For nonconvertible debt securities and nonconvertible preferred securities, the issuer of such securities meets the requirements of ''well-known seasoned issuer'' as that term is used in § 230.405 of this chapter, but only if such issuer also meets the requirements of paragraph (1)(i)(B)(*1*) of that definition; or

(ii) For asset-backed securities, the offer and sale of the security is registered using Form S–3 (§ 239.13 of this chapter); or

* * * * *

11. Section 242.102 is amended by revising paragraph (d)(2) to read as follows:

§ 242.102 Activities by issuers and selling security holders during a distribution.

* * * * *

(d) * * *

(2) *Nonconvertible and asset-backed securities.* Nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities, if:

(i) For nonconvertible debt securities and nonconvertible preferred securities, the issuer of such securities meets the requirements of ''well-known seasoned issuer'' as that term is used in § 230.405 of this chapter, but only if such issuer also meets the requirements of paragraph (1)(i)(B)(*1*) of that definition; or

(ii) For asset-backed securities, the offer and sale of the security is registered using Form S–3 (§ 239.13 of this chapter); or

* * * * *

12. Section 242.300 is amended by revising paragraph (i), removing paragraph (j), and redesignating paragraph (k) as paragraph (j).

The revision reads as follows:

§ 242.300 Definitions.

* * * * *

(i) *Corporate debt security* shall mean any security that:

(1) Evidences a liability of the issuer of such security;

(2) Has a fixed maturity date that is at least one year following the date of issuance; and

(3) Is not an exempted security, as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)).

* * * * *

13. Section 242.301 is amended by:

a. Adding the word ''or'' to the end of paragraph (b)(5)(i)(C);

b. Revising paragraph (b)(5)(i)(D);

c. Removing paragraph (b)(5)(i)(E);

d. Adding the word ''or'' to the end of paragraph (b)(6)(i)(C);

e. Revising paragraph (b)(6)(i)(D); and

f. Removing paragraph (b)(6)(i)(E).

The revisions read as follows:

§ 242.301 Requirements for alternative trading systems.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(D) With respect to corporate debt securities, 5 percent or more of the average daily volume traded in the United States.

* * * * *

(6) * * *

(i) * * *

(D) With respect to corporate debt securities, 20 percent or more of the average daily volume traded in the United States.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

14. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.*, 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

15. Amend Form X–17A–5 Part IIB General Instructions (referenced in § 249.617) by removing the phrase ''by a nationally recognized statistical rating organization ('NRSRO')'' and the phrase ''by an NRSRO'' wherever it appears in the section ''Credit risk exposure'' under the heading ''Computation of Net Capital and Required Net Capital'' and before the heading ''Aggregate Securities and OTC Derivatives Positions.''

Note: The text of Form X–17A–5 Part IIB does not and this amendment will not appear in the Code of Federal Regulations.

16. Form ATS–R (referenced in § 249.638) is amended by:

a. In the instructions to the form, Section B, revising the second term and removing the third term; and

b. In Section 4 of the form, revising Line L, to read ''Corporate debt securities,'' removing Line M, and redesignating Lines N and O as Lines M and N.

Note: The text of Form ATS–R does not and this amendment will not appear in the Code of Federal Regulations.

The revision reads as follows:

Form ATS–R, Quarterly Report of Alternative Trading System Activities

Form ATS–R Instructions

B. * * *

Corporate Debt Securities—shall mean any securities that (1) evidence a liability of the issuer of such securities; (2) have a fixed maturity date that is at least one year following the date of issuance; and (3) are not exempted securities, as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)).

* * * * *

17. Form PILOT (referenced in § 249.821) is amended by:

a. In the instructions to the form, Section B, revising the second term and removing the third term; and

b. In Section 9 of the form, revising Line J, to read ''Corporate debt securities,'' removing Line K, and redesignating Lines L, M, N and O as Lines K, L, M and N.

Note: The text of Form PILOT does not and this amendment will not appear in the Code of Federal Regulations.

The revision reads as follows:

Form PILOT, Initial Operation Report, Amendment to Initial Operation Report and Quarterly Report for Pilot Trading Systems Operated by Self-Regulatory Organizations

Form PILOT Instructions

B. * * *

Corporate Debt Securities—shall mean any securities that (1) evidence a liability of the issuer of such securities; (2) have a fixed maturity date that is at least one year following the date of issuance; and (3) are not exempted securities, as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)).

By the Commission.

Dated: July 1, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15280 Filed 7–10–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239, and 240

[Release No. 33–8940; 34–58071; File No. S7–18–08]

RIN 3235–AK18

Security Ratings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: This is one of three releases that the Commission is publishing simultaneously relating to the use of security ratings by nationally recognized statistical rating organizations in its rules and forms. In this release, the Commission proposes to replace rule and form requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934 that rely on security ratings (for example, Forms S–3 and F–3 eligibility criteria) with alternative requirements. In addition, the Commission requests comment on its rules relating to the disclosure of security ratings.

DATES: Comments should be received on or before September 5, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–18–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–18–08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Steven Hearne, Eduardo Aleman, or Katherine Hsu, Special Counsels in the Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Regulation S–K,[1] and rules and forms under the Securities Act of 1933 (Securities Act),[2] and the Securities Exchange Act of 1934 (Exchange Act).[3] In Regulation S–K, the Commission is proposing to amend Items 10,[4] 1100,[5] 1112,[6] and 1114.[7] Under the Securities Act, the Commission is proposing to amend Rules 134,[8] 138,[9] 139,[10] 168,[11] 415,[12] 436,[13] Form S–3,[14] Form S–4,[15] Form F–1,[16] Form F–3,[17] Form F–4,[18] and Form F–9.[19] The Commission is also proposing to amend Schedule 14A [20] under the Exchange Act.

I. Background

On June 16, 2008, in furtherance of the Credit Rating Agency Reform Act of 2006,[21] the Commission published for notice and public comment two rulemaking initiatives.[22] The first proposes additional requirements for nationally recognized statistical rating organizations (NRSROs) that were directed at reducing conflicts of interest in the credit rating process, fostering competition and comparability among credit rating agencies, and increasing transparency of the credit rating

[1] 17 CFR 229.10 through 1123.
[2] 15 U.S.C. 77a *et seq.*
[3] 15 U.S.C. 78a *et seq.*
[4] 17 CFR 229.10.
[5] 17 CFR 229.1100.
[6] 17 CFR 229.1112.
[7] 17 CFR 229.1114.
[8] 17 CFR 230.134.
[9] 17 CFR 230.138.
[10] 17 CFR 230.139.
[11] 17 CFR 230.168.
[12] 17 CFR 230.415.
[13] 17 CFR 230.436.
[14] 17 CFR 239.13.
[15] 17 CFR 239.25.
[16] 17 CFR 239.31.
[17] 17 CFR 239.33.
[18] 17 CFR 239.34.
[19] 17 CFR 239.39.
[20] 17 CFR 240.14a–101.
[21] Pub. L. No. 109–291, 120 Stat. 1327 (2006).
[22] *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* Release No. 34–57967 (Jun. 16, 2008).

process.[23] The second is designed to improve investor understanding of the risk characteristics of structured finance products. These proposals address concerns about the integrity of the credit rating procedures and methodologies of NRSROs in light of the role they played in determining the security ratings for securities that were the subject of the recent turmoil in the credit markets.

Today's proposals comprise the third of these three rulemaking initiatives relating to security ratings by an NRSRO that the Commission is proposing. This release, together with two companion releases, sets forth the results of the Commission's review of the requirements in its rules and forms that rely on security ratings by an NRSRO. The proposals also address recent recommendations issued by the President's Working Group on Financial Markets, the Financial Stability Forum on Enhancing Market and Institutional Resilience, and the Technical Committee of the International Organization of Securities Commissions.[24] Consistent with these recommendations, the Commission is considering whether the inclusion of requirements related to security ratings in its rules and forms has, in effect, placed an ''official seal of approval'' on ratings that could adversely affect the quality of due diligence and investment analysis. The Commission believes that today's proposals could reduce undue reliance on ratings and result in improvements in the analysis that underlies investment decisions.

In 1981, the Commission issued a statement of policy regarding its view of disclosure of security ratings in registration statements under the Securities Act.[25] This statement marked a clear delineation between the Commission's historic practice of precluding the disclosure of security ratings in these filings and the Commission's then-developing acknowledgement of the growing importance of ratings in the securities markets and in the regulation of those markets. Soon thereafter, the Commission adopted rules that not only set forth its new policy of permitting the voluntary disclosure of security ratings in registration statements but that also encouraged such disclosure by the issuer.[26] The rules permitted the voluntary disclosure of security ratings in a communication deemed not to be a prospectus and provided that a security rating by an NRSRO is generally not part of a registration statement or report prepared or certified by a person within the meaning of Sections 7 [27] and 11 [28] of the Securities Act.

Concurrent with the adoption of these rules regarding security ratings, the Commission adopted Securities Act Form S–3, the short-form Securities Act registration statement for eligible domestic issuers.[29] The Commission adopted a provision in Form S–3 that a primary offering of non-convertible debt securities may be eligible for registration on the form if rated investment grade.[30] This provision provided debt securities issuers whose public float did not reach the required threshold, or that did not have a public float, with an alternate means of becoming eligible to register offerings on Form S–3.[31] In adopting this requirement, the Commission specifically noted that commenters believed that the component relating to investment grade ratings was appropriate because nonconvertible debt securities are generally purchased on the basis of interest rates and security ratings.[32] Consistent with Form S–3, the Commission adopted a provision in Form F–3 providing for the eligibility of a primary offering of investment grade non-convertible debt securities by eligible foreign private issuers.[33]

Since the adoption of those rules relating to security ratings and Form S–3 and Form F–3, other Commission forms and rules have included requirements that likewise rely on the ratings issued to a security.[34] Among them are Form F–9,[35] Forms S–4 and F–4,[36] and Exchange Act Schedule 14A.[37] Shelf registration requirements for asset-backed securities also depend on a security ratings component.[38] In 1983, the Commission adopted Securities Act Rule 415 which permits certain mortgage related securities, among others, to be offered on a delayed basis.[39] A mortgage related security is defined in section 3(a)(41) of the Exchange Act,[40] as, among other things, ''a security that is rated in one of the two highest rating categories by at least one nationally recognized statistical

[23] See Press Release No. 2008–110 (Jun. 11, 2008). As described in more detail below, an NRSRO is an organization that issues ratings that assess the creditworthiness of an obligor itself or with regard to specific securities or money market instruments, has been in existence as a credit rating agency for at least three years, and meets certain other criteria. The term is defined in section 3(a)(62) of the Exchange Act (15 U.S.C. 78c(a)(62)). A credit rating agency must apply with the Commission to register as an NRSRO, and currently there are nine registered NRSROs.

[24] See President's Working Group on Financial Markets, *Policy Statement on Financial Market Developments* (March 2008), available at *www.ustreas.gov; The Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience* (April 2008), available at *www.fsforum.org;* Technical Committee of the International Organization of Securities Commissions, *Consultation Report: The Role of Credit Rating Agencies in Structured Finance Markets* (March 2008), page 9, available at *www.iosco.org.*

[25] See *Disclosure of Ratings in Registration Statements,* Release No. 33–6336 (Aug. 6, 1981) [46 FR 42024]. The Commission first began using ratings by an NRSRO in 1975 for purposes of determining capital charges on different grades of debt securities under Rule 15c3–1 under the Exchange Act (Net Capital Rule). See 17 CFR 240.15c–31(c)(2)(vi)(E) and *Adoption of Amendments to Rule 15c3–1 and Adoption of Alternative Net Capital Requirement for Certain Brokers and Dealers,* Release No. 34–11497 (Jun. 26, 1975) [40 FR 29795].

[26] See *Adoption of Integrated Disclosure System,* Release No. 33–6383 (Mar. 3, 1982) [47 FR 11380] (''Integrated Disclosure Release'').

[27] 15 U.S.C. 77g.

[28] 15 U.S.C. 77k.

[29] 17 CFR 239.13 and the Integrated Disclosure Release.

[30] See General Instruction I.B.2 of Form S–3. A non-convertible security is an ''investment grade security'' for purposes of form eligibility if at the time of sale, at least one NRSRO has rated the security in one of its generic rating categories which signifies investment grade, typically one of the four highest rating categories. See *id.*

[31] Pursuant to the recently adopted revisions to Form S–3 and Form F–3, issuers also may conduct primary securities offerings on these forms without regard to the size of their public float or the rating of debt securities being offered, so long as they satisfy the other eligibility conditions of the respective forms, have a class of common equity securities listed and registered on a national securities exchange, and the issuers do not sell more than the equivalent of one-third of their public float in primary offerings over any period of 12 calendar months. See *Revisions to Eligibility Requirements for Primary Offerings on Forms S–3 and F–3,* Release No. 33–8878 (Dec. 19, 2007) [72 FR 73534].

[32] See Section III.A.1 of the Integrated Disclosure Release. Later, in 1992, the Commission expanded the eligibility requirement to delete references to debt or preferred securities and provide Form S–3 eligibility for other investment grade securities (such as foreign currency or other cash settled derivative securities). See *Simplification of Registration Procedures for Primary Securities Offerings,* Release No. 33–6964 (Oct. 22, 1992) [57 FR 48970].

[33] General Instruction I.B.2 of Form F–3. See *Adoption of Foreign Issuer Integrated Disclosure System,* Release No. 33–6437 (Nov. 19, 1982) [47 FR 54764]. In 1994, the Commission expanded the eligibility requirement to delete references to debt or preferred securities and provide Form F–3 eligibility for other investment grade securities (such as foreign currency or other cash settled derivative securities). See *Simplification of Registration of Reporting Requirements for Foreign Companies,* Release No. 33–7053A (May 12, 1994) [59 FR 25810].

[34] This release addresses rules and forms filed by issuers under the Securities Act and Exchange Act. In separate releases, the Commission is proposing to address other rules and forms that rely on an investment grade ratings component.

[35] See General Instruction I. of Form F–9.

[36] See General Instruction B.1 of Form S–4 and General Instruction B.1(a) of Form F–4.

[37] See Note E and Item 13 of Schedule 14A.

[38] General Instruction I.B.5 of Form S–3.

[39] 17 CFR 230.415(a)(1)(vii). See *Shelf Registration,* Release No. 33–6499 (Nov. 17, 1983) [48 FR 5289].

[40] 15 U.S.C. 78c(a)(41).

rating organization.''[41] In 1992, the Commission expanded the Form S–3 eligibility provisions to provide for the registration of investment grade asset-backed securities offerings, regardless of the issuer's reporting history or public float.[42] In addition, if they are related to investment grade rated securities, certain registration statements and other requirements afford foreign private issuers with an option to comply with less extensive U.S. GAAP reconciliation requirements.[43]

At various times since the adoption of these form requirements and rules, however, the Commission has reviewed and reconsidered its permissive views toward the disclosure of ratings in filings and the reliance on ratings in the Commission's form requirements. For example, in 1994, the Commission published a proposing release that would have mandated disclosure in Securities Act prospectuses of a rating given by an NRSRO whenever a rating with respect to the securities being offered is ''obtained by or on behalf of an issuer.''[44] The proposals would have required disclosure of specified information with respect to security ratings, whether or not disclosed voluntarily or mandated by the proposed new rules. In addition, the 1994 Ratings Release sought comment on various areas relating to the disclosure of security ratings.

The 1994 Ratings Release also proposed to require the disclosure on a Form 8–K current report of any material change in the security rating assigned to the registrant's securities by an NRSRO.[45] Later, in 2002, the Commission again proposed to require an issuer to file a Form 8–K current report when it received a notice or other communication from any rating agency regarding, for example, a change or withdrawal of a particular rating.[46] The Commission did not adopt this proposal, noting that it would continue to consider the appropriate regulatory approach for rating agencies.[47]

In 2003, the Commission issued a concept release requesting comment on whether it should cease using the NRSRO designation and, as an alternative to the ratings criteria, provide for Form S–3 eligibility where investor sophistication or large size denomination criteria are met.[48] The Commission also requested comment on alternatives to Form S–3 ratings reliance with regard to offerings of asset-backed securities. In the 2004 adopting release for Regulation AB,[49] while retaining the eligibility provision for investment grade rated asset-backed securities, the Commission noted that it was engaged in a broad review of the role of credit rating agencies in the securities markets, including whether security ratings should continue to be used for regulatory purposes under the securities laws.[50] The release made note of the 2003 concept release and the comments received on possible alternatives to using the investment grade requirement for determining Form S–3 eligibility for asset-backed securities.

In 2005, the Commission adopted rules and form amendments to modify the framework for the registration, communications, and offerings processes, relaxing restrictions and requirements on the largest issuers.[51] These large issuers, defined as well-known seasoned issuers, include issuers that have issued for cash more than an aggregate of $1 billion in non-convertible securities, other than common equity, through registered primary offerings over the prior three years.[52] In adopting this definition, the Commission did not rely on investment grade ratings, noting in the adopting release that the securities included in the calculation for determining whether the $1 billion threshold has been met need not be investment grade securities.[53]

II. Proposed Amendments

A. Shelf Registration for Issuers of Asset-Backed Securities

1. Form S–3 Eligibility for Offerings of Asset-Backed Securities

Under the existing requirements, an offering of asset-backed securities, or ABS, as defined in Item 1101 of Regulation AB,[54] may be eligible for registration on Form S–3 and may therefore be offered on a delayed or continuous basis[55] if they are rated investment grade by an NRSRO and meet certain other conditions.[56] The Commission now proposes to amend this requirement in Form S–3 for ABS to replace the component that relies on investment grade ratings with an alternate provision.

In the 2004 proposing release for Regulation AB, the Commission requested comment on whether the investment grade reliance component of the Form S–3 eligibility requirements for ABS offerings was appropriate and whether alternative criteria such as investor sophistication, minimum denomination, or experience criteria were more appropriate.[57] The Commission received four comment letters in response that provided suggestions on possible alternatives to the investment grade requirement for Form S–3 eligibility purposes for ABS offerings.[58] One commenter

[41] See discussion of mortgage related securities in Section II.A.2. below.

[42] See *Simplification of Registration Procedures for Primary Securities Offerings,* Release No. 33–6964 (Oct. 22, 1992) [57 FR 32461].

[43] See Exchange Act Forms 20–F (17 CFR 249.220f) and 40–F (17 CFR 249.240f), Securities Act Forms F–1 (17 CFR 239.31), F–3 (17 CFR 239.33), and F–4 (17 CFR 239.34), and Form F–9 (17 CFR 239.39) and Rule 502(b)(2)(i)(C) of Regulation D (17 CFR 230.502(b)(2)(i)(C)).

[44] See *Disclosure of Security Ratings,* Release No. 33–7086 (Aug. 31, 1994) [59 FR 46304] (the ''1994 Ratings Release''). A concept release on this subject was published in *Disclosure of Security Ratings,* Release No. 33–5882 (Nov. 3, 1977) [42 FR 58414].

[45] See the 1994 Ratings Release.

[46] See *Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date,* Release No. 33–8106 (Jun. 17, 2002) [67 FR 42914].

[47] See *Additional Form 8–K Filing Requirements and Acceleration of Filing Date,* Release No. 33–8400 (Mar. 16, 2004) [69 FR 15594], amended by Release No. 33–8400A (Aug. 4, 2004) [69 FR 48370].

[48] See *Rating Agencies and the Use of Credit Ratings under the Federal Securities Laws,* Release No. 33–8236 (Jun. 4, 2003) [68 FR 35258]. Comments on the concept release are available at: *http://www.sec.gov/rules/concept/s71203.shtml.* As discussed above, recent events have highlighted the need to revisit our reliance on NRSRO ratings in the context of these developments. See also the extensive discussion of market developments in Release No. 34–57967.

[49] 17 CFR 229.1100 through 1123.

[50] See Section III.A.3.c of *Asset-Backed Securities,* Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506, 1524].

[51] See *Securities Offering Reform,* Release No. 33–8591 (July 19, 2005) [70 FR 44722].

[52] See definition of well-known seasoned issuer in Rule 405. 17 CFR 230.405.

[53] See Section II.A.1.b of Release No. 33–8591.

[54] 17 CFR 229.1101.

[55] General Instruction I.B.5 of Form S–3. The Commission expanded the use of Form S–3 to all types of asset-backed securities in 1992. See *Simplification of Registration Procedures for Primary Securities Offerings,* Release No. 33–6964 (Oct. 22, 1992) [57 FR 48970].

[56] As discussed below, two additional conditions also apply in order for ABS offered for cash to be Form S–3 eligible: (1) delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date; and (2) with respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date. General Instruction I.B.5(a) of Form S–3.

[57] See Section III.A.3.c of *Asset-Backed Securities,* Release No. 33–8419 (May 3, 2004) [69 FR 16650]. In the 2003 concept release where the Commission requested comment on alternatives to the ratings reliance requirement in Form S–3 for corporate debt, the Commission requested comment on alternatives to ratings reliance with respect to ABS offerings. No comment letters submitted in response to the concept release provided specific suggestions on alternatives for ABS offerings. See Release No. 33–8236.

[58] See letters commenting on Release No. 33–8419 from the American Bar Association (ABA), Kutak

recommended that the Commission replace the investment grade ratings requirement with a sponsor[59] experience requirement (*e.g.*, Exchange Act reporting).[60] Another commenter suggested that the Commission either (1) eliminate the use of the ratings as a bright line test for the Form S–3 eligibility criteria, thereby eliminating the incentive to shop for ratings simply to satisfy a regulatory requirement; or (2) reflective of developing market practice, require an investment grade rating which is the lower of two ratings.[61]

Two commenters recommended that the Commission adopt a minimum denomination requirement (*e.g.*, $100,000 or $250,000) that would determine form eligibility, limiting investment in the offering to investors who had such capital.[62] One of these commenters recommended that the Commission make short-form registration available to otherwise eligible non-investment grade rated or unrated classes of asset-backed securities provided that sales are made in minimum denominations and initial sales of classes of securities are made only to qualified institutional buyers (as defined in Securities Act Rule 144A(a)(1))[63] and institutional accredited investors (as defined in Rule 501[64] of Regulation D).[65] The commenter reasoned that such restrictions should ensure that securities are sold and subsequently resold only to investors who are capable of undertaking their own analysis of the merits and risks of their investment.[66]

In light of our effort to reduce regulatory reliance on security ratings, the Commission has revisited the comments in 2004 and now proposes to replace the investment grade component in the Form S–3 eligibility requirement for ABS offerings with a minimum denomination requirement for initial and subsequent sales and a requirement that initial sales of classes of securities be made only to qualified institutional buyers. The eligibility requirement, as proposed to be revised, would retain the other provisions relating to delinquency concentration and residual value percentages for offerings of securities backed by leases other than motor vehicle leases.[67] Thus, as proposed, asset-backed securities offered for cash may be Form S–3 eligible provided:

- Initial and subsequent resales are made in minimum denominations of $250,000;
- Initial sales are made only to qualified institutional buyers (as defined in Rule 144A(a)(1));
- Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date; and
- With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.[68]

This proposed amendment would limit use of a short-form shelf registration statement for asset-backed securities to offerings to large sophisticated and experienced investors without, we believe, causing undue detriment to the liquidity of the asset-backed securities market.[69] In keeping with that purpose and given the unique nature and structure of asset-backed securities, we are proposing at this time only to include qualified institutional buyers rather than also including institutional accredited investors as suggested by the commenter in 2004.

2. Mortgage Related Securities and Securities Act Rule 415

In addition to being shelf eligible by meeting the requirements of Form S–3, a particular subset of ABS may also be shelf eligible by meeting the requirements in Securities Act Rule 415,[70] which enumerates the securities which are permitted to be offered on a continuous or delayed basis. Among those securities are ''mortgage related securities, including such securities as mortgage-backed debt and mortgage participation or pass through certificates.''[71] By specifically referring to mortgage related securities, Rule 415 has permitted such securities to be offered on a delayed basis, even if the offering cannot be registered on the Form S–3 short form registration statement because it does not meet the eligibility requirements of Form S–3.

Currently, the term ''mortgage related securities'' is defined by Section 3(a)(41) of the Exchange Act[72] as, among other things, ''a security that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.'' Given that the term mortgage related securities also depends on a ratings component, it would be a logical extension of our amendments here to amend the Rule 415 reference to a mortgage related security to add that the sale of such security must be in compliance with the additional requirements that initial sales are made to qualified institutional buyers and initial and subsequent sales are made in certain minimum denominations. Given that reliance on security ratings could just as easily impact an investor's investment decision in mortgage-backed securities as it could for other asset-backed securities,[73] we believe it is appropriate that mortgage-backed securities be treated the same as all asset-backed securities.[74]

Therefore, under the proposed revision to Rule 415, mortgage-backed securities, having the same characteristics as mortgage related securities under the Section 3(a)(41) definition, regardless of the security

Rock, LLP (Kutak), State Street Global Advisors (State Street), and Moody's Investor Service (Moody's). The public comments received are available for inspection in our Public Reference Room at 100 F Street, NE., Washington, DC 20549 in File No. S7–21–04, or may be viewed at *http://www.sec.gov/rules/proposed/s72104.shtml.*

[59] While ''sponsor'' is a commonly used term for the entity that initiates the asset-backed securities transaction, the terms ''seller'' or ''originator'' also are often used in the market. In some instances the sponsor is not the originator of the financial assets but has purchased them in the secondary market. See footnote 46 of Release No. 33–8518.

[60] See letter from State Street.

[61] See letter from Moody's.

[62] See letters from ABA and Kutak.

[63] 17 CFR 230.144A(a)(1).

[64] 17 CFR 230.501.

[65] See letter from ABA.

[66] *Id.*

[67] See proposed General Instruction I.B.5(a)(iii) and (iv) of Form S–3.

[68] See proposed General Instruction I.B.5(a) of Form S–3.

[69] We are aware of two types of asset-backed offerings that may not meet these new criteria, unit repackaging and securitization of insurance funding agreements but believe that they can be effectively registered using Form S–1 instead of Form S–3.

[70] 17 CFR 230.415.

[71] 17 CFR 230.415(a)(vii).

[72] 15 U.S.C. 78c(a)(41). Section 3(a)(41) was added by the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA) (Pub. L. 98–440–98 Stat. 1690). In 1984, contemporaneous with the enactment of SMMEA, the Commission amended Rule 415, which is known as the shelf rule, to allow SMMEA-eligible mortgage related securities to use the shelf offering process. See *Shelf Registration,* Release No. 33–6499 (Nov. 17, 1983) [48 FR 5289].

[73] The President's Working Group has noted that one of the principal underlying causes of the current global market turmoil relating to the mortgage-backed securities industry was the credit rating agencies' assessments of subprime residential mortgage-backed securities and other complex structured credit products that held residential mortgage-backed and other asset-backed securities. See Section I of the Policy Statement on Financial Market Developments. See n. 24 above.

[74] Indeed, mortgage-backed securities are merely a type of, or subset of, asset-backed securities. We believe that there have not been any recent offerings that have relied on Rule 415(a)(vii) for shelf eligibility rather than through meeting the requirements of Form S–3.

rating, could be offered on a delayed basis provided that:

- Initial sales and any resales of the securities are made in minimum denominations of $250,000;[75] and
- initial sales of the securities are made only to qualified institutional buyers (as defined in Rule 144A(a)(1)).

Request for Comment

- Is the proposed amendment to the Form S–3 eligibility requirement for asset-backed securities appropriate? Is there a better alternative to the investment grade ratings component? If so, what is that alternative and why is it better?
- Is the proposed amendment requiring that initial and subsequent sales be made in a minimum denomination appropriate? Should the denomination level be higher or lower (*e.g.*, $400,000 or $100,000)?
- We understand that non-convertible securities may typically be held in book entry form with a depository. Are there any system issues or processes at the depository that may affect the ability to limit transferability based on a minimum denomination? If yes, what are those issues or processes and how should the rule provisions be revised to prohibit subsequent transfers below the minimum denominations?
- Should there be any restriction on permitting purchasers from allocating securities in denominations lower than $250,000 if the purchasers are acquiring the nonconvertible securities for more than one account? For example, if an investment advisor acquires the securities for more than one qualified institutional buyer, should it be allowed to allocate securities to the accounts of the qualified institutional buyers in denominations lower than $250,000?
- Should Form S–3 limit initial sales of eligible asset-backed securities to qualified institutional buyers? Should the requirement include sales to an additional group of investors (*e.g.*, institutional accredited investors)? If so, why? Should subsequent sales be limited as well? Would it be appropriate to eliminate the minimum denomination requirements after some period of time, such as after six months or one year from the date of issuance? Are there particular kinds of ABS offerings that are sold to investors other than qualified institutional buyers?
- What would be the impact on liquidity in the ABS secondary market if Form S–3 registration required that initial sales be limited to qualified institutional buyers, institutional accredited investors, or other groups of sophisticated investors? What would be the impact on liquidity in the secondary market if resales of securities that were originally offered and sold off of the Form S–3 were so limited? What would be the impact on the cost of capital for ABS sponsors if Form S–3 registration required that initial sales or resales were limited to qualified institutional buyers or other groups of sophisticated investors?
- Would a better standard than qualified institutional buyer be any purchaser that owns and invests on a discretionary basis not less than $25,000,000? Would a threshold like this that does not limit the purchasers to institutions be appropriate, particularly in light of recent market events? Should there be other thresholds for particular investors, such as owning and investing on a discretionary basis not less than $50,000,000 for government or political subdivisions, agencies or instrumentalities of a government? Should we use Qualified Investor as defined in Exchange Act Section 3(a)(54)[76] rather than qualified institutional buyer?
- We note that there are two types of ABS offerings that may not meet this new criteria, unit repackagings, and securitizations of insurance funding agreements. Can the offer and sale of these securities be effectively registered on Form S–1? We note that these securities are typically listed on a national securities exchange. Should we instead add an alternative eligibility requirement that would provide eligibility to use Form S–3 for securities listed on a national securities exchange?
- Should we instead assess Form S–3 and shelf eligibility in a manner similar to what we are proposing for corporate debt that is discussed in the next section? If so, what would be the appropriate amount of required issuance? Should the issuance amount be measured only for the same sponsor, same asset class, and same structure? Should it matter if the assets are purchased by the sponsor rather than originated by the sponsor or an affiliate?
- Is the proposed revision to Securities Act Rule 415 appropriate? Is there any reason why mortgage related securities should be treated differently from other asset-backed securities for purposes of delayed offerings?
- Are there SMMEA eligible loans that could not be securitized in circumstances meeting the proposed threshold for S–3 eligibility?
- Should Rule 415 be amended as proposed? In the alternative, should the reference to mortgage related securities in Rule 415 be deleted (*i.e.*, so that mortgage-backed securities could only be offered on a delayed basis if eligible for registration on Form S–3)? Are there securities that are currently offered pursuant to Rule 415(a)(1)(vii) that do not meet the current requirements of Form S–3 and would not meet the requirements of the proposal?

B. Primary Offerings of Non-convertible Securities

1. Form S–3 and Form F–3

Forms S–3 and F–3 are the ''short forms'' used by eligible issuers to register securities offerings under the Securities Act. These forms allow eligible issuers to rely on reports they have filed under the Exchange Act to satisfy many of the disclosure requirements under the Securities Act. Form S–3 eligibility for primary offerings also enables form eligible issuers to conduct primary offerings ''off the shelf'' under Securities Act Rule 415. Rule 415 provides considerable flexibility in accessing the public securities markets in response to changes in the market and other factors. Issuers that are eligible to register these primary ''shelf'' offerings under Rule 415 are permitted to register securities offerings prior to planning any specific offering and, once the registration statement is effective, offer securities in one or more tranches without waiting for further Commission action. To be eligible to use Form S–3 or F–3, an issuer must meet the form's eligibility requirements as to registrants, which generally pertain to reporting history under the Exchange Act,[77] and at least one of the form's transaction requirements.[78] One such transaction requirement permits registrants to register primary offerings of non-convertible securities if they are rated investment grade by at least one NRSRO.[79] Instruction I.B.2 provides that a security is ''investment grade'' if, at the time of sale, at least one NRSRO has rated the security in one of its generic rating categories, typically the four highest, which signifies investment grade.

The Form S–3 investment grade requirement was originally proposed by

[75] Denominations of any amounts above $250,000 would meet this requirement.

[76] 15 U.S.C. 78c(a)(54).

[77] See General Instruction I.A to Forms S–3 and F–3.

[78] See General Instruction I.B to Forms S–3 and F–3.

[79] See General Instruction I.B.2 to Forms S–3 and F–3.

the Commission in a 1982 release.[80] Prior to adopting Form S–3, the Commission had previously provided a short form registration statement on Form S–9, which permitted the registration of issuances of certain high quality debt securities.[81] The criteria for use of Form S–9 related primarily to the quality of the issuer.[82] While these eligibility criteria delineated the type of issuer of high quality debt for which Form S–9 was intended, the Commission believed that certain of its requirements may have overly restricted the availability of the form.[83] The Commission believed that security ratings were a more appropriate standard on which to base Form S–3 eligibility than specified quality of the issuer criteria, citing letters from commenters indicating that short form prospectuses are appropriate for investment grade debt because such securities are generally purchased on the basis of interest rates and security ratings.[84]

Today we are proposing to revise the transaction eligibility criteria for registering primary offerings of non-convertible securities on Forms S–3 and F–3. As proposed, the instructions to these forms would no longer refer to security ratings by an NRSRO as a transaction requirement to permit issuers to register primary offerings of non-convertible securities for cash. Instead, these forms would be available to register primary offerings of non-convertible securities if the issuer has issued (as of a date within 60 days prior to the filing of the registration statement) for cash more than $1 billion in non-convertible securities, other than common equity, through registered primary offerings over the prior three years.[85]

We are proposing to revise the form criteria using the same method and threshold by which the Commission defined an issuer of non-convertible securities, other than common equity, that does not meet the public equity float test as a ''well-known seasoned issuer.''[86] Similar to our approach with well-known seasoned issuers, we believe that having issued $1 billion of registered non-convertible securities over the prior three years would lead to a wide following in the marketplace. These issuers generally have their Exchange Act filings broadly followed and scrutinized by investors and the markets.[87] The Commission intends for the number of issuers eligible under the proposed criteria to register primary offerings of non-convertible securities on Forms S–3 and F–3 to not be significantly reduced, or to differ significantly from, the number of those eligible under the current form requirements.[88] Using the $1 billion threshold, we preliminarily believe that for issuances that have occurred thus far this year, the proposed change would result in approximately six issuers filing on Form S–1 instead of on a short-form registration statement. This approach is designed to provide assurance that eligible issuers are followed by the markets such that it is appropriate to allow forward incorporation by reference and delayed offering. We realize that it is now possible that some offerings of non-investment grade securities, such as high-yield bonds (also known as ''junk bonds'') may be registered for sale on Form S–3.

These issuers also would have to satisfy the other conditions of the form eligibility requirement. In determining compliance with this threshold:

- Issuers may aggregate the amount of non-convertible securities, other than common equity, issued in registered primary offerings during the prior three years;
- issuers may include only such non-convertible securities that were issued in registered primary offerings for cash—they may not include registered exchange offers;[89] and
- parent company issuers only may include in their calculation the principal amount of their full and unconditional guarantees, within the meaning of Rule 3–10 of Regulation S–X,[90] of non-convertible securities, other than common equity, of their majority-owned subsidiaries issued in registered primary offerings for cash during the three-year period.

The aggregate principal amount of non-convertible securities that may be counted toward the $1 billion issuance threshold may have been issued in any registered primary offering for cash, on any form (other than Form S–4 or Form F–4). Non-convertible securities need not be investment grade securities to be included in the calculation. In calculating the $1 billion amount, issuers generally may include the principal amount of any debt and the greater of liquidation preference or par value of any non-convertible preferred stock that were issued in primary registered offerings for cash.[91]

Request for Comment

- The recent turmoil in the credit markets, particularly in the structured finance market, strongly suggests that there has been undue reliance on security ratings and that the ratings for many issuers did not reflect the risks of the investment. We are proposing thresholds on the amount of issuance in order to move away from reliance on security ratings in the Commission's rules. Does the proposed eligibility based on the amount of prior registered non-convertible securities issued serve as an adequate replacement for the investment grade eligibility condition? Would the cumulative offering amount

[80] See *Reproposal of Comprehensive Revision to System for Registration of Securities Offerings,* Release No. 33–6331 (Aug. 6, 1981) [46 FR 41902] (''the S–3 Proposing Release'').

[81] Form S–9 was rescinded on December 20, 1976, because it was being used by only a very small number of registrants. The Commission believed the lack of usage was due in part to interest rate increases which made it difficult for many registrants to meet the minimum fixed charges coverage standards required by the form. *Adoption of Amendments to Registration Forms and Guide and Rescission of Registration Form,* Release No. 33–5791 (Dec. 20, 1976) [41 FR 56301].

[82] The criteria included net income during each of the registrant's last five fiscal years, no defaults in the payment of principal, interest, or sinking funds on debt or of rental payments for leases, and various fixed charge coverages. The use of fixed charges coverage ratios, typically 1.5, was common in state statutes defining suitable debt investments for banks and other fiduciaries.

[83] See the S–3 Proposing Release.

[84] See the Integrated Disclosure Release.

[85] See proposed General Instruction I.B.2 of Forms S–3 and F–3. We are also proposing to delete Instruction 3 to the signature block of Forms S–3 and F–3.

[86] See *Securities Offering Reform,* Release No. 33–8591 (Jul. 19, 2005) [70 FR 44722]. Rule 405 under the Securities Act defines a ''well-known seasoned issuer'' as an issuer that meets the registrant requirements of Form S–3 or F–3, and either has a worldwide market value of its outstanding voting and non-voting common equity held by non-affiliates of $700 million or more, or has issued in the last three years, in registered offerings, at least $1 billion aggregate principal amount of non-convertible securities in primary offerings for cash. 17 CFR 230.405.

[87] See *Securities Offering Reform,* Release No. 33–8501 (Nov. 3, 2004) [69 FR 67392].

[88] We preliminarily anticipate that under the proposed threshold some additional high yield debt issuers would be eligible to use the Forms.

[89] Issuers may not include the principal amount of securities that were offered in registered exchange offers by the issuer when determining compliance with the $1 billion non-convertible securities threshold. A substantial portion of these offerings involve registered exchange offers of substantially identical securities for securities that were sold in private offerings. In those cases, the original sale to investors in the private offering, relying upon, for example, the exemptions of Securities Act Section 4(2) and Rule 144A, is not registered and is not carried out under the Securities Act's disclosure or liability standards. Moreover, in the subsequent registered exchange offers purchasers may not be able, in certain cases, to avail themselves effectively of the remedies otherwise available to purchasers in registered offerings for cash.

[90] 17 CFR 210.3–10.

[91] In determining the dollar amount of securities that have been registered during the preceding three years, issuers should use the same calculation that they use to determine the dollar amount of securities they are registering for purposes of determining fees under Rule 457. 17 CFR 230.457.

for the most recent three-year period reflect market following? Since most of the problems in the market have occurred with respect to asset-backed securities, should we retain the current eligibility requirement for investment grade non-convertible securities?

• Would the specific issuers eligible under the investment grade condition be different from the issuers eligible under the proposal? Would certain investors, such as pension funds, be impacted if investment grade securities could not be offered on Form S–3?

• If the Commission adopts a Form S–3 eligibility requirement designed to reflect the market following of a debt issuer, should the condition be sensitive to the number of debt holders? Is it reasonable to expect that analysts would be more likely to follow issuers with a larger number of debt holders insofar as such holders are potential customers of the analysts' products? If so, how should we determine the number of holders?

• Should there be an eligibility requirement based on a minimum number of holders of record of non-convertible securities offered for cash? If so, should this number be 300 or 500, by analogy to our registration and deregistration rules relating to equity securities? Would linking the eligibility requirement to the number of holders of record help to assure market following?

• Is the cumulative offering amount for the most recent three-year period the appropriate threshold at which to differentiate issuers? Should the threshold be higher (*e.g.*, $1.25 billion) or lower (*e.g.*, $800 million), and, if so, at what level should it be set? Are there any transactions that currently meet the requirements of current General Instruction I.B.2. that would not be eligible to use the form under the proposed revision? Are there any transactions that do not meet the current Form S–3 or Form F–3 eligibility requirements for investment grade securities but now would be eligible under the proposed revision that should not be eligible? If practicable, provide information on the frequency such offerings are made.

• Would the proposed threshold increase or decrease the number of issuers eligible to use Forms S–3 and F–3 under the current investment grade criteria? Is there a reason that this Form S–3 eligibility requirement should not mirror the debt only well-known seasoned issuer definition?

• Should the measurement time period for $1 billion of issuance be longer than three years (*e.g.*, four or five years)? If so, why? Would it be more appropriate for the threshold to include non-convertible securities, other than common equity, outstanding rather than issued over the prior three years?

• Is there a better alternative by which Form S–3 eligibility for non-convertible securities could be required? By what metrics could one measure the market following for debt issuers? Is there an alternative definition of ''investment grade debt securities'' that does not rely on NRSRO ratings and adequately meets the objective of relating short-form registration to the existence of widespread following in the marketplace?

• Should there be a different standard for foreign private issuers eligible to use Form F–3? If so, explain why and what would be a more appropriate criteria.

• Does the $1 billion threshold of offering in the prior three years present any issues that are unique to foreign private issuers, especially those that may undertake U.S. registered public offerings as only a portion of their overall plan of financing, and how might these problems be addressed? Would it be appropriate to provide a longer time period for measurement, or to include public offerings of securities for cash outside the United States?

2. U.S. GAAP Reconciliation Requirements

The Commission's rules relating to U.S. GAAP reconciliation requirements for foreign filers also rely on ratings. Forms F–1, F–3, and F–4 under the Securities Act permit foreign private issuers registering offerings of investment grade securities to provide financial information in accordance with Item 17 of Exchange Act Form 20–F. Item 17 requires foreign private issuers to reconcile their financial statements and schedules to U.S. GAAP if they are prepared in accordance with a basis of accounting other than U.S. GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board. This reconciliation need only include a narrative discussion of reconciling differences, a reconciliation of net income for each year and any interim periods presented, a reconciliation of major balance sheet captions for each year and any interim periods, and a reconciliation of cash flows for each year and any interim periods. Item 18 of Form 20–F, by contrast, requires that a foreign private issuer provide all of the information required by U.S. GAAP and Regulation S–X, in addition to the reconciling information for the line items specified in Item 17.[92] Foreign private issuers of investment grade rated securities are permitted to provide the less-extensive U.S. GAAP reconciliation disclosure pursuant to Item 17 in registration statements and annual reports.

The definition of ''investment grade'' is the same as in the Form S–3 eligibility requirements. A security is ''investment grade'' if, at the time of sale, at least one NRSRO has rated it in one of its generic rating categories that signifies investment grade. Also, a foreign private issuer conducting a private placement of investment grade securities under Regulation D can provide Item 17 information to the extent the issuer is able to do so in a registration statement.[93]

The Commission recently proposed to require foreign private issuers offering investment grade securities, among others, to file financial statements that comply with the more complete Item 18 level of reconciliation, thus eliminating the option of providing Item 17 financial disclosure.[94] The Commission reasoned that ''a reconciliation that includes footnote disclosures required by U.S. GAAP and Regulation S–X [95] can provide important additional information.'' [96] The Commission specifically requested comment, however, on whether foreign private issuers should continue to be permitted to provide Item 17 financial disclosure for offerings of, and periodic reporting relating to, investment grade securities.[97] We now also propose to remove from these requirements the components relying on investment grade ratings and instead permit foreign private issuers to comply with the less extensive U.S. GAAP reconciliation requirements under Item 17 in a registration statement or private offering document if the issuer would meet the proposed Form F–3 eligibility requirements (*i.e.*, if the issuer has issued (as of a date within 60 days prior to the filing of the registration statement) for cash more than $1 billion in non-convertible securities, other than common equity, through registered

[92] See also *Foreign Issuer Reporting Enhancements*, Release No. 33–8900 (Feb. 29, 2008) [73 FR 13404] at Section III.A.

[93] Rule 502 requires a foreign private issuer to provide the same kind of information the issuer would be required to include in a registration statement on a form the issuer would be eligible to use if any sales are made to investors who are not accredited investors. *See* 17 CFR 230.502(b)(2)(i)(C).

[94] *See* Release No. 33–8900.

[95] 17 CFR 210.1–01 *et seq.*

[96] Release No. 33–8900 at Section III.A.

[97] *See* Request for Comment No. 23 of Release No. 33–8900.

primary offerings over the prior three years).

Request for Comment

• If the Commission does not adopt the proposal in Release No. 33–8900 that would eliminate the ability of a foreign private issuer to comply with the less extensive U.S. GAAP reconciliation requirements under Item 17 for filings with respect to investment grade securities, should the Commission revise the requirements as proposed to permit a foreign private issuer to comply with the less extensive U.S. GAAP reconciliation requirements under Item 17 if the issuer has met the proposed Form F–3 eligibility criteria for debt issuers? Are there different criteria that should be used?

3. Form F–9

Form F–9 allows certain Canadian issuers to register investment grade debt or investment grade preferred securities that are offered for cash or in connection with an exchange offer, and which are either non-convertible or not convertible for a period of at least one year from the date of issuance.[98] Under the Form's requirements, a security is rated ''investment grade'' if it has been rated investment grade by at least one NRSRO, or at least one Approved Rating Organization (as defined in National Policy Statement No. 45 of the Canadian Securities Administrator).[99] This eligibility requirement was adopted as part of a 1993 revision to the multijurisdictional disclosure system originally adopted by the Commission in 1991 in coordination with the Canadian Securities Administrators.[100] Consistent with the Commission's proposal to reduce reliance on security ratings in its rules and regulations the Commission is proposing to eliminate the eligibility requirement of Form F–9 that allows Canadian issuers to register certain debt and preferred securities if they are rated investment grade by at least one NRSRO. As with our proposals regarding Forms S–3 and F–3, this requirement would be replaced by a requirement that the issuer has issued in the three years immediately preceding the filing of the Form F–9 registration statement at least $1 billion of aggregate principal amount of debt or preferred securities for cash in primary offerings registered under the Securities Act.

The proposed revision would not change a Canadian issuer's ability to use Form F–9 to register debt or preferred securities meeting the requirements of current General Instruction I.A if the securities are rated ''investment grade'' by at least one Approved Rating Organization (as defined in National Policy Statement No. 45 of the Canadian Securities Administrators). While the proposal would still permit Canadian issuers to register certain securities rated investment grade by an Approved Rating Organization, the Commission believes this approach is appropriate and consistent with the Commission's intent in adopting the multijurisdictional disclosure system to look to form eligibility requirements under Canadian rules.[101] To the extent that the Canadian securities regulators revise similar requirements to remove references to investment grade ratings, we may revise Form F–9 to mirror those revisions.

Request for Comment

• The Commission requests comment on whether the proposed threshold for issuances of debt or preferred securities in the three years immediately preceding the filing of the registration statement is appropriate. Should the Form F–9 eligibility requirements continue to permit the use of ratings by Approved Rating Organizations? Is a different threshold or measurement period more appropriate for Form F–9?

4. NRSRO Ratings Reliance in Other Forms and Rules

a. Forms S–4 and F–4 and Schedule 14A

Issuing investment grade securities confers benefits that extend to other forms and rules as well. Forms S–4 and F–4 allow registrants that meet the registrant eligibility requirements of Form S–3 or F–3 and are offering investment grade securities to incorporate by reference certain information.[102] Similarly, Schedule 14A permits a registrant to incorporate by reference if the Form S–3 registrant requirements are met and the registrant is offering investment grade securities.[103] Because the Commission proposes to change the eligibility requirements in Forms S–3 and F–3 to remove references to ratings by an NRSRO, the Commission believes the same standard should apply to the disclosure options in Forms S–4 and F–4 based on Form S–3 or F–3 eligibility. That is, a registrant will be eligible to use Forms S–4 and F–4 to register non-convertible debt or preferred securities if the issuer has issued (as of a date within 60 days prior to the filing of the registration statement) for cash more than $1 billion in non-convertible securities, other than common equity, through registered primary offerings over the prior three years. Similarly, we propose to amend Schedule 14A to refer simply to the requirements of General Instruction I.B.2. of Form S–3, rather than to ''investment grade securities.''

b. Securities Act Rules 138, 139 and 168

The reliance on security ratings is also evident in other Securities Act rules. Rules 138, 139, and 168 under the Securities Act provide that certain communications are deemed not to be an offer for sale or offer to sell a security within the meaning of Sections 2(a)(10)[104] and 5(c)[105] of the Securities Act when the communications relate to an offering of non-convertible investment grade securities. These communications include the following:

• Under Securities Act Rule 138, a broker's or dealer's publication about securities of a foreign private issuer that meets F–3 eligibility requirements (other than the reporting history requirements) and is issuing non-convertible investment grade securities;

• Under Securities Act Rule 139, a broker's or dealer's publication or distribution of a research report about an issuer or its securities where the issuer meets Form S–3 or F–3 registrant requirements and is or will be offering investment grade securities pursuant to General Instruction I.B.2 of Form S–3 or F–3, or where the issuer meets Form F–3 eligibility requirements (other than the reporting history requirements) and is issuing non-convertible investment grade securities; and

• Under Securities Act Rule 168, the regular release and dissemination by or on behalf of an issuer of communications containing factual business information or forward-looking information where the issuer meets Form F–3 eligibility requirements (other than the reporting history requirements) and is issuing non-convertible investment grade securities.

The Commission proposes to revise Rules 138, 139, and 168 to be consistent with the proposed revisions to the eligibility requirements in Forms S–3 and F–3 since in order to rely on these rules the issuer must either satisfy the public float threshold of Form S–3 or F–

[98] Securities convertible after a period of at least one year may only be convertible into a security of another class of the issuer.

[99] *See* General Instruction I.A to Form F–9.

[100] *See Amendments to the Multijurisdictional Disclosure System for Canadian Issuers*, Release No. 33–7025 (Nov. 3, 1993) [58 FR 62028]. *See also Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers*, Securities Act Release No. 33–6902 (Jun. 21, 1991) [56 FR 30036].

[101] *See* Release No. 33–6902, section II.

[102] *See* General Instruction B.1 of Forms S–4 and Form F–4.

[103] *See* Note E and Item 13 of Schedule 14A.

[104] 15 U.S.C. 77b(a)10.

[105] 15 U.S.C. 77e(c).

3, or issue non-convertible investment grade securities as defined in the instructions to Form S–3 or F–3 as proposed to be revised.

Request for Comment

• Should the Commission revise Rules 138, 139, and 168 as proposed?

c. Item 1100 of Regulation AB

Under the existing Item 1100(c) of Regulation AB,[106] if a significant obligor[107] meets the registrant requirements for Form S–3 or Form F–3 and the pool assets relating to the obligor are non-convertible investment grade rated securities, then an ABS issuer's filings may include a reference to the financial information of the obligor rather than presenting the full financial information of the obligor. The Commission now proposes to amend this provision of Item 1100(c) to remove the ratings reference and permit incorporation by reference of third party financial statements if the third party meets the registrant requirements of Form S–3 and the pool assets relating to such third party are non-convertible securities, other than common equity, that were issued in a primary offering for cash that was registered under the Securities Act. The Commission believes that, for the most part, non-convertible securities that were issued in a registered offering constitute higher quality securities than securities issued under an exemption under, for example, Securities Act Rule 144A, and then subsequently exchanged for registered securities because such securities are subject to the Securities Act.

Request for Comment

• Should the Commission revise Item 1100 of Regulation AB as proposed? If not, explain why?

d. Items 1112 and 1114 of Regulation AB

Items 1112 and 1114 of Regulation AB require the disclosure of certain financial information regarding significant obligors of an asset pool and significant credit enhancement providers relating to a class of asset-backed securities. An instruction to Item 1112(b)[108] provides that no financial information on a significant obligor, however, is required if the obligations of the significant obligor as they relate to the pool assets are backed by the full faith and credit of a foreign government and the pool assets are investment grade securities. Item 1114 of Regulation AB contains a similar instruction that relieves an issuer from providing financial information when the obligations of the credit enhancement provider are backed by a foreign government and the enhancement provider has an investment grade rating. Under both Items 1112 and 1114, to the extent that pool assets are not investment grade securities, information required by paragraph (5) of Schedule B of the Securities Act may be provided in lieu of the required financial information.[109]

We are now proposing to revise these instructions so that these exceptions based on investment grade ratings to the requirements of Items 1112 and 1114 of Regulation AB would no longer apply and information required by paragraph (5) of Schedule B would be required in all situations when the obligations of a significant obligor are backed by the full faith and credit of a foreign government. We are not aware of any benchmark comparable to an investment grade rating here and the requirement would not impose substantial costs or burdens to an ABS issuer, as such information should be readily available.

Request for Comment

• Should the Commission revise the instructions that rely on investment grade ratings in Items 1112 and 1114, as proposed? In the alternative, should the Commission instead permit issuers to omit all information relating to the obligors and credit enhancement providers when the obligations are backed by the full faith and credit of the foreign government? Are there any risks in doing so? Should the Commission allow incorporation by reference of the information required by paragraph (5) of Schedule B of the Securities Act in lieu of providing the information to the extent such information is contained in a filing with the Commission?

• Are there any other provisions in Regulation AB or other rules applicable to asset-backed securities that should be revised?

C. The Commission's Policy on Security Ratings

As noted above, in 1981 the Commission issued its policy on disclosure of security ratings, articulated in Item 10(c) of Regulation S–K,[110] that permits, but does not require, issuers to disclose in Commission filings security ratings assigned by credit rating agencies to classes of debt securities, convertible debt securities, and preferred stock.[111] In 1994, the Commission proposed to change from permissible to mandated disclosure of security ratings.[112] While the Commission did not adopt mandatory disclosure at that time, it signaled concerns relating to adequate disclosure to the markets regarding new financial products and security ratings. In the proposal we noted the dramatic proliferation in the types of securities offered in the marketplace with the development of the market for mortgage- and asset-backed securities and other highly structured or derivative financial obligations. In response to the growth of this market, we adopted new and amended rules and forms to address comprehensively the registration, disclosure, and reporting requirements for asset-backed securities.[113] The adoption of Regulation AB in 2004 codified disclosure requirements and assisted in providing more disclosure with greater comparability for investors in the asset-backed securities markets. While the adoption of Regulation AB has enhanced the disclosure about asset-backed securities, it did not significantly address securities ratings disclosure.

Because mandating disclosure of, and about, securities ratings might unduly emphasize or over rely on ratings, the Commission is at this time retaining the current Item 10(c) policy on security ratings, with minor changes to accommodate our proposed changes to Rule 436(g),[114] which asks registrants to consider, but does not require, certain additional disclosure if a registration statement includes disclosure of a rating. While the Commission has not determined to propose mandatory disclosure, we are again requesting comment as to whether we should require disclosure by issuers regarding ratings in their Securities Act registration statements and their Exchange Act periodic reports. The goal of such disclosure requirements would be to enhance security rating disclosure so that investors are better able to understand the terms of a security rating and the limitations on the rating.

We are proposing to amend Rule 436(g) so that applicability would no longer be limited to just NRSROs.

[106] 17 CFR 229.1100(c).

[107] The term ''significant obligor'' is defined in Item 1101(k) of Regulation AB [17 CFR 229.1101(k)].

[108] Instruction 2 to 17 CFR 229.1112(b).

[109] Paragraph 5 of Schedule B requires disclosure of three years of the issuer's receipts and expenditures classified by purpose in such detail and form as the Commission prescribes.

[110] 17 CFR 229.10(c).

[111] See the Integrated Disclosure Release. See also Release No. 33–6336. The release indicated that a debt rating was simply ''an evaluation of the likelihood that an issuer will be able to make timely interest payments and will be able to repay principal.''

[112] See the 1994 Ratings Release.

[113] Release No. 33–8518.

[114] 17 CFR 230.436(g).

Securities Act Rule 436(g)[115] provides that a security rating assigned to a class of debt securities, a class of convertible debt securities, or a class of preferred stock is not a part of a registration statement prepared or certified by a person or a report or valuation prepared or certified by a person within the meaning of sections 7 and 11 of the Securities Act. We propose to amend the reference to ''nationally recognized statistical rating organization'' in Rule 436(g) to expand the relief to any ''credit rating agency'' as defined in 15 U.S.C. 78c(a)(61). By proposing to permit issuers to disclose security ratings provided by any credit rating agency without requiring consents, the Commission believes this relief may foster competition between credit rating agencies.[116]

Request for Comment

- Prior to 1981 the Commission precluded disclosure regarding security ratings in registration statements under the Securities Act. Should we revise our disclosure policy to prohibit disclosure of security ratings in an issuer's Securities Act registration statements or Exchange Act periodic reports? Should we simply delete Item 10(c) and provide no established disclosure policy regarding credit ratings?
- In 1994, the Commission noted ''the extensive use of, and reliance on, ratings, and the wide disparity in the meaning and significance of the rating'' as important factors in its decision to propose mandated disclosure.[117] In light of the recent turmoil in the credit markets, some of the factors for the proposed disclosure may be no less of concern today than they were in 1994. Should the Commission require disclosure like the disclosure we currently recommend in Item 10(c) of Regulation S–K in order to enhance issuers' security rating disclosure so that investors are better able to understand the terms of a security rating and the limitations on that rating? Would requiring disclosure of a security rating place the Commission's ''official seal of approval'' on security ratings such that it could adversely affect the quality of due diligence and investment analysis?
- Item 10(c) of Regulation S–K currently refers to ''security ratings'' while the 2006 Credit Rating Agency Reform Act added the definition of ''credit rating'' to the Exchange Act, which means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments. Should we revise the reference to ''security rating'' in Item 10(c) to refer to ''credit rating'' instead? Would such a revision increase or decrease the scope of ratings covered by 10(c)? Would such a change limit the types of ratings that could be disclosed in a registration statement? In particular, are there any types of ratings that are issued that would not be covered by the term ''credit rating,'' particularly for ABS or structured products that should be covered by Item 10(c)? Are there any other changes we should make to Item 10(c) to align it with the Credit Rating Agency Reform Act or otherwise modernize it? For instance, should we specifically delineate structured products and asset-backed securities in the list of securities covered by the item since it currently only lists debt securities, convertible debt securities and preferred stock?
- While Item 10(c) currently only recommends disclosure, commenters on the 1994 Ratings Release expressed that most issuers provide this disclosure in their Securities Act filings. Do issuers generally provide this disclosure today? Is disclosure about an issuer's securities rating appropriate disclosure for their Securities Act filings? Is it appropriate disclosure for their periodic Exchange Act filings? Is there any reason that this disclosure should only be recommended rather than required?
- In addition to the information Item 10(c) currently recommends disclosure regarding security ratings would it be valuable for investors to have additional disclosure of all material scope limitations of the rating and any related designation (or other published evaluation) of non-credit payment risks assigned by the rating agency with respect to the security assist investors in better understanding the credit rating and assessing the risks of an investment in the securities? What additional disclosure would be helpful to investors in making these assessments?
- If we were to mandate security rating disclosure, should disclosure be required for any published designation that reflects the results of any evaluation, other than a credit risk evaluation, done by a credit rating agency? Should disclosure be required for any evaluation by a credit rating agency that is communicated to the issuer, regardless of whether it is published?
- If the Commission were to require security rating disclosure, when should an issuer be required to provide that disclosure? In 1994, we proposed to require disclosure: if a registrant has obtained a security rating from an NRSRO with respect to a class of securities being registered under the Securities Act; if the rating is used in the offer or sale of the securities by any participant in an offering; or if the registrant voluntarily discloses a security rating. Should disclosure about the security rating be required under those circumstances? If not, under what circumstances, if any, should disclosure be required?
- Should we require disclosure of unsolicited ratings? It has been suggested that such ratings may not reflect the level of information on the security that is reflected in a solicited rating, at least in part because of a lack of access to the issuer by the unsolicited credit rating agency.[118] Is there a difference between solicited and unsolicited ratings such that they should be treated disparately? Should it matter if the issuer uses the unsolicited rating in the offer and sale of the securities being rated? If we were to require disclosure of unsolicited ratings, should there be limitations on how many ratings or which credit rating agencies ratings should be required to be disclosed? At what point would this create too great a burden on the issuer?
- In Release 34–57967, we expressed our concerns about ratings shopping by issuers and the potential for credit rating agencies to use less conservative rating methodologies in order to gain business, presumably lessening the value of the ratings. If an issuer would be required to provide ratings disclosure where the issuer has obtained either a preliminary security rating or a final security rating from a rating agency, would such disclosure enhance investors' understanding of, and therefore the value of, the ratings? Would it help to address our concerns with ratings shopping? If you do not believe such disclosure would be helpful, how would you suggest that we address these concerns? Should we include a disclosure requirement for indications of a rating prior to a preliminary rating? Would disclosure of indication from a credit rating agency of a likely or possible rating be appropriate?

[115] 17 CFR 230.436(g).

[116] See also Section II.B.1 of the 1994 Ratings Release where the Commission requested comment on eliminating the consent requirement for credit rating agencies that are not NRSROs.

[117] See Section II.A of the 1994 Proposing Release.

[118] However, in the corollary release amending rules for NRSROs, the Commission proposed various changes to Exchange Act Rule 17g–5 [17 CFR 240.17g–5] that would provide the opportunity for other credit rating agencies to use the information to develop ''unsolicited ratings'' for certain rated asset-backed securities. See proposed amendments to Rule 17g–5 in Release No. 34–57967 (Jun. 16, 2008).

• If we were to interpret that a security rating is ''obtained'' if: it is solicited by or on behalf of an issuer from a credit rating agency; or the issuer pays a credit rating agency for services related to a rating issued by that credit rating agency, would the standard capture sufficient disclosure about an issuer's security ratings and the credit rating agencies that have issued them? Could that lead to non-substantive or procedural modifications to the practice of assigning ratings so that issuers could avoid the disclosure requirement? Would that lead to disclosure of security ratings that would not be useful to investors? What standard would provide the most useful information for investors? Could this threshold lead to ratings being obtained in connection with an offering but not being disclosed?

• In the 1994 Ratings Release, we proposed to require issuers to disclose any material differences between the terms of the security as assumed in rating the security and (1) the terms of the security as specified in the governing instruments, and (2) the terms of the security as marketed to investors. The terms of the securities are required to be disclosed in the prospectus, a prospectus supplement, or a post-effective amendment, as applicable. Would this disclosure assist investors? Would requiring this disclosure in periodic filings assist investors in the secondary market in making their investment decisions?

• Having previously proposed requiring material changes in security ratings be reported on Form 8–K under the Exchange Act,[119] we recognize that such security rating changes can be important information to an investor in making investment and voting decisions. We note, however, that issuer-paid rating agencies make their rating designations public. The current failures of security ratings, particularly in the asset-backed securities markets, have led us to re-evaluate the required level of disclosure regarding security ratings. Would requiring detailed current and/or periodic reporting of an issuer's security ratings provide investors and the markets sufficient, timely information about an issuer's security ratings to assist them in making their investment decisions? Would a Form 8–K provide investors with material and timely information about an issuer's security ratings and changes in those ratings? Would periodic reports on Form 10–K, Form 20–F, Form 10–Q and Form 10–D provide investors with material and timely information about an issuer's security ratings and changes in those ratings? Is the information that would be provided regarding a material change in a rating in a Form 8–K already provided by the credit rating agency? Would a Form 8–K be unduly burdensome? Should a Form 8–K requirement be limited to solicited ratings? If a credit rating agency does not publicly disclose the security rating of an issuer's securities, should we require disclosure of the rating in a Form 8–K or in the issuer's periodic reports? How would the existence of subscriber paid credit rating agencies affect your response?

• We are only proposing to amend Item 10(c) to remove references to consents in conjunction with our proposed amendments to Rule 436(g) to no longer requiring consents from any credit rating agencies for inclusion of their ratings in an issuer's registration statement. Should there be a written consent requirement? Would a written consent requirement create any issues if the Commission were to require disclosure regarding those ratings? Would issuers find it problematic or costly to obtain consents?

• Should we require the consent of a credit rating agency for the use of its security rating by an issuer? What would be the additional costs of such a requirement? Would a consent requirement result in fewer ratings being obtained?

• Should we continue to limit the consent requirement to non-NRSROs as our rules currently do? Does our proposed regulatory oversight and additional disclosure regarding the ratings process and results of ratings justify allowing the use of NRSROs ratings without requiring consents? Would such a provision provide a ''seal of approval'' for NRSROs? Would there be any competitive effect on non-NRSRO credit rating agencies?

• Are there any issues with periodic disclosure regarding security ratings that are particular to ABS issuers? For instance, how would the responsibility to monitor changes or development in security ratings impact ABS offerings?

D. Other Rules Referencing Security Ratings

Other rules under the Securities Act also reference security ratings assigned by NRSROs. Rule 134(a)(17)[120] permits the disclosure of security ratings in certain communications deemed not to be a prospectus or free writing prospectus. We are not proposing to eliminate this reference to security ratings in our rules. However, we are proposing to revise the rule to allow for disclosure of ratings assigned by any credit rating agency, not just NRSROs. In addition, disclosure must also note that the credit rating agency is not an NRSRO, if that is the case.

Under Rule 100(b)(2) of Regulation FD, disclosures to an entity whose primary business is the issuance of security ratings are excluded from coverage provided the information is disclosed solely for the purpose of developing a credit rating and the entity's ratings are publicly available. We believe this exception for disclosures to credit rating agencies is appropriate given the purpose of Regulation FD and are therefore not proposing to revise that provision.

Request for Comment

• Should we continue to allow disclosure of security ratings in ''tombstones'' to be deemed not to be a prospectus or free writing prospectus? Is it appropriate to allow such disclosure of a security rating by any credit rating agency and not limit the allowance to NRSROs? If the credit rating agency is not an NRSRO, is it appropriate to require additional disclosure to that effect?

• Should we revise Rule 100(b)(2) of Regulation FD to eliminate the requirement that the entity's ratings be publicly available or to require public disclosure of information submitted to credit rating agencies by issuers? If so, please explain the basis for recommending the change and discuss how to implement such changes.

• How would requiring disclosure under Regulation FD affect security ratings?

III. General Request for Comments

We request and encourage any interested person to submit comments regarding:

• The proposed amendments that are the subject of this release;

• Additional or different changes; or

• Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of companies, investors, and other market participants. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

In addition, we request comment on the following:

• Should the Commission include a phase-in for issuers beyond the effective date to accommodate pending offerings?

[119] See the 1994 Ratings Release and Release No. 33–8106.

[120] 17 CFR 230.134(a)(17).

If so, should a phase-in apply only to particular rules, such as Form S–3 eligibility? As proposed, compliance with the new standards would begin on the effective date of the new rules. Will a significant number of issuers have their offerings limited by the proposed rules? If a phase-in is appropriate, should it be for a certain period of time or only for the term of a pending registration statement?

• What impact on competition should the Commission expect were it to adopt the proposed non-convertible debt eligibility requirements? Would any issuers that currently take advantage, or are eligible to take advantage of the investment grade condition and are planning to do so, be adversely affected? Is the ability to offer debt off the shelf a significant competitive advantage that the Commission should be concerned about limiting to only large debt issuers?

IV. Paperwork Reduction Act

A. Background

Certain provisions of the proposed rule amendments contain a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA).[121] The Commission is submitting these proposed amendments and proposed rules to the Office of Management and Budget (OMB) for review in accordance with the PRA. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:[122]

''Regulation S–K'' (OMB Control No. 3235–0071);

''Regulation C'' (OMB Control No. 3235–0074);

''Form S–1'' (OMB Control No. 3235–0065) ;

''Form S–3'' (OMB Control No. 3235–0073);

''Form S–4'' (OMB Control No. 3235–0324);

''Form F–1'' (OMB Control No. 3235–0258);

''Form F–3'' (OMB Control No. 3235–0256); and

''Form F–4'' (OMB Control No. 3235–0325).

We adopted all of the existing regulations and forms pursuant to the Securities Act or the Exchange Act. These regulations and forms set forth the disclosure requirements for periodic reports and registration statements that are prepared by issuers to provide investors with information to make investment decisions in registered offerings and in secondary market transactions. Our proposed amendments to existing forms and regulations are intended to replace rule and form requirements of the Securities Act and the Exchange Act that rely on security ratings with alternative requirements.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. There is no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on the EDGAR filing system.

B. Summary of Collection of Information Requirements

The threshold we are proposing for issuers of non-convertible securities who are otherwise ineligible to use Form S–3 or Form F–3 to conduct primary offerings because they do not meet the aggregate market value requirement is designed to capture those issuers with an active market following. The Commission expects that under the proposed threshold, approximately the same number of issuers who are currently eligible will be eligible to register on Form S–3 or Form F–3 for primary offerings of non-convertible securities for cash. In addition, because these proposed amendments relate to those forms' eligibility requirements, rather than the disclosure requirements, the Commission does not expect that the proposed revisions will impose any new material recordkeeping or information collection requirements. Issuers may be required to ascertain the aggregate principal amount of non-convertible securities issued in registered primary offerings for cash, but the Commission believes that this information should be readily available and easily calculable.

Our proposed amendments to Form S–3 and Rule 415 for ABS offerings is intended to limit the investors purchasing asset-backed securities in a delayed offering and off a short-form registration statement to sophisticated and experienced investors without creating an undue detriment to the liquidity of the asset-backed securities market. The Commission expects preliminarily that the proposed amendments for ABS offerings would not substantially change the number of ABS issuers registering their offerings on Form S–3.[123]

C. Paperwork Reduction Act Burden Estimates

For purposes of the Paperwork Reduction Act, we estimate that there will be no annual incremental increase in the paperwork burden for issuers to comply with our proposed collection of information requirements.

D. Solicitation of Comments

We request comments in order to evaluate: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.[124]

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–18–08. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–18–08, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this

[121] 44 U.S.C. 3501 *et seq.* ; 5 CFR 1320.11.

[122] The paperwork burden from Regulation S–K and S–B is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulation S–K.

[123] As noted above, we have identified two areas of exception: unit repackagings and securitizations of insurance funding agreements. We do not believe that changes in these areas would substantially change the number of issuers that would be eligible under the proposed Form S–3 eligibility requirement for ABS offerings.

[124] We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost-Benefit Analysis

A. Proposed Amendments

The Commission is sensitive to the costs and benefits imposed by its rules. We have identified certain costs and benefits of the proposed amendments and request comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. We seek comment and data on the value of the benefits identified. We also welcome comments on the accuracy of the cost estimates in each section of this analysis, and request that commenters provide data that may be relevant to these cost estimates. In addition, we seek estimates and views regarding these costs and benefits for particular covered institutions, including small institutions, as well as any other costs or benefits that may result from the adoption of these proposed amendments.

As discussed above, the proposed rule amendments are designed to address the risk that the reference to and use of NRSRO ratings in our rules is interpreted by investors as an endorsement of the quality of the credit ratings issued by NRSROs, and may encourage investors to place undue reliance on the NRSRO ratings. Today's proposals seek to replace rule and form requirements of the Securities Act and the Exchange Act that rely on security ratings by NRSROs with alternative requirements that do not rely on ratings.

The Commission is proposing to revise the transaction eligibility requirements of Forms S–3, F–3, and F–9. Currently, these forms allow issuers who do not meet the forms' other transaction eligibility requirements to register primary offerings of non-convertible securities for cash if such securities are rated investment grade by an NRSRO.[125] The proposed rules would replace the current eligibility requirement with a requirement that for primary offerings of non-convertible securities for cash, an issuer must have issued in the three years (as of a date within 60 days prior to the filing of the registration statement) at least $1 billion aggregate principal amount of non-convertible securities, other than common equity, in registered primary offerings for cash. In addition, the Commission proposes to replace the Form S–3 eligibility requirement for ABS offerings to require that initial sales of eligible offerings be made only to qualified institutional buyers and that initial and subsequent resales of the securities in the eligible offerings be made only in denominations of at least $250,000. In conjunction with this proposal, the Commission proposes to amend Rule 415 to provide for delayed offerings of mortgage related securities, regardless of the security ratings, only if they meet the same criteria as proposed for ABS offerings on Form S–3.

Currently, issuers are required to obtain consent from a rating agency that is not an NRSRO for disclosure of a security rating issued by that rating agency in a registration statement or report. The Commission is also proposing to amend Securities Act Rule 436(g) and related rules to expand the relief from the consent requirements for security ratings currently provided to NRSROs to other credit rating agencies that are not NRSROs. In addition, the proposed revision to Rule 134 of the Securities Act would permit an issuer to disclose the security rating of any credit rating agency, but would require an issuer to provide, if it elects to include a security rating in a communication under Rule 134, a statement as to whether the entity issuing the rating is an NRSRO.

B. Benefits

The Commission anticipates that one of the primary benefits of the proposed amendments, if adopted, would be the benefit to investors of reducing their possible undue reliance on NRSRO ratings that could be caused by references to NRSROs in our rules. An over-reliance on ratings can inhibit independent analysis and could possibly lead to investment decisions that are based on incomplete information. The purpose of the proposed rule amendments is to encourage investors to examine more than a single source of information in making an investment decision. Eliminating reliance on ratings in the Commission's rules could also result in greater investor due diligence and investment analysis. In addition, the Commission believes that eliminating the reliance on ratings in its rules would remove any appearance that the Commission has placed its imprimatur on certain ratings.

The Commission believes that the proposed amendments to the Form S–3 eligibility requirements for ABS offerings and eligibility to rely on Rule 415(a)(vii) for mortgage-backed securities are designed to make shelf eligibility and short-form registration available to sophisticated and experienced investors. The proposed requirement to permit initial sales only to qualified institutional buyers is intended to limit the market to investors who understand the risks involved with an ABS offering. The proposed requirement that initial sales and subsequent resales of the securities are in minimum denominations of $250,000 is designed to limit offerings to investors with such capital, increasing the probability that these investors have the resources to analyze and comprehend the risks involved with an investment decision in the ABS offering. As with the other amendments to our rules and form requirements relying on investment grade ratings, the Commission believes that these proposals would reduce or eliminate undue reliance on ratings.

The proposed revision to Rule 134 of the Securities Act would require an issuer to provide, if it elects to include a security rating in a communication under Rule 134, a statement as to whether the entity issuing the rating is an NRSRO. The Commission believes that disclosure of this information would be beneficial to investors in evaluating the value of the rating.

Under our proposed amendment to Rule 436(g), an issuer would not be required to obtain consent from the rating agency even with respect to a rating disclosed in a registration statement or report that is issued by a credit rating agency that is not an NRSRO. We believe that our proposed change would foster competition between credit rating agencies.[126]

C. Costs

We are proposing to revise the transaction eligibility criteria for registering primary offerings of non-convertible securities on short-form registration statements. Forms S–3 and F–3 would be available to register primary offerings of non-convertible securities if the issuer has issued (as of a date within 60 days prior to the filing of the registration statement) for cash more than $1 billion in non-convertible securities, other than common equity, through registered primary offerings over the prior three years. The proposed eligibility thresholds may be more difficult to ascertain for some issuers than an NRSRO rating and impose some

[125] The proposed revisions to Form F–9 would eliminate a Canadian issuer's ability to rely on security ratings by NRSROs, but would continue to rely on ratings issued by Approved Rating Organizations, as defined in National Policy Statement No. 45 of the Canadian Securities Administrator.

[126] This would be consistent with our proposed amendments to the rules governing NRSROs in Release No. 34–57967. As discussed in that release, such competition could promote ease of comparability between ratings.

burden on issuers to ascertain the information. In addition, while we do not anticipate that fewer issuers will be eligible, to the extent that the proposal results in fewer issuers eligible to use Forms S–3 and F–3 to register primary offerings of non-convertible securities, this could result in increased costs of preparing and filing registration statements.[127] Issuers who do not meet the proposed threshold and are not otherwise eligible to use Forms S–3 and F–3, would have to register offerings on Forms S–1 or F–1. This could result in additional time spent in the offering process, and issuers may incur costs associated with preparing and filing post-effective amendments to the registration statement.

The Commission does not expect the proposed changes to Forms F–1, F–3 and F–4 to impact substantially the number of registrants able to provide information required by Item 17 of Form 20–F in lieu of Item 18 information. However, because the Commission is proposing changes to the provisions of the forms that provide the eligibility requirements for registrants to provide Item 17 information instead of Item 18, registrants who do not meet the proposed criteria could incur more costs as a result of being required to provide Item 18 information instead.

For the most part, the Commission believes that there would be minimal costs involved with the adoption of the proposed ABS offering Form S–3 eligibility requirements and eligibility to rely on Rule 415(a)(vii) for mortgage-backed securities.[128] Some costs may be incurred on the part of issuers to ensure that sales of the securities in an offering on Form S–3 are made only to qualified institutional buyers and in the prescribed denominations; however, the Commission believes these costs are not significant. To the extent that some issuers would no longer be able to use Form S–3 to register their offerings, those issuers may face some additional costs, such as those arising from no longer being able to utilize certain rules permitting the use of offering materials.

The proposed revision to Rule 134 could impose a disclosure burden of ascertaining whether the entity is an NRSRO, but the Commission believes this burden is slight given the limited number of NRSROs, the availability of this information from public filings, and the issuer's relationship with the credit rating agency.

D. Request for Comments

We seek comments and empirical data on all aspects of this Cost-Benefit Analysis. Specifically, we ask the following:

- Are there any costs involved with tracking whether the initial purchaser is a qualified institutional buyer? Are most ABS offerings on Form S–3 sold to such purchasers? What kind of asset-backed securities are sold to retail investors?
- Are there any costs entailed with tracking the denominations of the sale for the purposes of meeting the proposed ABS offering Form S–3 eligibility requirements?
- Would there be any significant transition costs imposed on issuers as a result of the proposals, if adopted? Please be detailed and provide quantitative data or support, as practicable.

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a) of the Exchange Act[129] requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) prohibits the Commission from adopting any rule which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 2(b) of the Securities Act[130] and Section 3(f) of the Exchange Act[131] require the Commission, when engaging in rulemaking, to consider whether an action is necessary or appropriate in the public interest, and in addition, to consider the protection of investors and whether the action would promote efficiency, competition, and capital formation.

The proposed amendments would eliminate reliance on ratings by an NRSRO in various rules and forms under the Securities Act and the Exchange Act. If adopted, the Commission believes that these amendments would reduce the potential for over-reliance on ratings, and thereby promote investor protection. The Commission anticipates that these proposed amendments would improve investors' ability to make informed investment decisions, which will therefore lead to increased efficiency and competitiveness of the U.S. capital markets. The Commission expects that this increased market efficiency and investor confidence also may encourage more efficient capital formation. Specifically, the proposed amendments would:

- Seek to limit the investors purchasing asset-backed securities off a short-form registration statement to sophisticated and experienced investors without creating an undue detriment to the liquidity of the asset-backed securities market; and
- Seek to limit the issuers eligible to register primary offerings of non-convertible securities on Forms S–3 and F–3 and incorporate by reference to issuers that are actively followed by the markets; and
- Enhance the ability of credit rating agencies to offer security ratings to issuers.

The Commission solicits comment on whether the proposed amendments would change the Forms S–3 and F–3 eligibility requirements for registering primary offerings of non-convertible securities, if adopted, would promote or burden efficiency, competition, and capital formation. The Commission also requests comment on whether the proposed amendments would have harmful effects on investors or on issuers who could use Form S–3 and Form F–3 for primary offerings of non-convertible securities, and what options would best minimize those effects. The Commission requests comment on whether the proposed changes to the eligibility requirement on Form S–3 for offerings of asset-backed securities would promote or burden efficiency, competition, and capital formation. The Commission requests comment on whether the proposed eligibility criterion is less efficient than using the current NRSRO criterion? Additionally, the Commission solicits comment on whether the proposed expansion of the ability of credit rating agencies to proffer their security ratings without being required to provide a consent for an issuer to disclose those ratings would promote or burden efficiency, competition, and capital formation. Finally, the Commission requests comment on the anticipated effect of disclosure requirements on competition in the market for credit rating agencies.

[127] The ability to conduct primary offerings on short form registration statements confers significant advantages on eligible companies in terms of cost savings and capital formation. The time required to prepare Form S–3 or F–3 is significantly lower than that required for Forms S–1 and F–1 primarily because registration statements on Forms S–3 and F–3 can be automatically updated. Forms S–3 and F–3 permit registrants to forward incorporate required information by reference to disclosure in their Exchange Act filings.

[128] ABS issuers generally provide the same disclosure in Form S–1 and Form S–3 registration statements. As such, there may not be the same cost concerns for ABS issuers that no longer qualify for registration on Form S–3 as for other issuers.

[129] 15 U.S.C. 78w(a).

[130] 15 U.S.C. 77b(b).

[131] 15 U.S.C. 78c(f).

The Commission requests commenters to provide empirical data and other factual support for their views, if possible.

VII. Regulatory Flexibility Act Certification

The Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the amendments contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. *The proposed amendments would:*

- Amend the Securities Act Form S–3 eligibility requirements for offerings of asset-backed securities by replacing the investment grade component with a minimum denomination requirement for initial and subsequent sales and require that initial sales of classes of securities only be made to qualified institutional buyers;
- Amend Rule 415 of the Securities Act that references mortgaged related securities by adding the requirement that an initial and subsequent sale of such a security must meet certain minimum denominations, and initial sales must be made to qualified institutional buyers;
- Amend the Securities Act Form S–3 and Form F–3 eligibility requirements for primary offerings of non-convertible securities if the issuer has issued (as of a date within 60 days prior to the filing of the registration statement) for cash more than $1 billion in non-convertible securities, other than common stock, through registered primary offerings, within the prior three years;
- Amend Form F–9 which requires securities to be rated investment grade to instead require that the issuer have issued in the prior three years at least $1 billion of aggregate principle amount of debt or preferred securities for cash in registered primary offerings;
- Amend Forms S–4 and F–4 and Schedule 14A to conform with the proposed Form S–3/F–3 eligibility requirements;
- Amend Securities Act Rules 138, 139, and Rules 168 to be consistent with the proposed Form S–3/F–3 eligibility requirements;
- Amend Item 10(c) to conform to our proposed Rule 436(g) changes;
- Amend Rule 134(a)(17) to allow for disclosure of ratings assigned by any Credit Rating Agency—not just NRSROs; and
- Amend Rule 436(g) to replace the current reference to ''nationally recognized statistical rating organization'' with a reference to ''credit rating agency.''

We are not aware of any issuers that currently rely on the rules that we propose to change or any issuers that would be eligible to register under the affected rules that is a small entity. In this regard, we note that credit rating agencies rarely, if ever, rate the securities of small entities. We further note most security ratings that will be disclosed are expected to be ratings obtained and used by the issuer. Issuers are required to pay for these security ratings and the cost of these ratings relative to the size of a debt or preferred securities offering by a small entity would generally be prohibitive. Finally, based on an analysis of the language and legislative history of the Regulatory Flexibility Act, we note that Congress did not intend that the Act apply to foreign issuers. Accordingly, some of the entities directly affected by the proposed rule and form amendments will fall outside the scope of the Act.

For these reasons, the proposed amendments would not have a significant economic impact on a substantial number of small entities.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[132] *a rule is ''major'' if it has resulted, or is likely to result in:*

- An annual effect on the U.S. economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

IX. Statutory Authority and Text of Proposed Rule and Form Amendments

We are proposing the amendments contained in this document under the authority set forth in Sections 6, 7, 10, 19(a) of the Securities Act and Sections 12, 13, 14, 15(d) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 230, 239, and 240

Reporting and recordkeeping requirements, Securities.

[132] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend § 229.10, paragraph (c)(1)(i) by:

a. Removing the second sentence;

b. Revising ''NRSRO'' in the third sentence to read, ''credit rating agency (as defined in 15 U.S.C. 78c(a)(61))''; and

c. Revising the phrase ''Instruction to paragraph (a)(2)'' in the fourth sentence to read, ''paragraph A.2.(B)''.

3. Amend § 229.1100 by revising paragraph (c)(2)(ii)(B) to read as follows:

§ 229.1100 (Item 1100) General.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) The third party meets the requirements of General Instruction I.A. of Form S–3 or General Instructions 1.A.1, 2, 3, 4, and 6 of Form F–3 and the pool assets relating to such third party are non-convertible securities, other than common equity, that were issued in a primary offering for cash that was registered under the Securities Act.

* * * * *

4. Amend § 229.1112 by:

a. In paragraph (b) remove Instruction 2 to Item 1112(b);

b. Redesignating Instructions 3 and 4 to Items 1112(b) as Instructions 2 and 3 to Item 1112(b).

5. Amend § 229.1114 by:

a. In paragraph (b) revise the heading for ''Instructions to Item 1114:'' to read ''Instructions to Item 1114(b):''.

b. Removing Instruction 3 to Item 1114.

c. Redesignating Instructions 4 and 5 to Item 1114 as Instructions 3 and 4 to Item 1114.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

6. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

7. Amend § 230.134 by:

a. Revising paragraph (a)(17)(i);

b. Redesignating paragraph (a)(17)(ii) as paragraph (a)(17)(iii); and

c. Adding new paragraph (a)(17)(ii).

The revision and addition read as follows:

§ 230.134 Communications not deemed a prospectus.

* * * * *

(a) * * *

(17) * * *

(i) Any security rating assigned, or reasonably expected to be assigned, by a credit rating agency, as that term is defined in 15 U.S.C. 78c(a)(61), and the name or names of the credit rating agencies that assigned or is or are reasonably expected to assign the rating(s);

(ii) If the credit rating agency or agencies that assigned or is or are reasonably expected to assign the rating(s) is not a nationally recognized security rating organization, as that term is defined in 15 U.S.C. 78c(a)(62), include a statement to that effect; and

* * * * *

8. Amend § 230.138 by revising paragraph (a)(2)(ii)(B)(*2*) to read as follows:

§ 230.138 Publications or distributions of research reports by brokers or dealers about securities other than those they are distributing.

(a) * * *

(2) * * *

(ii) * * *

(B) * * *

(*2*) Is issuing non-convertible securities and the registrant meets the provisions of General Instruction I.B.2 of Form F–3; and

* * * * *

9. Amend § 230.139 by revising paragraphs (a)(1)(i)(A)(*1*)(*ii*) and (a)(1)(i)(B)(*2*)(*ii*) to read as follows:

§ 230.139 Publications or distributions of research reports by brokers or dealers distributing securities.

(a) * * *

(1) * * *

(i) * * *

(A)(1) * * *

(*ii*) At the date of reliance on this section, is, or if a registration statement has not been filed, will be, offering non-convertible securities and meets the requirements for the General Instruction I.B.2 of Form S–3 or Form F–3; or

* * * * *

(B) * * *

(*2*) * * *

(*ii*) Is issuing non-convertible securities and meets the provisions of General Instruction I.B.2. of Form F–3; and

* * * * *

10. Amend § 230.168 by revising paragraph (a)(2)(ii)(B) to read as follows:

§ 230.168 Exemption from sections 2(a)(10) and 5(c) of the Act for certain communications of regularly released factual business information and forward-looking information.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(B) Is issuing non-convertible securities and meets the provisions of General Instruction I.B.2 of Form F–3; and

* * * * *

11. Amend § 230.415 by revising paragraph (a)(1)(vii) to read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(1) * * *

(vii) Mortgage backed securities, including such securities as mortgage backed debt and mortgage participation or pass through certificates, provided that:

(A) Initial sale and any resales of the securities are made in minimum denominations of $250,000; and

(B) Initial sales of the securities are made only to *qualified institutional buyers* (as defined in § 230.144A(a)(1)); and

(C) Either of the following is true:

(*1*) Represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(*i*) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, on a residential manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located, or on one or more parcels of real estate upon which is located one or more commercial structures; and

(*ii*) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgage approved by the Secretary of Housing and Urban Development pursuant to sections 203 and 211 of the National Housing Act, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to section 2 of the National Housing Act; or

(*2*) Is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of paragraphs (a)(1)(vii)(C)(*1*) (*i*) and (*ii*) of this section or certificates of interest or participations in promissory notes meeting such requirements.

Note to paragraph (a)(1)(vii): For purposes of paragraph (a)(1)(vii) of the section, the term ''promissory note,'' when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence by a retail installment sales contract or other instrument.

* * * * *

12. Amend § 230.436 by revising paragraph (g) and removing the authority citations following the section to read as follows:

§ 230.436 Consents required in special cases.

* * * * *

(g) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the security rating assigned to a class of debt securities, a class of convertible debt securities, or a class of preferred stock by a credit rating agency as defined in 15 U.S.C. 78c(a)(61), or with respect to registration statements on Form F–9 (§ 239.39 of this chapter) by any other rating organization specified in the Instruction to paragraph A of General Instruction I of Form F–9, shall not be considered a part of the registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Act.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

13. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

14. Amend Form S–3 (referenced in § 239.13) by:

a. Revising General Instructions I.B.2 and I.B.5; and

b. Removing Instruction 3 to the signature block.

The revisions read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form S–3

* * * * *

B. Transaction Requirements* * *

2. *Primary Offerings of Non-convertible Securities.* Non-convertible securities to be offered for cash by or on behalf of a registrant, provided the registrant, as of a date within 60 days prior to the filing of the registration statement on this Form, has issued in the last three years at least $1 billion aggregate principal amount of non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Act.

* * * * *

5. *Offerings of Asset-backed Securities.*

(a) Asset-backed securities (as defined in 17 CFR 229.1101) to be offered for cash, provided:

(i) Initial sales and any resales of the securities are made in minimum denominations of $250,000;

(ii) Initial sales of the securities are made only to *qualified institutional buyers* (as defined in 17 CFR 230.144A(a)(1));

(iii) Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date; and

(iv) With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

Instruction. For purposes of making the determinations required by paragraphs (a)(iii) and (a)(iv) of this General Instruction I.B.5, refer to the Instructions to Item 1101(c) of Regulation AB (17 CFR 229.1101(c)).

* * * * *

15. Amend Form S–4 (referenced in § 239.25) by revising General Instruction B.1.a.(ii)(B) to read as follows:

Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. Information With Respect to the Registrant

1. * * *

a. * * *

(ii) * * *

(B) Non-convertible debt or preferred securities are to be offered pursuant to this registration statement and the requirements of General Instruction I.B.2. of Form S–3 have been met; or

* * * * *

16. Amend Form F–1 (referenced in § 239.31) by revising Item 4.c, including the Instructions to read as follows:

Note: The text of Form F–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 4. Information with Respect to the Registrant and the Offering.

* * * * *

c. Information required by Item 17 of Form 20–F may be furnished in lieu of the information specified by Item 18 thereof if:

1. The only securities being registered are non-convertible securities offered for cash and the registrant, as of a date within 60 days prior to the filing of the registration statement on this Form, has issued in the last three years at least $1 billion aggregate principal amount of non-convertible securities, other than common equity, in primary offerings for cash registered under the Act; or

2. The only securities to be registered are to be offered:

i. Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach and there is no standby underwriting in the United States or similar arrangement; or

ii. Pursuant to a dividend or interest reinvestment plan; or

iii. Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer.

Instruction: Attention is directed to section 10(a)(3) of the Securities Act.

* * * * *

17. Amend Form F–3 (referenced in § 239.33) by:

a. Revising General Instruction I.B.2; and

b. Deleting Instruction 3 to the signature block.

The revision to General Instruction I.B.2 reads as follows:

Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–3

* * * * *

B. Transaction Requirements * * *

2. *Primary Offerings of Non-convertible Securities.* Non-convertible securities to be offered for cash provided the issuer, as of a date within 60 days prior to the filing of the registration statement on this Form, has issued in the last three years at least $1 billion aggregate principal amount of non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Act. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F.

* * * * *

18. Amend Form F–4 (referenced in § 239.34) by:

a. revising General Instruction B.1(a)(ii)(B); and

b. revising the following in Part I.B: Instruction 1 to Item 11 following paragraph (a)(3); the first sentence in paragraph (b)(2) to Item 12; Instruction 1 to Item 13 following paragraph (b); and paragraph (h) to Item 14.

The revisions read as follows:

Note: The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. Information with Respect to the Registrant

1. * * *

a. * * *

(ii) * * *

(B) Non-convertible debt or preferred securities are to be offered pursuant to this registration statement and the requirements of General Instruction I.B.2. of Form F–3 have been met; or

* * * * *

PART I—INFORMATION REQUIRED IN THE PROSPECTUS

* * * * *

B. INFORMATION ABOUT THE REGISTRANT

* * * * *

Item 11. Incorporation of Certain Information by Reference.

* * * * *

(a) * * *

(3) * * *

Instructions

1. All annual reports or registration statements incorporated by reference pursuant to Item 11 of this Form shall contain financial statements that comply with Item 18 of Form 20–F except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are non-convertible securities offered for cash and the requirements of General Instruction I.B.2 of Form F–3 have been satisfied.

* * * * *

Item 12. Information With Respect to F–3 Registrants.

* * * * *

(b) * * *

(2) Include financial statements and information as required by Item 18 of Form 20–F, except that financial statements of the registrant may comply with Item 17 of Form 20–F if the requirements of General Instruction I.B.2 of Form F–3 have been satisfied.

* * *

* * * * *

Item 13. Incorporation of Certain Information by Reference.

* * * * *

(b) * * *

Instructions

1. All annual reports incorporated by reference pursuant to Item 13 of this Form shall contain financial statements that comply with Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are non-convertible securities offered for cash and the requirements of General Instruction I.B.2 of Form F–3 have been satisfied.

* * * * *

Item 14. Information With Respect to Foreign Registrants Other Than F–3 Registrants.

* * * * *

(h) Financial statements required by Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are non-convertible securities offered for cash and the requirements of General Instruction I.B.2 of Form F–3 have been satisfied, as well as financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued (Schedules required by Regulation S–X shall be filed as ''Financial Statement Schedules'' pursuant to Item 21 of this Form); and

* * * * *

19. Amend Form F–9 (referenced in § 239.39) by:

a. Revising General Instruction I.A;

b. Removing Instruction D to the signature block.

The revision reads as follows:

Note: The text of Form F–9 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–9

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–9

A. Form F–9 may be used for the registration under the Securities Act of 1933 (the ''Securities Act'') for an offering of debt or preferred securities if:

(1) The debt or preferred securities to be offered are:

(A) Offered for cash or in connection with an exchange offer; and

(B) Either non-convertible or not convertible for a period of at least one year from the date of issuance and, except as noted in E. below, are thereafter only convertible into a security of another class of the issuer; and

(2) Either of the following is true:

(A) The registrant, as of a date within 60 days prior to the filing of the registration statement on this Form, has issued in the last three years at least $1 billion of aggregate principal amount of debt or preferred securities for cash in primary offerings registered under the Act; or

(B) The securities are investment grade debt or investment grade preferred securities. Securities shall be ''investment grade'' for purposes of this requirement if, at the time of sale, at least one Approved Rating Organization (as defined in National Policy Statement No. 45 of the Canadian Securities Administrator, as the same may be amended from time to time) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

20. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

21. Amend § 240.14a–101 by revising Note E(2)(ii) to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Notes

* * * * *

E. * * *

(2) * * *

(ii) Action is to be taken as described in Items 11, 12, and 14 of this schedule which concerns non-convertible debt or preferred securities issued by a registrant meeting the requirements of General Instruction I.B.2 of Form S–3; or

* * * * *

By the Commission.

Dated: July 1, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15281 Filed 7–10–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 275

[Release Nos. IC–28327; IA–2751 File No. S7–19–08]

RIN 3235–AK19

References to Ratings of Nationally Recognized Statistical Rating Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: This is one of three releases that the Securities and Exchange Commission (''Commission'') is publishing simultaneously relating to the use in its rules and forms of credit ratings issued by nationally recognized statistical rating organizations (''NRSROs''). In this release, the Commission proposes to amend five rules under the Investment Company Act of 1940 and the Investment Advisers Act of 1940 that rely on NRSRO ratings. The proposed amendments are designed to address concerns that the reference to NRSRO ratings in Commission rules may have contributed to an undue reliance on NRSRO ratings by market participants.

DATES: Comments should be received on or before September 5, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–19–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–19–08. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Penelope Saltzman, Acting Assistant Director, or Vincent Meehan, Senior Counsel, (202) 551–6792, Office of Regulatory Policy, or Smeeta Ramarathnam, Senior Counsel, (202) 551–6792, Office of Special Projects, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment amendments to rules 2a–7 [17 CFR 270.2a–7], 3a–7 [17 CFR 270.3a–7], 5b–3 [17 CFR 270.5b–3], and 10f–3 [17 CFR 270.10f–3] under the Investment Company Act of 1940 (''Investment Company Act''),[1] and amendments to rule 206(3)–3T [17 CFR 275.206(3)–3T] under the Investment Advisers Act of 1940 (''Investment Advisers Act'' or ''Advisers Act'').[2]

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I. Introduction

On June 16, 2008, in furtherance of the Credit Rating Agency Reform Act of 2006,[3] the Commission published for notice and comment two rulemaking initiatives.[4] The first proposes additional requirements for NRSROs[5] that were directed at reducing conflicts of interest in the credit rating process, fostering competition and comparability among credit rating agencies, and increasing transparency of the credit rating process.[6] The second is designed to improve investor understanding of the risk characteristics of structured finance products. Those proposals address concerns about the integrity of the credit rating procedures and methodologies of NRSROs in light of the role they played in determining the credit ratings for securities that were the subject of the recent turmoil in the credit markets.

Today's proposals comprise the third of these three rulemaking initiatives relating to credit ratings by an NRSRO that the Commission is proposing. This release, together with two companion releases, sets forth the results of the Commission's review of the requirements in its rules and forms that rely on credit ratings by an NRSRO. The proposals also address recent recommendations issued by the President's Working Group on Financial Markets (''PWG''), the Financial Stability Forum (''FSF'') and the Technical Committee of the International Organization of Securities Commissions (''IOSCO'').[7] Consistent

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[1] 15 U.S.C. 80a. Unless otherwise noted, all references to rules under the Investment Company Act will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270], and all references to statutory sections are to the Investment Company Act.

[2] 15 U.S.C. 80b. Unless otherwise noted, all references to rules under the Investment Advisers Act will be to Title 17, Part 275 of the Code of Federal Regulations [17 CFR 275], and all references to statutory sections are to the Investment Advisers Act.

[3] Public Law No. 109–291, 120 Stat. 1327 (2006).

[4] Proposed Rules for Nationally Recognized Statistical Rating Organizations, Securities Exchange Act Release No. 57967 (June 16, 2008) [73 FR 36212 (June 25, 2008)] (''NRSRO June 16, 2008 Proposing Release'').

[5] As described in more detail below, an NRSRO is an organization that issues ratings that assess the creditworthiness of an obligor itself or with regard to specific securities or money market instruments, has been in existence as a credit rating agency for at least three years, and meets certain other criteria. The term is defined in section 3(a)(62) of the Securities Exchange Act of 1934 (''Exchange Act''). A credit rating agency must apply with the Commission to register as an NRSRO, and currently there are ten registered NRSROs.

[6] *See* Press Release No. 2008–110 (June 11, 2008).

[7] *See* President's Working Group on Financial Markets, *Policy Statement on Financial Market Developments* (March 2008), available at *www.ustreas.gov* (''PWG Statement''); *The Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience* (April 2008), available at *www.fsforum.org* (''FSF Report''); Technical Committee of the International Organization of Securities Commissions, *Consultation Report: The Role of Credit Rating Agencies in Structured*

with these recommendations, the Commission is considering whether the inclusion of requirements related to ratings in its rules and forms has, in effect, placed an ''official seal of approval'' on ratings that could adversely affect the quality of due diligence and investment analysis. The Commission believes that today's proposals could reduce undue reliance on credit ratings and result in improvements in the analysis that underlies investment decisions.

II. Background

The Commission first used the term ''NRSRO'' in our rules in 1975 in the net capital rule for broker-dealers, Rule 15c3–1 (''Net Capital Rule'')[8] under the Securities Exchange Act of 1934 (the ''Exchange Act'')[9] as an objective benchmark to prescribe capital charges for different types of debt securities. Since then, we have used the designation in a number of regulations under the federal securities laws. Although we originated the use of the term NRSRO for a narrow purpose in our own regulations, ratings by NRSROs today are used widely as benchmarks in federal and state legislation, rules issued by other financial regulators, in the United States and abroad, and private financial contracts.

Referring to NRSRO ratings in regulations was intended to provide a clear reference point to both regulators and market participants. Increasingly, we have seen clear disadvantages of using the term in many of our regulations. Foremost, there is a risk that investors interpret the use of the term in laws and regulations as an endorsement of the quality of the credit ratings issued by NRSROs, which may have encouraged investors to place undue reliance on the credit ratings issued by these entities. In addition, as demonstrated by recent events,[10] there has been increasing concern about ratings and the ratings process. Further, by referencing ratings in the Commission's rules, market participants operating pursuant to these rules may be vulnerable to failures in the ratings process. In light of this, the Commission proposes to amend regulations under the Investment Company Act and the Investment Advisers Act that use the term NRSRO or refer to NRSRO ratings.[11]

III. Discussion

The credit ratings issued by NRSROs are used in four of the Commission's rules under the Investment Company Act—rules 2a–7, 3a–7, 5b–3, and 10f–3—and one rule under the Investment Advisers Act—rule 206(3)–3T. These rules use the credit ratings issued by the NRSROs in different contexts, and for different purposes, to distinguish among various grades of debt and other rated securities. We propose to amend each rule to omit references to NRSRO ratings and, except with respect to one of the rules, substitute alternative provisions that are designed to appropriately achieve the same purpose as the ratings. Below we discuss these proposals in greater detail in the context of each rule we propose to amend.

A. Rule 2a–7

Rule 2a–7 under the Investment Company Act governs the operation of money market funds. Unlike other investment companies (''funds''), money market funds seek to maintain a stable share price, typically at $1.00 per share. To do so, most money market funds use the amortized cost method of valuation (''amortized cost method'') or the penny-rounding method of pricing (''penny-rounding method'') permitted by rule 2a–7.[12] The Investment Company Act and applicable rules generally require funds to calculate current net asset value per share by valuing their portfolio instruments at market value or, if market quotations are not readily available, at fair value as determined in good faith by the board of directors.[13] These valuation requirements are designed to prevent unfair share pricing from diluting or otherwise adversely affecting the interests of investors.[14]

Rule 2a–7 exempts money market funds from these provisions but contains maturity, quality, and diversification conditions designed to minimize the deviation between a money market fund's stabilized share price and the market value of its portfolio.[15] Among these conditions, rule 2a–7 limits a money market fund's portfolio investments to securities that have received credit ratings from the ''Requisite NRSROs'' in one of the two highest short-term rating categories or comparable unrated securities (*i.e.*, ''Eligible Securities'').[16] Rule 2a–7 further restricts money market funds to securities that the fund's board of directors (which typically rely on the fund's adviser[17]) determines present minimal credit risks, and specifically requires that determination ''be based on factors pertaining to credit quality in addition to any ratings assigned to such securities by an NRSRO.''[18]

We propose to eliminate references to ratings by amending rule 2a–7 in four principal ways.[19] In combination, these proposed amendments are designed to offer similar protections to the current rule's reliance on NRSRO ratings.[20]

1. Minimal Credit Risk Determination

Under the proposed amendments, we would rely on money market fund boards of directors to determine that each portfolio instrument presents minimal credit risks,[21] and whether the

Finance Markets (March 2008), p. 9, available at *www.iosco.org*.

[8] 17 CFR 240.15c3–1.

[9] 15 U.S.C. 78a.

[10] *See* NRSRO June 16, 2008 Proposing Release, *supra* note 4, at Section I.C.

[11] These regulations include rules 2a–7, 3a–7, 5b–3 and 10f–3 under the Investment Company Act and rule 206(3)–3T under the Investment Advisers Act.

[12] Under the amortized cost method, portfolio instruments are valued by reference to their acquisition cost as adjusted for amortization of premium or accretion of discount. *See* rule 2a–7(a)(2). Share price is determined under the penny-rounding method by valuing securities at market value, fair value or amortized cost and rounding the per share net asset value to the nearest cent on a share value of a dollar, as opposed to the nearest one tenth of one cent. *See* rule 2a–7 (a)(18).

[13] *See* section 2(a)(41) of the Investment Company Act (defining value) and rules 2a–4 (defining current net asset value) and 2a–7(c) thereunder (money market fund share price calculations).

[14] If shares are sold or redeemed based on a net asset value which turns out to have been either understated or overstated to the amount at which portfolio instruments could have been sold, then the interests of either existing shareholders or new investors will have been diluted. *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Sen. Comm. on Banking and Currency,* 76th Cong., 3d Sess. 136–138, 288 (1940).

[15] Rule 2a–7 contains conditions that apply to each investment a money market fund proposes to make, as well as conditions that apply to a money market fund's entire portfolio.

[16] The term ''Eligible Security'' is defined in rule 2a–7(a)(10). ''Requisite NRSROs'' is defined in rule 2a–7(a)(21).

[17] *See* rule 2a–7(e).

[18] Rule 2a–7(c)(3)(i). Thus, under the current rule, where the security is rated, having the requisite NRSRO rating is a necessary but not sufficient condition for investing in the security and cannot be the sole factor considered in determining whether a security presents minimal credit risks. *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 18005 (Feb. 20, 1991) [56 FR 8113 (Feb. 27, 1991)], at text preceding n.18.

[19] The proposed amendments would also make conforming amendments to rule 2a–7's record keeping and reporting requirements. *See* proposed rule 2a–7(c)(11).

[20] In 2003, the Commission published a concept release in which we sought comment on the use of NRSRO ratings in our rules. *See* Rating Agencies and the Use of Credit Ratings Under the Federal Securities Laws, Investment Company Act Release No. 26066 (June 4, 2003) [68 FR 35258 (June 12, 2003)]. Comments on the concept release are available at: *http://www.sec.gov/rules/concept/s71203.shtml*. As discussed above, recent events have highlighted the need to revisit our reliance on NRSRO ratings in the context of these developments. *See also* the extensive discussion of market developments in the NRSRO June 16, 2008 Proposing Release, *supra* note 4.

[21] *See* proposed rule 2a–7(a)(10).

security is a ''First Tier Security'' or a ''Second Tier Security'' for purposes of the rule.[22] We believe that money market fund boards of directors would still be able to use quality determinations prepared by outside sources, including NRSRO ratings that they conclude are credible, in making credit risk determinations. We expect that the boards of directors (or their delegates) would understand the basis for the rating and make an independent judgment of credit risks.

Under the proposed amendments, a security would be an Eligible Security if the board of directors determines that it presents minimal credit risks, which determination must be based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations.[23] A security would be a First Tier Security if the fund's board had determined that the issuer has the ''highest capacity to meet its short-term financial obligations.'' [24] A security would be a Second Tier Security if it is an Eligible Security but is not a First Tier Security.[25] We have designed these proposed definitions to retain a degree of risk limitations similar to what is in the current rule.

We request comment on the proposed amendments. What are the advantages and disadvantages of eliminating the requirement to use NRSRO ratings from rule 2a–7? Would eliminating the rating requirements from rule 2a–7 affect the amount or nature of risks money market funds would be willing or able to take? What are the advantages and disadvantages of relying on minimum credit risk determinations? What are the advantages and disadvantages of having fund directors and investment advisers exclusively make credit quality determinations? Are we correct that the current rule's reliance on credit ratings discourages fund directors and investment advisers from performing independent credit risk assessments? What other alternatives could we adopt to encourage more independent credit risk analysis and meet the regulatory objectives of rule 2a–7's requirement of NRSRO ratings? Are the distinctions our proposed amendments would draw between First Tier and Second Tier Securities workable? Is there a better way to describe the characteristics of a First Tier Security without reference to ratings? Are we correct in our expectation that the proposed standards would not impose additional burdens on boards or investment advisers, or require new recordkeeping requirements?

2. Portfolio Liquidity

Under the proposed amendments, a money market fund must hold securities that are sufficiently liquid to meet reasonably foreseeable redemptions in light of the fund's obligations under section 22(e) of the Investment Company Act and any commitments the fund has made to its shareholders.[26] In addition, the proposed amendments would expressly limit a money market fund's investment in illiquid securities to not more than 10 percent of its total assets.[27] The proposed amendments would define a Liquid Security as a security that can be sold or disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the money market fund.[28] These proposed provisions should be familiar to managers of money market funds. Past releases proposing, adopting and amending rule 2a–7 repeatedly emphasized the special duty of the board of directors of a money market fund to monitor purchases of illiquid instruments.[29] Money market funds often have a greater and perhaps less predictable volume of redemptions than other open-end investment companies. Further, the portfolio management of a money market fund may be impaired if a fund were forced to meet redemption requests by selling marketable securities that it would otherwise wish to retain in order to avoid attempting to dispose of illiquid portfolio instruments.[30] In light of these potential problems, the proposal would prohibit money market funds from acquiring illiquid securities representing more than 10 percent of their total assets.[31] In the event that changes in the money market fund's portfolio or other external events cause the fund's investments in illiquid instruments to exceed 10 percent of the fund's assets, the money market fund would have to take steps to bring the aggregate amount of illiquid securities back within the proposed limitations as soon as reasonably practicable. However, consistent with the current rule, this requirement generally would not force the money market fund to liquidate any portfolio security where the fund would suffer a loss on the sale of that instrument.[32]

We request comment on the proposed amendments. Should we include in rule 2a–7 an express requirement that money market funds limit their exposure to illiquid securities? Do the proposed requirements provide money market funds sufficient flexibility to retain securities that may be illiquid if the disposal of those securities would not be in the best interests of the fund? Are there alternative or additional provisions that we should consider to address the way in which money market

[22] Rule 2a–7(c)(4) addresses portfolio diversification requirements for money market funds, including diversification requirements relating to First and Second Tier Securities.

[23] Proposed rule 2a–7(a)(10).

[24] Proposed rule 2a–7(a)(12).

[25] *See* rule 2a–7(a)(22). The specific language of this provision would not change, but the definitions of ''Eligible Security'' and ''First Tier Security'' would change under the proposal. Consistent with the current rule, under proposed rule 2a–7, a money market fund that is not a tax exempt fund generally must limit its investments in Second Tier Securities to no more than five percent of fund assets, with investment in the Second Tier Securities of any one issuer being limited to the greater of one percent of fund assets or one million dollars. Proposed rule 2a–7(c)(3)(ii)(A) and (c)(4)(i)(C)(*1*). Tax exempt money market funds are subject to different limitations on investments in Second Tier Conduit Securities. Rule 2a–7(c)(3)(ii)(B) and (c)(4)(i)(C)(*2*).

[26] *See* proposed rule 2a–7(c)(5). Section 22(e) of the Investment Company Act prohibits registered investment companies from suspending the right of redemption or postponing the date of payment upon redemption of any redeemable security for more than seven days except for certain periods specified in the provision. While the Investment Company Act requires only that an investment company make payment of the proceeds of redemption within seven days, most money market funds promise investors that they will receive proceeds much sooner, often on the same day that the request for redemption is received by the fund.

[27] The proposed standard codifies the current standard regarding portfolio liquidity. *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar. 28, 1996)] (''Rule 2a–7 1996 Amending Release''), at text accompanying n.108 (''The limit on money fund holdings of illiquid securities is ten percent of fund assets.''); Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies, Investment Company Act Release No. 14983 (Mar. 12, 1986) [51 FR 9773 (Mar. 21, 1986)] (''1986 Valuation Release''). Although credit ratings do not directly incorporate liquidity risks, they have been used as a proxy for liquidity because a security may lose liquidity if its credit rating falls.

[28] *See* proposed rule 2a–7(a)(17). *See also* 1986 Valuation Release, *supra* note 27 at text following n.21.

[29] *See, e.g.*, Valuation of Debt Instruments and Computation of Current Price per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 12206 (Feb. 1, 1982) [47 FR 5428 (Feb. 5, 1982)] (proposing rule 2a–7); Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)] (''Rule 2a–7 Adopting Release''); 1986 Valuation Release, *supra* note 27.

[30] Rule 2a–7 Adopting Release, *supra* note 29, at text preceding, accompanying and following nn.37–39.

[31] Proposed rule 2a–7(c)(5). Money market funds must limit their investments in illiquid assets to not more than 10 percent of their net assets. *See* rule 2a–7 1996 Amending Release, *supra* note 27, at n.108 and accompanying text. An investment company's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the investment company. *See id.* at n.107 and accompanying text.

[32] *See* Rule 2a–7 Adopting Release, *supra* note 29, at n.38.

funds should evaluate liquidity risk and determine whether to dispose of securities that present an increasing liquidity risk?

3. Monitoring Minimal Credit Risks

The proposed amendments would also amend rule 2a–7's downgrade and default provisions. We propose that in the event the money market fund's investment adviser becomes aware of any information about a portfolio security or an issuer of a portfolio security that suggests that the security may not continue to present minimal credit risks, the money market fund's board of directors would have to reassess promptly whether the portfolio security continues to present minimal credit risks.[33] This proposed requirement would replace the provisions in the current rule that generally require a money market fund board to promptly reassess whether a security that has been downgraded by an NRSRO continues to present minimal credit risks, and take such action as the board determines is in the best interests of the fund and its shareholders.[34] We do not believe that the proposed amendments would require investment advisers to subscribe to every rating service publication in order to comply with this proposal. However, we would expect an investment adviser to exercise reasonable diligence in keeping abreast of new information about a portfolio security that is reported in the national financial press or in publications to which the investment adviser subscribes.

We request comment on the proposed amendments. Would the requirement that the board of directors reassess the credit risk of a security when investment advisers become aware of information that may suggest the security no longer presents minimal credit risks provide adequate investor protections? Would investment advisers be able to stay abreast of new information about their portfolio securities?

4. Commission Notice of Rule 17a–9 Transactions

Finally, the proposed amendments would require that money market funds provide the Commission with prompt notice when an affiliate of the money market fund (or its promoter or principal underwriter) purchases from the fund a security that is no longer an Eligible Security, pursuant to rule 17a–9 under the Investment Company Act.[35] We believe that the current notice provisions, which are triggered when a security held by a fund defaults, provide us with incomplete information about money market funds holding distressed securities, particularly those that have engaged in an affiliated transaction with an affiliated person. The additional notice, which we believe would impose little burden on money market funds or their managers, would enhance our oversight of money market funds especially during times of economic stress.

We request comment on the proposed amendments.

B. Rule 3a–7

Rule 3a–7 under the Investment Company Act excludes structured finance vehicles from the Act's definition of ''investment company'' subject to certain conditions.[36] In a typical financing, a sponsor transfers a pool of assets (such as residential mortgages) to a limited purpose entity, which in turn issues fixed income securities that are rated investment grade or higher by at least one NRSRO. Payment on the securities depends primarily on the cash flows generated by the pooled assets. As a result, these are often referred to as ''asset-backed'' securities.

Rule 3a–7 contains a number of conditions that differentiate investment companies from structured financings. The conditions include the requirement that structured financings offered to the general public are rated by at least one NRSRO in one of the four highest ratings categories.[37] The rule contains an exception under which asset-backed securities sold to accredited investors [38] and qualified institutional buyers [39] may be unrated, or may be rated less than investment grade, if the issuer and its underwriters use reasonable care to ensure that all excepted sales are to such persons.[40] We concluded that these persons are in a position to evaluate the structured financing vehicle and to take steps to protect themselves from the types of abusive practices against which the Investment Company Act was designed to protect.[41]

We understand that today most asset-backed securities are issued by special purpose vehicles that do not rely on rule 3a–7 to exclude them from the application of the Investment Company Act. Instead, they rely on section 3(c)(7), which was added to the Act in 1996, after the Commission adopted rule 3a–7, and provides an exception from the Act for companies whose securities are limited to any issuer, the outstanding securities of which are owned exclusively by persons who are qualified purchasers, and that is not making and does not at that time propose to make a public offering of such securities. Moreover, asset-backed securities issued by financing vehicles that rely on rule 3a–7, even when highly rated, generally are not marketed to retail investors.[42] Accordingly, we propose to eliminate the rule's reliance on ratings by amending the rule to

[33] Proposed rule 2a–7(c)(7) (''In the event the money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware of any information about a portfolio security or an issuer of a portfolio security that may suggest that the security may not continue to present minimal credit risks, the board of directors shall reassess promptly whether such security continues to present minimal credit risks and shall cause the fund to take such action as the board of directors determines is in the best interests of the money market fund and its shareholders.'').

[34] Rule 2a–7(c)(6)(i)(A). This current assessment is not required, however, if the downgraded security is disposed of or matures within five business days of the specified event and in the case of events specified in rule 2a–7(c)(6)(i)(A)(*2*), the board is subsequently notified of the adviser's actions. Rule 2a–7(c)(6)(i)(B).

[35] Proposed rule 2a–7(c)(7)(iii)(B) (requiring notice to the Commission of any ''purchase of a security from the fund by an affiliated person or promoter of or principal underwriter for the fund or an affiliated person of such a person in reliance on rule 17a–9''). *See* rule 17a–9 (exempting from section 17(a) of the Act the purchase of a security ''that is no longer an Eligible Security (as defined in [rule 2a–7(a)(10)]) under certain conditions).'' Notification under this proposed provision would also be amended to require electronic mail, instead of the other means currently listed in rule 2a–7(c)(6)(iii). We believe this change is appropriate in light of recent changes in telecommunications technology, and because most of the notices of default that we have received in the past year have been transmitted electronically.

[36] Structured financings meet the definition of investment company under section 3(a) of the Act because they issue securities and invest in, own, hold, or trade securities. Almost none of the structured financings, however, are able to operate under the Act's requirements. *See* Exclusion from the Definition of Investment Company for Structured Financings, Investment Company Act Release No. 19105 (Nov. 19, 1992) [57 FR 56248 (Nov. 27, 1992)] (''Rule 3a–7 Adopting Release'').

[37] Rule 3a–7(a)(2).

[38] The exception permits the sale of asset backed fixed-income securities to ''accredited investors'' as defined in paragraphs (1), (2), (3) and (7) of rule 501(a) under the Securities Act [17 CFR 230.501(a)], and includes any entity in which all of the equity owners come within such paragraphs. Rule 3a–7(a)(2)(i).

[39] The exception permits the sale of any asset backed securities to ''qualified institutional buyers'' as defined in rule 144A under the Securities Act [17 CFR 230.144A] and certain other persons involved in the organization or operation of the issuer or an affiliate, as defined in rule 405 under the Securities Act [17 CFR 230.405]. Rule 3a–7(a)(2)(ii).

[40] Rule 3a–7(a)(2).

[41] *See* Exclusion from the Definition of Investment Company for Certain Structured Financings, Investment Company Act Release No. 18736 (May 29, 1992) [57 FR 23980 (June 5, 1992)] (proposing rule 3a–7).

[42] *See Credit & Finance Risk Analysis Asset Backed Securities and Structural Finance,* at *http://www.credfinrisk.com/assetsecure.html.*

eliminate the exclusion for structured financings offered to the general public.

In addition, we are proposing to amend the part of the rule that addresses substitution of eligible assets to remove the reference to ratings downgrades. The rule permits the issuer to acquire additional eligible assets or dispose of assets only if, among other conditions, the acquisition or disposition of the assets does not result in a downgrading in the rating of the issuer's outstanding fixed-income securities.[43] We propose to require instead that the issuer have procedures to ensure that the acquisition or disposition does not adversely affect the full and timely payment of the outstanding fixed income securities.[44]

Finally, we propose to amend the portion of the rule that deals with the safekeeping of assets.[45] Among other requirements, the rule provides that cash flows from the asset pool periodically be deposited in a segregated account, consistent with the rating of the outstanding fixed income securities.[46] This provision was intended to ensure that the segregated account in which the cash flows are deposited and the length of time that the servicer holds the cash flows before depositing them in the segregated account would pose a minimal risk of loss to the fixed income security holders. We propose to change this provision to require that the cash flows be deposited in a segregated account consistent with the full and timely payment of the outstanding fixed income securities.[47] The proposed amendment is designed to minimize the risk of loss of cash flows pending payment to the fixed income securities holders.

We request comment on our proposed amendments to rule 3a–7. What are the advantages and disadvantages of eliminating the NRSRO rating requirement from the rule? Is our understanding that structured financings are generally not marketed to retail investors correct? If not, should we retain an exclusion for structured finance offerings to the general public? If so, what standards should we impose that could distinguish structured finance vehicles from investment companies for those investors? For example, should we permit offerings to the general public if a sponsor or trustee conducts an independent statistical analysis of the anticipated cash flows? Are we correct in our assumption that dropping the rating requirement from the rule will not blur the current distinction between structured finance vehicles and investment companies? If not, should the rule incorporate alternatives to the rule's rating requirement that would clarify the distinction? For example, should the rule contain specific requirements regarding abuses that the Act is designed to address, such as self-dealing and overreaching by the issuer? Does our proposal regarding the deposit of cash flows into a segregated account provide sufficient protection against the possibility of loss while the servicer is handling cash flows pending payment to the fixed income security holders? Would an alternative standard provide better protection?

C. Rule 5b–3

Rule 5b–3 under the Investment Company Act permits a fund, subject to certain conditions, to treat a repurchase agreement as an acquisition of the securities collateralizing the repurchase agreement in determining whether the fund is in compliance with two provisions of the Act that may affect a fund's ability to invest in repurchase agreements.[48] Section 12(d)(3) of the Investment Company Act generally prohibits a fund from acquiring an interest in a broker, dealer, or underwriter. Because a repurchase agreement may be considered to be the acquisition of an interest in the counterparty, section 12(d)(3) may limit a fund's ability to enter into repurchase agreements with many of the firms that act as repurchase agreement counterparties. Section 5(b)(1) of the Act limits the amount that a fund that holds itself out as being a diversified investment company may invest in the securities of any one issuer (other than the U.S. Government). This provision may limit the number and principal amounts of repurchase agreements a diversified fund may enter into with any one counterparty.

Rule 5b–3 allows funds to treat the acquisition of a repurchase agreement as an acquisition of securities collateralizing the repurchase agreement for purposes of sections 5(b)(1) and 12(d)(3) of the Act if the obligation of the seller to repurchase the securities from the fund is ''collateralized fully.''[49] A repurchase agreement is collateralized fully if, among other things, the collateral for the repurchase agreement consists entirely of (i) cash items, (ii) government securities, (iii) securities that at the time the repurchase agreement is entered into are rated in the highest rating category by the ''Requisite NRSROs'' or (iv) unrated securities that are of a comparable quality to securities that are rated in the highest rating category by the Requisite NRSROs, as determined by the fund's board of directors or its delegate.[50]

In proposing rule 5b–3, the Commission explained that the highest rating category requirement in the definition of collateralized fully was designed to ensure that the market value of the collateral would remain fairly stable and that the fund could more readily liquidate the collateral quickly in the event of a default.[51]

We propose to eliminate the requirement that collateral other than cash or government securities be rated by an NRSRO. As an alternative, we propose to require that if the collateral is not cash or government securities, the fund's board of directors (or its delegate)

[43] Rule 3a–7(a)(3)(ii).

[44] Proposed rule 3a–7(a)(3)(ii).

[45] Rule 3a–7(a)(4).

[46] Rule 3a–7(a)(4)(iii).

[47] Proposed rule 3a–7(a)(4)(iii). The proposed amendment would require the issuer to take ''actions necessary for the cash flows derived from eligible assets for the benefit of the holders of fixed-income securities to be deposited periodically in a segregated account that is maintained or controlled by the trustee consistent with the full and timely payment of the outstanding fixed income securities.''

[48] In a typical investment company repurchase agreement, a fund enters into a contract with a broker, dealer, or bank (the ''counterparty'' to the transaction) for the purchase of securities. The counterparty agrees to repurchase the securities at a specified future date, or on demand, for a price that is sufficient to return to the fund its original purchase price, plus an additional amount representing the return on the fund's investment. Repurchase agreements provide funds with a convenient means to invest excess cash on a secured basis, generally for short periods of time. Economically, a repurchase agreement functions as a loan from the fund to the counterparty, in which the securities purchased by the fund serve as collateral for the loan and are placed in the possession or under the control of the fund's custodian during the term of the agreement. *See* Treatment of Repurchase Agreements and Refunded Securities as an Acquisition of the Underlying Securities, Investment Company Act Release No. 25058 (July 5, 2001) [66 FR 36156 (July 11, 2001)] (''Rule 5b–3 Adopting Release'').

[49] Rule 5b–3(a). The term ''Collateralized Fully'' is defined in rule 5b–3(c)(1). An investment company investing in a repurchase agreement primarily looks to the value and liquidity of the securities collateralizing the repurchase agreement rather than the credit quality of the counterparty for satisfaction of the repurchase agreement.

[50] Rule 5b–3(c)(1)(iv). The term ''Requisite NRSROs'' means any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer or, if only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the investment company acquires the security, that NRSRO. Rule 5b–3(c)(6). The term ''unrated securities'' means securities that have not received a rating from the Requisite NRSROs. Rule 5b–3(c)(8).

[51] *See* Treatment of Repurchase Agreements and Refunded Securities as an Acquisition of the Underlying Securities, Investment Company Act Release No. 24050 (Sept. 23, 1999) [64 FR 52476 (Sept. 29, 1999)] (''Rule 5b–3 Proposing Release''), at n.43 and accompanying text.

determines that the collateral securities present minimum credit risks and are highly liquid. Specifically, the proposal would require collateral other than cash or government securities to consist of securities that the fund's board of directors (or its delegate) determines at the time the repurchase agreement is entered into (i) are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time, (ii) are subject to no greater than minimal credit risk, and (iii) are issued by a person that has the highest capacity to meet its financial obligations.[52] Although the rule would no longer require the collateral to be rated by an NRSRO, we anticipate that evaluating credit risk and liquidity of the collateral could incorporate ratings, reports, analyses, and other assessments issued by NRSROs and other persons.[53]

NRSRO ratings are also used in a provision of rule 5b–3 that permits a fund to deem the acquisition of a ''refunded security'' as the acquisition of the escrowed government securities for purposes of section 5(b)(1)'s diversification requirements.[54] Under this provision, a debt security must satisfy certain conditions to be considered a refunded security under the rule. One of these conditions is that an independent certified public accountant must have certified to the escrow agent that the escrowed securities will satisfy all scheduled payments of principal, interest, and applicable premiums on the refunded securities.[55] This condition is not required, however, if the refunded security has received a debt rating in the highest rating category from an NRSRO.[56]

We are proposing to eliminate the exception to the certification requirement for securities that have received the highest rating from an NRSRO. Rule 5b–3 requires the certification by an independent certified public accountant (together with the other conditions) to ensure that the bankruptcy of the issuer of the pre-refunded securities would not affect payments on the securities from the escrow account.[57] The Commission included this exception because in rating refunded securities, NRSROs typically require that an independent third party make the same determination.[58]

We request comment on the proposed amendments. How would the proposed elimination of the rating requirement from the definition of ''collateralized fully'' affect funds? Would the proposed board determinations sufficiently address our concerns that collateral securities be of high quality in order to limit a fund's exposure to counterparties' credit risks? If not, are there additional or alternative standards that would better address our concerns? How would the proposal to eliminate the exception for rated securities from the condition that refunded securities obtain a certification from an independent auditor affect funds? We expect that with respect to rated refunded securities, funds may be able to satisfy the certification requirement by determining that an NRSRO required an independent certified public accountant to make the same determination.[59] Would funds incur any costs in determining that a refunded security has received an accountant certification rather than relying on an NRSRO rating? Is there an alternative standard that would provide an equivalent evaluation? For example, should we permit the board to rely on another independent third party to provide the certification?

D. Rule 10f–3

Section 10(f) of the Investment Company Act prohibits a registered investment company from purchasing any security for which an affiliated underwriter is acting as a principal underwriter[60] during the existence of an underwriting or selling syndicate for that security.[61] The prohibition was intended to address Congress's concern that underwriters were ''dumping'' otherwise unmarketable securities on affiliated funds, either by forcing the fund to purchase unmarketable securities from the underwriting affiliate itself, or by forcing or encouraging the fund to purchase the securities from another member of the syndicate.[62] Congress also expressed concern regarding the amount of underwriting fees earned by the sponsors and affiliated persons who placed the securities with the fund.[63]

The Commission adopted rule 10f–3 in 1958 to permit a fund that is affiliated with members of an underwriting syndicate to purchase securities from the syndicate if certain conditions are met.[64] We amended rule 10f–3 in 1979 to add municipal securities to the class of securities that funds could purchase under the rule.[65] The rule defines

[52] Proposed rule 5b–3(c)(1)(iv)(C). Under the proposal, the board would make credit quality determinations for all non-government collateral securities, rather than just unrated securities. As in the current rule, the proposed rule would permit the board to delegate this credit quality and liquidity determination.

[53] A fund that acquires repurchase agreements would have to adopt and implement a written policy reasonably designed to comply with this requirement under rule 38a–1 under the Investment Company Act. *See* rule 38a–1(a) (requiring registered funds to adopt and implement written policies and procedures reasonably designed to prevent the fund's violation of federal securities laws).

[54] Rule 5b–3(b). Under the rule, a refunded security means a debt security the principal and interest payments of which are to be paid by U.S. government securities that have been irrevocably placed in an escrow account and are pledged only to the payment of the debt security. Rule 5b–3(c)(4).

[55] Rule 5b–3(c)(4)(iii).

[56] *Id.*

[57] *See* Rule 5b–3 Adopting Release, *supra* note 48, at text accompanying n.25 (explaining that the conditions required in the definition of refunded security correspond to those in the definition of the term in rule 2a–7); Rule 2a–7 1986 Amending Release, *supra* note 31, at section II.D.2.

[58] *See* Technical Revisions to the Rules and Forms Regulating Money Market Funds, Investment Company Act Release No. 22921 (Dec. 2, 1997) [62 FR 64968 (Dec. 9, 1997)], at section I.B.2.c.

[59] *See, e.g.*, Standard & Poor's, Public Finance Criteria: Defeasance: Legal Defeasance Criteria, Cash Flow Verification (Sept. 8, 2006).

[60] The term ''principal underwriter'' means (in relevant part) an underwriter who, in connection with a primary distribution for securities: (i) Is in privity of contract with the issuer or an affiliated person of the issuer; (ii) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (iii) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution. 15 U.S.C. 80a–2a(a)(29).

[61] Section 10(f) prohibits a fund from purchasing a security during the existence of an underwriting or selling syndicate if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. An affiliated person of a fund includes, among others: (i) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting securities of the fund; (ii) any person five percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the fund; and (iii) any person directly or indirectly controlling, controlled by, or under common control with such other person. 15 U.S.C. 80a–2(a)(3)(A), (B) and (C).

[62] *See* Report of the SEC, Investment Trusts and Investment Companies, H.R. Doc. No. 279, 76th Cong., 2d Sess., pt. 3, at 2581, 2589 (1939). The sales were also used to alleviate certain of an affiliated underwriter's financial difficulties. For example, an underwriter could benefit by rapidly turning over its securities inventory to produce working capital and to reduce the related expenses of carrying the inventory.

[63] *See* Hearings on S.3580 Before a Subcommittee of the Commission on Banking and Currency, 76th Cong., 3d Sess. 209, 212–23 (1940).

[64] Adoption of Rule N–10–F–3 Permitting Acquisition of Securities of Underwriting Syndicate Pursuant to Section 10(f) of the Investment Company Act of 1940, Release No. 2797 (Dec. 2, 1958) [23 FR 9548 (Dec. 10, 1958)]. The rule codified the conditions of orders that the Commission had granted prior to 1958 exempting certain funds from section 10(f) to permit them to purchase specific securities.

[65] Exemption of Acquisition of Securities During the Existence of Underwriting Syndicate, Investment Company Act Release No. 10736 (June 14, 1979) [44 FR 36152 (June 20, 1979)] (''Rule 10f–3 1979 Adopting Release''). Rule 10f–3(c)(1)(iii).

municipal securities that may be purchased during an underwriting in reliance on the rule (''eligible municipal securities'') to include securities that have an investment grade rating from at least one NRSRO or, if the issuer or the entity supplying the revenues or other payments from which the issue is to be paid has been in continuous operation for less than three years (*i.e.*, a less seasoned security), one of the three highest ratings from an NRSRO.[66] The Commission explained that the rationale behind the rating requirement was to prevent the purchase of less seasoned securities and reduce the risk of unloading unmarketable securities on the fund.[67]

We propose to eliminate the references to ratings in rule 10f–3, and amend the rule's definition of ''eligible municipal security'' to mean securities that are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time. In addition, the securities would have to be either: (i) Subject to no greater than moderate credit risk; or (ii) if they are less seasoned securities, subject to a minimal or low amount of credit risk.[68]

Unlike our proposals to amend other rules, we are not proposing to add a requirement that the board of directors make the determination regarding credit risk and liquidity. Rule 10f–3 already requires a fund's directors, including a majority of disinterested directors, to approve procedures regarding purchases made in reliance on the rule and to determine each quarter that all purchases were made in compliance with the procedures.[69] Accordingly, the board, including a majority of disinterested directors, already is required to review purchases of municipal securities made in reliance on the rule, and would continue to do so under our proposal. In addition, pursuant to its oversight role, the board would be required to approve procedures for ensuring that municipal securities meet the proposed conditions for credit quality and liquidity. Although the rule would no longer require municipal securities to be rated by an NRSRO, fund boards of directors would still be able to incorporate quality determinations prepared by outside sources, including ratings, reports, analyses, and other assessments issued by NRSROs and other persons, in their approval of procedures and in their review of transactions under the rule.

We request comment on the proposed amendment to rule 10f–3. What would be the effect of eliminating the rating requirement in the definition of ''eligible municipal securities''? Is the proposed standard that municipal securities purchased in reliance on rule 10f–3 present no more than moderate credit risks and are highly liquid sufficient to limit the possibility underwriters may sell unmarketable securities to the fund? Is there an alternative that would better address our regulatory concerns?

E. Rule 206(3)–3T

Rule 206(3)–3T under the Investment Advisers Act of 1940 establishes a temporary alternative means for investment advisers who are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients.[70] That section makes it unlawful for any investment adviser, directly or indirectly ''acting as principal for his own account, knowingly to sell any security to or purchase any security from a client * * *, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.'' [71] Rule 206(3)–3T contains several conditions that are designed to prevent overreaching by advisers by requiring an adviser to disclose to its client the conflicts of interest involved in principal transactions, inform the client of the circumstances in which the adviser may effect a trade on a principal basis, and provide the client with meaningful opportunities to refuse to consent to a particular transaction or revoke the prospective general consent to these transactions.[72]

An adviser generally may not rely on the rule for principal trades of securities if the investment adviser or a person who controls, is controlled by, or is under common control with the adviser (''control person'') is the issuer or is an underwriter of the security.[73] As we stated when we adopted the rule, the incentives associated with underwriting securities may bias the advice being provided or lead the adviser to exert undue influence on its client's decision to invest in the offering or the terms of that investment.[74] The rule contains an exception to this ''underwritten securities'' exclusion for trades in which the adviser or a control person is an underwriter of non-convertible *investment-grade* debt securities.[75] We provided this exception because non-convertible investment grade debt securities may be less risky and therefore less likely to be ''dumped'' on clients.[76] The rule defines an ''investment grade debt security'' as a non-convertible debt security that, at the time of sale, is rated in one of the four highest rating categories of at least two NRSROs.[77]

We propose to amend rule 206(3)–3(T), to eliminate an adviser's ability to rely exclusively on NRSRO ratings to determine whether a security is investment grade for purposes of the rule. Instead, the adviser would have to make its own assessment taking into account specified criteria, including that the security: (i) Has no greater than

[66] Rule 10f–3(a)(3).

[67] Exemption of Acquisition of Securities During the Existence of Underwriting Syndicate, Investment Company Act Release No. 10592 (Feb. 13, 1979) [44 FR 10580 (Feb. 21, 1979)] (''1979 10f–3 Amendments Proposing Release'').

[68] Proposed rule 10f–3(a)(3). The proposed rule would define ''eligible municipal securities'' to mean "'municipal securities'' as defined in section 3(a)(29) of the Securities Exchange Act of 1934, that have sufficient liquidity such that they can be sold at or near their carrying value within a reasonably short period of time and either (i) are subject to no greater than moderate credit risk or (ii) if the issuer of the municipal securities, or the entity supplying the revenues or other payments from which the issue is to be paid, has been in continuous operation for less than three years, including the operation of any predecessors, the securities are subject to a minimal or low amount of credit risk.''

[69] Rule 10f–3(c)(10). The Commission added the requirement that disinterested directors adopt procedures made in reliance on the rule and periodically review the fund's compliance with these procedures in 1979. *See* Rule 10f–3 1979 Adopting Release, *supra* note 65. At the time, we stressed that in determining specific procedures to be included in the guidelines for transactions in reliance on the rule, the board should be aware generally of the nature of any affiliation that the investment company (or any of its officers, directors, employees or adviser) may have with underwriters and any role the affiliate person would play in mounting the underwriting of a particular issue. *See* 1979 10f–3 Amendments Proposing Release, *supra* note 67, at text preceding n.23. Our proposal would not affect this existing requirement with respect to the purchase of municipal securities.

[70] Rule 206(3)–3T [17 CFR 275.206(3)–3T]. *See also* Temporary Rule Regarding Principal Trades with Certain Advisory Clients, Investment Advisers Act Release No. 2653 (Sept. 24, 2007) [72 FR 55022 (Sept. 28, 2007)] (''Principal Trade Rule Release'').

[71] 15 U.S.C. 80b–6(3).

[72] *See* Principal Trade Rule Release, *supra* note 70, at text accompanying n.28.

[73] Rule 206(3)–3T(a)(2).

[74] Principal Trade Rule Release, *supra* note 70, at n.35 and accompanying and following text.

[75] *Id.* at text accompanying n.36. There is no exception if the adviser or a control person is the issuer of the securities.

[76] *Id.* at text following n.36. We also noted in the Principal Trade Rule Release that it may be easier for clients to identify whether the price they are being quoted for a non-convertible investment grade debt security is fair given the relative comparability, and the significant size, of the non-convertible investment grade debt markets. *Id.*

[77] Rule 206(3)–3T(c).

moderate credit risk; and (ii) is sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time.[78]

Finally, as we stated when we adopted rule 206(3)–3T, an adviser subject to rule 206(4)–7 of the Advisers Act must adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act (and the rules thereunder) by the adviser or any of its supervised persons.[79] An adviser seeking to rely on rule 206(3)–3T, therefore, would have to adopt and implement policies and procedures that address the adviser's methodology for determining whether a security is investment grade quality.

We request comment on our proposed revised definition of ''investment grade debt security.'' Is it appropriate for us to allow advisers seeking to rely upon the rule to determine whether a security is investment grade based on the criteria in the rule? Is there another definition of ''investment grade'' elsewhere in the federal securities laws that we should incorporate by reference into the rule? Are there alternative methods to ensure that advisers seeking to rely on the exception to the underwriting exclusion do so only with respect to investment grade debt? Are there alternative or additional factors we should require an adviser to consider in making its determination? In addition, we expect that advisers, in order to establish their eligibility to rely on the rule, would document their determination that a security is investment grade quality, as well as the process for making such a determination. Are we correct? Should we make such documentation an explicit requirement of the rule, or amend rule 204–2 under the Advisers Act[80] (the books and records rule) to require such documentation?

IV. Request for Comment

We request comment on the rule amendments proposed in this release. We also request suggestions for additional changes to existing rules, and comments on other matters that might have an effect on the proposals contained in this release. Commenters are requested to provide empirical data to support their views.

V. Paperwork Reduction Act

Certain provisions of the proposed amendments to rules 2a–7, 3a–7, 5b–3, and 10f–3 under the Investment Company Act, and rule 206(3)–(3)T under the Investment Advisers Act, contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[81] The Commission is submitting this proposal to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: ''Rule 2a–7 under the Investment Company Act of 1940, Money market funds'' (OMB Control No. 3235–0268); ''Rule 10f–3 under the Investment Company Act of 1940, Exemption for the Acquisition of Securities During the Existence of an Underwriting and Selling Syndicate'' (OMB Control No. 3235–0226); and ''Temporary rule for principal trades with certain advisory clients, rule 206(3)–3T'' (OMB Control No. 3235–0630). There are currently no approved collections for rules 3a–7 and 5b–3, and the proposed amendments would not create any new collections. We adopted the rules pursuant to the Investment Company Act and the Investment Advisers Act.

Our proposed amendments are designed to address the risk that the reference to and required use of NRSRO ratings in our rules:

- Is interpreted by investors as an endorsement of the quality of the credit ratings issued by NRSROs; and
- Encourages investors to place undue reliance on NRSRO ratings.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Rule 2a–7

Rule 2a–7 under the Investment Company Act exempts money market funds from the Act's valuation requirements, permitting money market funds to maintain stable share pricing, subject to certain risk-limiting conditions. We propose to amend rule 2a–7 in four principal ways to: (i) Rely on money market fund boards of directors (who usually rely on the funds' advisers) to determine that each portfolio instrument presents minimal credit risks, and whether the security is a ''First Tier Security'' or a ''Second Tier Security;'' (ii) add a portfolio liquidity requirement to the rule that would require that money market funds hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions, and expressly limit their investment in illiquid securities to not more than 10% of their total assets; (iii) in the event the money market fund's investment adviser becomes aware of any new information about a portfolio security (or an issuer of a portfolio security) that may suggest that the security may not continue to present minimal credit risks, the proposal would amend rule 2a–7's downgrade and default provisions to require a money market fund's board of directors to reassess promptly whether the portfolio security continues to present minimal credit risks; and (iv) require a money market fund to notify the Commission of the purchase of a money market fund's portfolio security by an affiliated person in reliance on rule 17a–9 under the Investment Company Act.[82] The proposed amendments also would make conforming amendments to rule 2a–7's record keeping and reporting requirements.[83]

The proposed amendments to rule 2a–7 would impose a new reporting obligation on money market funds. The proposed reporting requirement to notify the Commission of the purchase of a money market fund's portfolio securities by an affiliated person in reliance on rule 17a–9 under the Investment Company Act is designed to assist Commission staff in overseeing money market funds' affiliated transactions that are otherwise prohibited. If adopted, the new collection of information would be mandatory for money market funds. Information submitted to the Commission related to a rule 17a–9 transaction would be accorded confidential treatment to the extent permitted by law.[84]

Commission staff estimates that there are 808 money market funds, all of whom are subject to rule 2a–7.[85] Of these money market funds, Commission staff estimates that an average of 10 funds per year would be required to provide notice to the Commission of a rule 17a–9 transaction, with the total

[78] Proposed rule 206(3)–3T(c). Although the proposed amendment would no longer require a security underwritten by an adviser or its control person to be rated by NRSROs to be eligible under the rule, investment advisers could refer to ratings, reports, analyses, and other assessments issued by NRSROs and other persons, for the purpose of evaluating credit risk and liquidity.

[79] Principal Trade Rule Release, *supra* note 70, at nn.56–58 and accompanying text. In that connection, an adviser seeking to rely on rule 206(3)–3T, as proposed to be amended, would need to adopt and implement policies and procedures reasonably designed to ensure that the adviser's methodology for determining investment grade quality is consistent with the adviser's legal obligations.

[80] 17 CFR 275.204–2.

[81] 44 U.S.C. 3501–3520.

[82] *See* rule 17a–9.

[83] *See* proposed rule 2a–7(c)(11).

[84] *See, e.g.*, 17 CFR 200.83.

[85] These include registered money market funds and series of registered money market funds. *See* Investment Company Institute, *Trends in Mutual Fund Investing April 2008,* May 29, 2008. Available at *http://www.ici.org/stats/latest/trends_04_08.html.*

annual responses per fund, on average, requiring .5 hours of an attorney's time at a cost of $147.50.[86] Given these estimates, we estimate that the total annual burden of the proposed amendments to rule 2a–7 for all money market funds would be approximately 5 hours and $1,475.[87]

We seek comment on these estimates. If commenters believe these estimates are not reasonable, we request they provide data that would allow us to make more accurate estimates.

B. Rule 3a–7

Rule 3a–7 under the Investment Company Act excludes structured finance vehicles from the Act's definition of ''investment company'' subject to certain conditions. The conditions include the requirement that structured financings offered to the general public are rated by at least one NRSRO in one of the four highest rating categories. The proposed amendments would: (i) Eliminate rule 3a–7's reliance on ratings by eliminating the exclusion for structured financings offered to the general public; (ii) remove the reference to ratings downgrades in the section of the rule that addresses substitution of eligible assets; and (iii) amend the portion of the rule that deals with safekeeping of assets. Commission staff estimates that the proposal may result in a new collection of information but any collection of information would not have an associated burden. Although in the condition in rule 3a–7 dealing with the substitution of assets, the proposed amendments would require the issuer to have procedures to ensure that the acquisition or disposition of assets does not adversely affect the full and timely payment of the outstanding fixed income securities, Commission staff believes that almost all issuers currently have these procedures in place.

We request comment on whether issuers currently have these procedures in place.

C. Rule 5b–3

Rule 5b–3 under the Investment Company Act allows funds to treat the acquisition of a repurchase agreement as an acquisition of securities collateralizing the repurchase agreement for purposes of sections 5(b)(1) and 12(d)(3) of the Investment Company Act under certain conditions. We propose to amend rule 5b–3 by requiring a fund's board of directors, or its delegate, to determine that the securities collateralizing a repurchase agreement present minimum credit risks and are highly liquid.[88] To that end, the fund's board of directors, pursuant to rule 38a–1 under the Investment Company Act, would have to develop procedures to ensure that at the time the repurchase agreement is entered into the securities meet the requirements for collateral outlined in the amendments to the proposed rule. These procedures are necessary to make sure that the market value of the collateral remains fairly stable and that the fund would be able to liquidate the collateral quickly in the event of a default.[89] This collection of information would be mandatory for funds that rely on rule 5b–3. Records of information made in connection with this requirement would be required to be maintained for inspection by Commission staff, but the collection would not otherwise be submitted to the Commission.

The existing rule provides that unrated securities are collateral if the fund's board, or its delegate, makes the determination that the unrated securities are comparable to securities that are rated in the highest rating category by the Requisite NRSROs.[90] Thus, fund boards may have existing procedures regarding credit quality determinations for unrated securities. In addition, as a matter of good business practice, we believe that some funds currently evaluate the credit risk and liquidity of rated securities. Thus, we believe that most funds already have procedures to evaluate collateral securities. As of March 31, 2008, 4,714 investment companies were registered with the Commission. Commission staff estimates that 90% of all registered investment companies, or 4,243 funds, currently have procedures for evaluating collateral securities. Commission staff therefore estimates that 471 funds would need to develop procedures and evaluate collateral securities, and the staff estimates this would involve a one-time burden of 942 hours and an ongoing burden of 5,652 hours, at a cost of approximately $1,294,308.[91]

We seek comment on these estimates. If commenters believe these estimates are not reasonable, we request they provide data that would allow us to make more accurate estimates.

D. Rule 10f–3

Rule 10f–3, permits funds that are affiliated with members of an underwriting syndicate to purchase securities from the syndicate if certain conditions are met. We are proposing to amend the rule's definition of ''eligible municipal securities'' to include credit quality and liquidity requirements.

Under the current rule, fund boards are required to approve procedures regarding purchases made in reliance on the rule and to determine each quarter that all purchases were made in compliance with the procedures.[92] Accordingly, the board currently reviews purchases of municipal securities made in reliance on the rule, and would continue to do so under our proposal. Pursuant to the amendments to the proposed rule, fund boards would need to approve additional procedures for ensuring that municipal securities meet the standards for credit quality and liquidity. These procedures are necessary to eliminate any possibility that an affiliated underwriter may ''unload'' otherwise unmarketable securities on a fund. This collection of information would be mandatory for funds that rely on rule 10f–3. Records of information made in connection with this requirement would be required to be maintained for inspection by Commission staff, but the collection would not otherwise be submitted to the Commission.

In our most recent PRA submission, we estimated that approximately 350 funds engage in rule 10f–3 transactions each year. We further estimated that each fund would, on average, take two

[86] Based on information provided by money market fund representatives, Commission staff estimates the cost would equal 0.5 hours of an attorney's time at $295 per hour (0.5 hours × $295 per hour = $147.50). The estimated hourly wages used in this PRA analysis were derived from reports prepared by the Securities Industry and Financial Markets Association. *See* Securities Industry and Financial Markets Association, *Report on Management and Professional Earnings in the Securities Industry—2007* (2007), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead; and Securities Industry and Financial Markets Association, *Office Salaries in the Securities Industry—2007* (2007), modified to account for an 1800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[87] These estimates are based on the following calculations: (10 money market funds × .5 hours) = 5 hours; (10 money market funds × 147.50) = $1,475.

[88] Proposed rule 5b–3(c)(1)(iv)(C).

[89] *See* Rule 5b–3 Proposing Release, *supra* note 51, at text accompanying n.43.

[90] Rule 5b–3(c)(1)(iv)(D).

[91] Commission staff estimates that each fund board would incur a one-time burden of 2 hours to develop procedures for evaluating credit and liquidity risks (471 boards × 2 hours = 942 hours). Commission staff believes that any incidental costs incurred by boards of directors would be incorporated into funds' overall board costs and would not add any particular costs. In addition, staff estimates that a board delegate would spend an average of 1 hour to evaluate the credit risks for the collateral for each of an average of 12 repurchase agreements each year (471 funds × 12 hours = 5,652 hours). Assuming the evaluation would be performed by a senior business analyst (at $229 per hour), the total cost estimate would be $1,294,308.

[92] Rule 10f–3(c)(10).

hours to review and revise, as needed, written procedures for rule 10f–3 transactions. We believe that any revisions funds would have to make to comply with the proposed amendments would be incorporated in the two hours of review. Accordingly, we do not believe that the proposed amendments to rule 10f–3 would change the burdens currently approved for rule 10f–3.

We seek comment on these estimates. If commenters believe these estimates are not reasonable, we request they provide data that would allow us to make more accurate estimates.

E. Rule 206(3)–3T

Rule 206(3)–3T under the Advisers Act establishes a temporary alternative means for investment advisers who are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients. So long as each condition of the rule is met, an eligible adviser may provide the transaction-by-transaction disclosure required under section 206(3) of the Advisers Act either orally or in writing. One condition of the rule is that an adviser generally may not rely on rule 206(3)–3T for principal trades of securities if the investment adviser or a person who controls, is controlled by, or is under common control with the adviser (''control person'') is the issuer or is an underwriter of the security. The rule contains an exception to this ''underwritten securities'' exclusion for trades in which the adviser or a control person is an underwriter of non-convertible *investment-grade* debt securities. The proposed amendment to rule 206(3)–3T would modify the definition of ''investment grade debt security'' to mean a non-convertible debt security that, at the time of sale, the investment adviser has determined to be subject to no greater than moderate credit risk and sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time.

Under the proposed amendment to rule 206(3)–3T, there is a single new collection burden. Pursuant to its obligations under rule 206(4)–7 under the Advisers Act, an adviser seeking to rely on rule 206(3)–3T must adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act that address the adviser's methodology for determining whether a security is investment grade quality pursuant to the definition. This collection of information is designed to minimize the incentives associated with underwriting securities that may bias the advice being provided or may lead the adviser to exert undue influence on its client's decision to invest in the offering or the terms of that investment. Although the rule does not call for any of the information collected to be provided to us, to the extent advisers include any of the information in a filing, such as Form ADV, the information would not be kept confidential.

We anticipate that the burden associated with this collection would mostly be borne upfront as advisers develop their policies and procedures for how to identify non-convertible investment grade debt securities in connection with the credit risk and liquidity elements specified under the rule. This would require drafting the policies and procedures, potentially subjecting them to review of outside counsel, implementing them, and explaining their contours in the adviser's Form ADV.

We estimate that the average burden for drafting the required policies and procedures for each eligible adviser that chooses to rely on the rule in connection with underwritten securities in particular, would be approximately 10 hours on average. Further, we expect the drafting burden would be uniform with respect to each eligible adviser regardless of how many individual non-discretionary advisory accounts that adviser administers or seeks to engage with in principal trading. As of June 1, 2008, there were 639 advisers that were eligible to rely on the temporary rule (*i.e.*, also registered as broker-dealers), 409 of which indicate that they have non-discretionary advisory accounts.[93] We estimate that 90% of those 409 advisers, or a total of 368 of those advisers, rely on the rule.[94] Of those, we estimate that only 50% would seek to engage in principal trades with clients of securities they or a control person underwrote. Thus, we estimate that the total number of advisers who would rely on the non-convertible investment grade debt exception to the ''underwritten securities'' exclusion under the rule would be approximately 185.

Accordingly, we estimate that the total burden for creating initial policies and procedures under the proposal for the estimated 185 advisers that would rely on the rule would be 1,850 hours.[95] We also estimate an average one-time cost for the preparation of the policies and procedures for approximately three hours of outside legal counsel time of $1,200 per eligible adviser on average,[96] for a total of $222,000.[97]

F. Request for Comments

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–19–08. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in

[93] IARD data as of June 1, 2008, for Items 6.A(1) and 5.F(2)(e) of Part 1A of Form ADV.

[94] We anticipate that most investment advisers that are dually registered as broker-dealers will make use of the rule to engage in, at a minimum, riskless principal transactions to limit the need for these advisers to process trades for their advisory clients with other broker-dealers. We estimate that 10% of these advisers will determine that the costs involved to comply with the rule are too significant in relation to the benefits that the adviser, and their clients, will enjoy.

[95] This estimate is based on the following calculation: 10 hours per adviser × 185 eligible advisers that will rely on the rule = 1,850 total hours.

[96] Outside legal fees are in addition to the projected 10 hours per adviser burden discussed in note 95 and accompanying text.

[97] This estimate is based on the following calculation: ($400 per hour × 3 hours × 185 advisers = $222,000).

writing, refer to File No. S7–19–08, and be submitted to the Securities and Exchange Commission, Public Records Management Office Room, 100 F Street, NE., Washington, DC 20549–1110.

VI. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. We have identified certain costs and benefits of the proposed amendments and request comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. We seek comment and data on the value of the benefits identified. We also welcome comments on the accuracy of the cost estimates in each section of this analysis, and request that commenters provide data that may be relevant to these cost estimates. In addition, we seek estimates and views regarding these costs and benefits for particular covered institutions, including small institutions, as well as any other costs or benefits that may result from the adoption of these proposed amendments.

As discussed above, the proposed rule amendments are designed to address the risk that the reference to and use of NRSRO ratings in our rules is interpreted by investors as an endorsement of the quality of the credit ratings issued by NRSROs, and may encourage investors to place undue reliance on the NRSRO ratings. The proposed amendments to rules 2a–7, 3a–7, 5b–3, and 10f–3 under the Investment Company Act and rule 206(3)–(3)T under the Investment Advisers Act would eliminate the reference to and requirement for the use of NRSRO ratings in these rules.

A. Benefits

The Commission anticipates that one of the primary benefits of the proposed amendments, if adopted, would be the benefit to investors of reducing their possible undue reliance on NRSRO ratings that could be caused by references to NRSROs in our rules. An over-reliance on ratings can inhibit independent analysis and could possibly lead to investment decisions that are based on incomplete information. The purpose of the proposed rule amendments is to encourage investors to examine more than a single source of information in making an investment decision. Eliminating reliance on ratings in the Commission's rules could also result in greater investor due diligence and investment analysis. In addition, the Commission believes that eliminating the reliance on ratings in its rules would remove any appearance that the Commission has placed its imprimatur on certain ratings.

More specifically, the principal benefit of the proposed amendments to rule 2a–7 would be to emphasize the importance of money market funds making independent assessments of credit risks. The benefit of the proposed amendments to rule 3a–7 would be to emphasize that ratings are not necessary for accredited investors and qualified institutional buyers to protect themselves in evaluating structured finance vehicles issued under the rule. Similarly, the benefit of the proposed amendments to rules 5b–3 and 10f–3 would be to emphasize the importance to funds that acquire repurchase agreements or securities in an affiliated underwriting of making an independent evaluation of the credit risks associated with the collateral or the underwritten security, respectively. In addition, by moving away from a required reliance on credit ratings in our rules, funds may benefit by acquiring a wider range of securities that present attractive investment opportunities and the requisite level of credit risks, although they do not meet the current rules' ratings requirements. The principal benefit of the proposed amendment to rule 206(3)–3T would be to allow advisers to consider factors other than only a rating by NRSROs of the credit quality of a debt security for purposes of eligibility of the rule. Advisers would determine, based upon established criteria of whether the security presents no more than moderate credit risk and has sufficient liquidity, whether a security is investment grade for purposes of the rule. Investment advisers could, in addition to considering NRSRO ratings, weigh various factors and consider a security's credit quality based on those qualitative and quantitative elements it deems most relevant. An additional benefit of the proposed amendment would be that non-discretionary advisory clients of advisers also registered with us as broker-dealers may have easier access to a wider range of securities. This, in turn, would increase liquidity in the markets for these securities and promote capital formation in these areas. These benefits are difficult to measure quantitatively, but qualitatively we believe the potential benefits are significant.

We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify. Commenters are also requested to identify sources of empirical data that could be used for the metrics they propose.

B. Costs

We anticipate that funds and investment advisers could incur certain costs if the proposed amendments are adopted. Funds and investment advisers may incur additional costs if they perform a more detailed and comprehensive analysis before making an investment decision. Such costs are difficult to measure, but we believe that they would be justified by the benefits related to a more informed investment decision as discussed in the previous section. In addition, the purpose of the proposal is to emphasize that it is not the Commission's intent to encourage investors to place undue reliance on NRSRO ratings in making investment decisions. In many cases, investors may still choose to rely solely on NRSRO ratings without incurring additional costs.

Additionally, in proposing to remove the ratings requirements from our rules, we would broaden the set of potential investments available to funds and investment advisers. For example, under the proposed amendments to rule 2a–7, money market funds would be able to invest in securities that have received credit ratings outside of the two highest short-term rating categories. It is possible that some investors, funds, or investment advisers may incur additional costs if funds and investment advisers use this expanded discretion to purchase (or sell in the case of principal transactions under rule 206(3)–3T) risky or illiquid securities. We believe that these potential costs would be mitigated, however, by market forces, including, in the case of money market funds, investors' desire to maintain the principal value of their investments.

We request comment on these costs. Would eliminating the rating requirements from our rules affect the amount or nature of risks that investment companies and investment advisers would be willing or able to take? We request comment on available metrics to quantify these costs and any other costs the commenter may identify. Commenters are also requested to identify sources of empirical data that could be used for the metrics they propose.

Rule 2a–7. We anticipate that the proposed amendments to rule 2a–7 would impose minimal new costs on a portion of money market funds. In general, we expect that money market fund boards of directors (or their delegates) would incur no additional costs in making credit and liquidity risk determinations regarding portfolio securities because the proposed rules would codify the determinations

regarding credit risk and liquidity that we believe boards (or their delegates) make under the current rule. Some money market funds, however, would incur costs to notify the Commission regarding rule 17a–9 transactions. For purposes of the PRA analysis, Commission staff estimates that on average 10 money market funds each year are likely to provide notices regarding rule 17a–9 transactions, at a cost of approximately $1,475.[98] We request comment on these cost estimates. Do commenters foresee additional or alternative costs if the proposed amendments to rule 2a–7 are adopted? Have we accurately estimated the number of money market funds that would have to report rule 17a–9 transactions annually? Have we accurately estimated money market funds' potential costs in reporting rule 17a–9 transactions?

Rule 3a–7. Our proposed amendments to rule 3a–7 under the Investment Company Act may impose minor costs. Specifically, retail investors who are able, because of the rule, to buy structured finance products would no longer be able to participate in the market. We understand that these products generally are not marketed to retail investors, however, and the number of retail investors affected, if there are any, may be quite low. The proposed amendments also may result in more limited access to capital for issuers of structured financings to the extent there is a retail market that is eliminated under the proposed amendments. All investors who hold structured finance products bought under the existing rule may bear some costs of reduced liquidity to the extent a retail market no longer exists because the pool of potential buyers in the secondary market may be reduced. These costs are difficult to assess given that any existing market may be very small.

Commission staff estimates the following potential costs associated with the proposed amendments to rule 3a–7:

• *Costs to retail investors*—Retail investors may incur certain opportunity costs under the proposal because they would not be able to purchase the securities of structured finance vehicles that rely on rule 3a–7. These potential costs may be mitigated, however, because we understand, based on staff experience that this market, if it exists, represents a very small amount of all structured finance products (perhaps less than 1% of the $306.7 billion in asset-backed securities issued in 2007).[99]

• *Procedures for the acquisition or disposition of assets*—Although we are proposing to remove rule 3a–7's rating requirement, we anticipate that structured financing vehicles would be rated by the NRSROs. We expect that market participants generally will continue to require that issuers obtain ratings. Accordingly, as a matter of good business practice, Commission staff estimates that almost all issuers will continue to have procedures in place to ensure that the acquisition or disposition of assets does not adversely affect the full and timely payments to outstanding security holders. Thus, Commission staff believes that the proposed amendments would not impose any new cost burdens on issuers.

• *Deposits in segregated accounts*—We believe that almost all issuers have already taken the actions necessary for cash flows to be deposited in segregated accounts consistent with the full and timely payment of outstanding fixed income securities in meeting the current rule's ratings requirement. Commission staff does not anticipate any new costs associated with this provision of the proposal.

We request comment on these cost estimates. Are structured financings offered to the retail market under rule 3a–7? If so, how large is the retail market for these products? What costs would retail investors incur if the proposed amendments are adopted? How would retail investors sell or dispose of their current structured finance vehicle holdings if the proposed amendments were adopted? How should any opportunity costs investors may face if the proposed amendments are adopted be quantified? Would there be any new costs associated with developing procedures for the acquisition or disposition of assets and deposits in segregated accounts?

Rule 5b–3. Our proposed amendments to rule 5b–3 under the Investment Company Act may impose costs on funds that rely on the rule. Specifically, a fund's board of directors, or its delegate, pursuant to rule 38a–1 under the Investment Company Act, would be required to develop written policies and procedures to ensure that at the time the repurchase agreement is entered into the collateral meets the requirements outlined in the amendments to the proposed rule.[100] The proposal would require collateral other than cash or government securities to consist of securities that the fund's board of directors (or its delegate) determines at the time the repurchase agreement is entered into: (i) Are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time; (ii) are subject to no greater than minimal credit risk; and (iii) the issuer of which has the highest capacity to meet its financial obligations. The existing rule provides that collateral may consist of unrated securities if the fund's board, or its delegate, makes the determination that the unrated securities are comparable to securities that are rated in the highest rating category by the Requisite NRSROs. Consistent with the requirements of rule 38a–1 under the Investment Company Act, we expect that fund boards would have existing procedures regarding credit quality determinations for unrated securities. In addition, as a matter of good business practice, we believe that most funds currently evaluate the credit risk and liquidity of rated securities. Thus, we believe that most funds already have procedures to evaluate collateral securities. For purposes of the PRA analysis, Commission staff estimates that 90% of all investment companies, or 4,243 funds, currently have procedures for evaluating collateral securities.[101] Commission staff therefore estimates that 471 funds would need to develop procedures and evaluate collateral securities, at an annual cost of approximately $1,294,308.[102]

Our proposed amendments to rule 5b–3 may result in another cost to affected funds. Currently, NRSRO ratings are used in a provision of rule 5b–3 that permits a fund to deem the acquisition of a ''refunded security'' as the acquisition of the escrowed government securities for purposes of section 5(b)(1)'s diversification requirements.[103] Under this provision, a debt security must satisfy certain conditions to be considered a refunded security under the rule. One of these conditions is that an independent certified public accountant must have certified to the escrow agent that the escrowed securities would satisfy all scheduled payments of principal, interest, and applicable premiums on

[98] *See supra* note 87 and accompanying text.

[99] *See* Worldwide ABS Issuance, Asset-Backed Alert: The Weekly Update on Worldwide Securitization (June 13, 2008), p. 11.

[100] Rule 38a–1(a).

[101] *See supra* text preceding note 90.

[102] *See supra* note 91.

[103] Under the rule, a refunded security is defined as a debt security the principal and interest payments of which are to be paid by U.S. government securities that have been irrevocably placed in an escrow account and are pledged only to the payment of the debt security. Rule 5b–3(c)(4).

the refunded securities.[104] This condition is not required, however, if the refunded security has received a debt rating in the highest rating from an NRSRO.[105]

We propose to eliminate the exception to the certification requirement for securities that have received the highest rating from an NRSRO. As previously discussed, the Commission included this exception because in rating refunded securities, NRSROs typically require that an independent third party make the same determination.[106] As previously noted, Commission staff believes that market pressures currently require almost all issuers to have refunded securities certified by an independent accountant. To the extent that refunded securities are rated, and the rating agency requires certification by an independent certified public accountant, funds would not incur additional costs in determining whether a security had been certified in accordance with the rule. Accordingly, we do not expect there would be a change in current costs to issuers as a result of this proposal.

We request comment on these cost estimates. Do commenters foresee additional or alternative costs if the proposed amendments to rule 5b–3 are adopted? Have we accurately estimated current and future costs for collateral procedures? Are we correct in estimating that funds are unlikely to incur any additional costs in determining that a refunded security has received an accountant certification?

Rule 10f–3. We do not believe that our proposed amendments to rule 10f–3 would impose costs on funds that rely on rule 10f–3 to purchase municipal securities. Under the current rule, fund boards are required to adopt procedures regarding purchases made in reliance on the rule and to determine each quarter that all purchases were made in compliance with the procedures.[107] Commission staff estimates that these costs would not change. As noted above in our analysis of the PRA, we currently estimate that boards spend, on average, two hours each year to review and revise their procedures for acquiring securities in compliance with the conditions in rule 10f–3. We believe that any changes funds would make to their procedures in order to comply with the proposed amendments to the rule would be included in this annual review and revision.

We request comment on these cost estimates. Have we accurately estimated the costs associated with the proposal's required additional procedures for purchases of municipal securities? Do commenters foresee additional or alternative costs if the proposed amendments to rule 10f–3 are adopted?

Rule 206(3)–3T. In lieu of relying exclusively on credit ratings to determine eligibility for principal trading of underwritten securities under the rule, advisers would need to make a determination of a security's credit risk and liquidity. This determination would impose some costs on advisers. Advisers seeking to rely on the exception would need to develop and implement procedures regarding their eligibility determinations in accordance with their responsibilities under Advisers Act rule 206(4)–7. And, in making their determinations, many advisers would expend resources beyond merely obtaining credit ratings from NRSROs, as is required under the current rule.

Commission staff estimates that the costs of preparing the procedures for making the determinations of credit quality and liquidity under the rule would be borne upfront. Once generated, reviewed, and implemented by eligible advisers, advisers would be able to follow them for purposes of making further determinations of eligibility for underwritten securities under the requirements of the rule. For purposes of the PRA analysis, our staff has estimated the number of hours and costs the average adviser would spend in the initial preparation of its policies and procedures.[108] Based on those estimates, our staff estimates that advisers would incur costs of approximately $1,820 on average per adviser, including legal consultation.[109] Assuming there are 185 eligible advisers (*i.e.*, advisers that also are registered broker-dealers) that would prepare relevant policies and procedures, our staff estimates that the total costs would be $336,700.[110]

We request comment on these cost estimates. Are the cost estimates accurate regarding the proposed procedures for making credit quality determinations? Do commenters foresee additional or alternative costs if the proposed amendments to rule 206(3)–3T are adopted?

C. Request for Comment

We request comment on all aspects of this cost-benefit analysis, including comment as to whether the estimates we have used in our analysis are reasonable. We welcome comment on any aspect of our analysis, including the estimates and the assumptions we have described. In particular, we request comment as to any costs or benefits we may not have considered here that could result from the adoption of the proposed amendments. We also request comment on the numerical estimates discussed above, and request comment on specific costs and benefits from covered institutions that have experienced any of the situations analyzed above.

VII. Consideration of Promotion of Efficiency, Competition and Capital Formation

Investment Company Act section 2(c) and Investment Advisers Act section 202(c) require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[111] If adopted, the Commission believes that these amendments would reduce the potential for over-reliance on ratings, and thereby promote investor protection. The Commission anticipates that these proposed amendments would improve investors' ability to make informed investment decisions, which would therefore lead to increased efficiency and competitiveness of the U.S. capital markets. The Commission expects that this increased market efficiency and investor confidence also may encourage more efficient capital formation.

Efficiency. As discussed above, the proposed amendments could result in additional costs for investment companies and registered investment advisers, which could affect the

[104] Rule 5b–3(c)(4)(iii).

[105] *Id.*

[106] *See* rule 5b–3 Proposing Release, *supra* note 51.

[107] Rule 10f–3(c)(10).

[108] *See supra* note 97 and accompanying text. We estimate the following burdens and/or costs: (i) for drafting the policies and procedures, approximately 10 hours on average per eligible adviser, of which we estimate there are 185, for a total of 1,850 hours; and (ii) for utilizing outside legal professionals in the preparation of the policies and procedures, approximately $1,200 on average per eligible adviser, for a total of $222,000.

[109] We estimate that the internal preparation function will most likely be performed by a compliance clerk at $62 per hour. $62 per hour × 10 hours = $620 on average per adviser of internal costs for preparation of the policies and procedures. $620 on average per adviser of internal costs + $1,200 on average per adviser of costs for outside legal counsel = $1,820 on average per adviser.

[110] This estimate is based on the following calculation: $1,820 on average per adviser × 185 advisers = $336,700 in total costs for preparation of the policies and procedures.

[111] 15 U.S.C. 80a–2(c) and 15 U.S.C. 80b–2(c).

efficiency of these institutions. The proposed amendments to rule 2a–7 may slightly decrease the efficiency of certain money market funds, to the extent that any funds may be relying exclusively on credit ratings to make current minimal credit risk determinations. We believe that independently generated assessments of credit risks are important, however, and a slight decrease in efficiency may be warranted. Our proposed amendments to rule 3a–7 may reduce market efficiency by limiting the ability of retail investors who invest in structured financing vehicles. However, the proposal to eliminate sales of structured finance vehicles to the retail market would clearly delineate investors who are eligible to buy these products, which may increase market efficiency.

Ratings provide a standard for retail investors, funds, and advisers alike. By eliminating reliance on ratings, the proposed amendments may have a negative impact on efficiency by eliminating an objective standard in credit quality determinations. The proposed amendments also could decrease efficiency to the extent that funds acquired securities that do not meet the particular ratings requirement and that result in the concerns that the rating requirements were designed to address. On the other hand, the proposed amendments may result in some increased market efficiency by affording funds access to securities that do not meet the rating requirements in the current rules, but that would satisfy the credit risk and liquidity standards in the proposed amendments. We do not anticipate that the proposed amendments to rules 2a–7, 5b–3, and 10f–3 would have other impacts on the efficiency of funds that rely on those rules. The proposed amendments to rule 206(3)–3T may increase efficiency by affording clients access to certain investment grade debt securities underwritten by the adviser or its affiliate that they might not have had access to under the standard requiring NRSRO ratings.

Competition. If investors believe the proposed amendments to rule 2a–7 would make the rule less rigorous in part because of the loss of an independent third party check on money market fund investments, they may turn to other cash investment vehicles they perceive as offering greater protections. In addition, investors in money market funds may unduly rely on ratings of the money market funds themselves as a proxy for the quality and safety of these funds' portfolio securities. This may potentially increase costs to money market funds that would not otherwise seek ratings. The proposed amendments to rule 3a–7, may impact certain issuers of structured finance vehicles that, for example, may specialize in the retail market if they had some competitive advantage, such as a distribution channel. Eliminating the exclusion for structured finance vehicles offered to retail investors may make these issuers less competitive in this market. The proposed amendments to rule 206(3)–3T may promote competition because, by providing a more subjective standard for the underwritten securities exception, they may increase the alternative sources of the security for the client without diminishing the adviser's best execution obligations, thereby potentially improving price. We do not believe the proposed amendments to rules 5b–3 or 10f–3 would significantly affect competition because these amendments would apply to all money market funds and other funds.

Capital formation. We do not believe the proposed amendments to the rules would have a significant effect on capital formation. To the extent potential money market fund investors may react positively to money market funds' independent credit risk assessments and management of risks, we believe any effect the proposed amendments to rule 2a–7 may have on capital formation would be positive. Our proposed amendments to rule 3a–7 would limit capital formation for issuers that offer structured finance products to retail investors in reliance on rule 3a–7. The proposed amendments would have no effect on the ability of issuers who rely on rule 3a–7 to offer structured financings to accredited investors and qualified institutional buyers to raise capital. We do not expect that the proposed amendments to rules 5b–3 or 10f–3 would have an adverse effect on capital formation. If the proposed amendments to rule 206(3)–3T have any effect on capital formation, it is likely to be positive, although indirect. Providing a means for advisers, consistent with their fiduciary obligations, to offer their clients underwritten investment grade securities sold as principal, might serve to broaden the potential universe of purchasers of securities, opening the door to greater investor participation in the securities markets with a potential positive effect on capital formation.

We request comment on all aspects of this analysis, and specifically request comment on any effect the proposed amendments might have on the promotion of efficiency, competition, and capital formation that we have not considered. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980 [112] (''RFA'') requires the Commission to undertake an initial regulatory flexibility analysis (''IRFA'') of the proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[113] Pursuant to Section 605(b) of the RFA, the Commission hereby certifies that the proposed amendments to rules 2a–7 and 3a–7 under the Investment Company Act, would not, if adopted, have a significant economic impact on a substantial number of small entities. *The proposal would:*

(a) *Amend rule 2a–7 under the Investment Company Act to:* (i) Rely on money market fund boards of directors (who usually rely on the funds' advisers) to determine that each portfolio instrument presents minimal credit risks, and whether the security is a ''First Tier Security'' or a ''Second Tier Security''; (ii) add a portfolio liquidity requirement to the rule that would require that money market funds hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions, and expressly limit their investment in illiquid securities to not more than 10% of the their total assets; (iii) in the event the money market fund's portfolio manager becomes aware of any new information about a portfolio security (or an issuer of a portfolio security) that may suggest that the security may not continue to present minimal credit risks, the proposal would amend rule 2a–7's downgrade and default provisions to require a money market fund's board of directors to reassess promptly whether the portfolio security continues to present minimal credit risks; and (iv) require a money market fund to notify the Commission of the purchase of a money market fund's portfolio securities by an affiliated person in reliance on rule 17a–9 under the Investment Company Act. The proposed amendments also would make conforming amendments to rule 2a–7's record keeping and reporting requirements; and

(b) *Amend rule 3a–7 under the Investment Company Act to:* (i) Eliminate the rule's reliance on ratings by eliminating the exclusion for

[112] 5 U.S.C. 603(a).

[113] 5 U.S.C. 605(b).

structured financings offered to the general public; (ii) remove the reference to ratings downgrades in the section of the rule that addresses substitution of eligible assets; and (iii) amend the portion of the rule that deals with safekeeping of assets.

Based on information in filings submitted to the Commission, we believe that there are no money market funds that are small entities.[114] In addition, we are not aware of any issuers that currently rely on rule 3a–7 that are small entities. For these reasons, the Commission believes the proposed amendments to rules 2a–7 and 3a–7 under the Investment Company Act would not, if adopted, have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. The Commission solicits comment as to whether the proposed amendments to rules 2a–7 and 3a–7 could have an effect on small entities that has not been considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

IX. Initial Regulatory Flexibility Analysis

This IRFA has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments to rules 5b–3 and 10f–3 under the Investment Company Act and rule 206(3)–(3)T under the Investment Advisers Act. The proposed amendments would remove references to and the required use of NRSRO ratings from these rules.

A. Reasons for the Proposed Action

As discussed above, the proposed rule amendments are designed to address the risk that the reference to and use of NRSRO ratings in our rules is interpreted by investors as an endorsement of the quality of the credit ratings issued by NRSROs, and may encourage investors to place undue reliance on the NRSRO ratings.

B. Objectives of the Proposed Action

Our proposed amendments are designed to address the risk that reference to and use of NRSRO ratings in our rules:

- Is interpreted by investors as an endorsement of the quality of the credit ratings issued by NRSROs; and
- encourages investors to place undue reliance on the NRSRO ratings.

C. Legal Basis

The Commission is proposing amendments to rule 5b–3 under the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c) and 80a–37(a)]. The Commission is proposing amendments to rule 10f–3 under the authority set forth in sections 10(f), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a) and 80a–37(a)]. The Commission is proposing amendments to rule 206(3)–(3)T under the authority set forth in sections 206A and 211(a) of the Investment Advisers Act [15 U.S.C. 80b–6A, 80b–11(a)].

D. Small Entities Subject to the Proposed Rule Amendments

The proposed amendments to rules 5b–3 and 10f–3 under the Investment Company Act and rule 206(3)–(3)T under the Investment Advisers Act would affect funds and registered investment advisers, including entities that are considered to be a small business or small organization (collectively, ''small entity'') for purposes of the RFA. Under the Investment Company Act, a fund is considered a small entity if it, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[115] Under the Investment Advisers Act, a small entity is an investment adviser that: (i) Manages less than $25 million in assets; (ii) has total assets of less than $5 million on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person (other than a natural person) that has had total assets of $5 million or more on the last day of the most recent fiscal year.[116] Based on Commission filings, we estimate that 122 investment companies may be considered small entities. We also estimate that as of June 1, 2008, 572 investment advisers were small entities.[117] The Commission assumes for purposes of this IRFA that 19 of these small entities (those that are both investment advisers and broker-dealers) could rely on rule 206(3)–3T,[118] and that 50% of these, or 10 advisers, will seek to engage in principal trades with clients of securities they or a control person underwrote.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments to rule 5b–3 would require collateral for repurchase agreements other than cash or government securities to have minimal credit risk and be highly liquid. Specifically, the proposal would require collateral other than cash or government securities to consist of securities that the fund's board of directors (or its delegate) determines at the time the repurchase agreement is entered into: (i) Are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time; (ii) are subject to no greater than minimal credit risk, and (iii) the issuer of which has the highest capacity to meet its financial obligations.[119] The proposed amendments to rule 10f–3 would amend the rule's definition of ''eligible municipal security'' to mean securities that are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time. In addition, the securities would have to be either: (i) subject to no greater than moderate credit risk; or (ii) if they are less seasoned securities, subject to a minimal or low amount of credit risk.[120] The proposed amendments to rule 206(3)–3T would impose a new compliance requirement in connection with advisers' obligations relating to written policies and procedures under rule 206(4)–7 under the Advisers Act.

Small entities registered with the Commission as investment companies or investment advisers seeking to rely on each of the rules as it is proposed to be amended would be subject to the same requirements as larger entities. With respect to rule 206(3)–3T, in each case, however, an investment adviser, whether large or small, would only be able to rely on the rule as it is proposed to be amended if it also is registered with us as a broker-dealer. As noted above, we estimate that 19 small entities are advisers that are also registered as broker-dealers and therefore only those small entities are eligible to rely on the rule. In developing the requirements of the proposed amendments to each of rules 5b–3 and 10f–3 under the Investment Company Act, and rule 206(3)–3T under the Investment Advisers Act, we considered the extent to which the proposed amendments would have a significant impact on a substantial number of small entities.

[114] Under the Investment Company Act, an investment company is considered a small entity if it, together with other investment companies in the same group of related investment companies, have net assets of $50 million or less as of the end of its most recent fiscal year. *See* 17 CFR 270.0–10.

[115] 17 CFR 270.0–10.

[116] 17 CFR 275.0–7.

[117] IARD data as of June 1, 2008, for Item 12 of Part 1A of Form ADV.

[118] IARD data as of June 1, 2008, for Items 6.A(1) and 12 of Part 1A of Form ADV.

[119] Proposed rule 5b–3(c)(1)(iv)(C).

[120] Proposed rule 10f–3(a)(3).

We encourage written comments regarding this analysis. We solicit comments as to whether the proposed amendments could have any effect that we have not considered. We also request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

F. Duplicative, Overlapping, or Conflicting Federal Rules

Rule 31a–1 under the Act requires the retention of ledger accounts for each portfolio security and each person through which a portfolio transaction is effected. Although some of the procedures under the proposed amendments to rules 5b–3 and 10f–3 may overlap with information in the ledgers, the rule 5b–3 and 10f–3 procedures would contain additional information specifically related to the concerns underlying these rules.

The Commission believes that there are no rules that duplicate or conflict with the proposed amendments to rule 206(3)–3T.

G. Significant Alternatives

The RFA directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (i) Establishing different compliance or reporting standards or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

With respect to rules 5b–3 and 10f–3, the Commission preliminarily believes that special compliance requirements or timetables for small entities, or an exemption from coverage for small entities, may create a risk that those entities could acquire repurchase agreements with collateral that may not retain its market value or liquidity in the event of a counterparty default. We do not expect that the requirement that refunded securities be certified by a certified public accountant would result in any costs or burdens for either small or large entities. With respect to rule 10f–3, we preliminarily believe that special compliance requirements or timetables for small entities, or an exemption from coverage for small entities, may put those entities at greater risk for purchasing unmarketable municipal securities in an affiliated underwriting. We preliminarily believe, therefore, that it is important for the credit quality and liquidity considerations required by the proposed amendments to rules 5b–3 and 10f–3 to apply to all funds relying on the rules, not just those that are not considered small entities. Further consolidation or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's goals of fostering investor protection.

With respect to rule 206(3)–3T, the Commission preliminarily believes that special compliance or reporting requirements or timetables for small entities, or an exemption from coverage for small entities may create the risk that the investors who are advised by and effect securities transactions in underwritten securities through such small entities may not receive adequate protection combined with access to securities. We believe, therefore, that it is important for the investment quality consideration required by the proposed amendments to apply to all advisers, not just those that are not considered small entities. Further consolidation or simplification of the proposals for investment advisers that are small entities would be inconsistent with the Commission's goals of fostering investor protection.

We have endeavored through the proposed amendments to rules 5b–3, 10f–3 and 206(3)–3T to minimize the regulatory burden on all entities eligible to rely on the respective rules, including small entities, while meeting our regulatory objectives. It was our goal to ensure that eligible small entities may benefit from the Commission's approach to the proposed amendments to the same degree as other funds or eligible advisers, as appropriate.

We request comment on whether it is feasible or necessary for small entities to have special requirements or timetables for, or exemptions from, compliance with the proposed amendments to each of the rules. In particular, could any of the proposed amendments be altered in order to ease the regulatory burden on small entities, without sacrificing the effectiveness of the proposed amendments?

H. Request for Comments

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding: (i) The number of small entities that may be affected by the proposed amendments; (ii) the existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis; and (iii) how to quantify the impact of the proposed amendments. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments. Comments should be submitted to the Commission at the addresses previously indicated.

X. Statutory Authority

The Commission is proposing amendments to rules 2a–7, 3a–7, and 5b–3 under the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–37(a)]. The Commission is proposing amendments to rule 10f–3 under the authority set forth in sections 10(f), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a), 80a–37(a)]. The Commission is proposing amendments to rule 206(3)–(3)T under the authority set forth in sections 206A and 211(a) of the Investment Advisers Act [15 U.S.C. 80b–6A, 80b–11(a)].

List of Subjects

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

2. Section 270.2a–7 is amended by:

a. Revising paragraphs (a)(10), (a)(12), and (a)(17);

b. Removing paragraph (a)(19);

c. Redesignating paragraph (a)(20) as paragraph (a)(19);

d. Removing paragraph (a)(21);

e. Redesignating paragraphs (a)(22) through (a)(27) as paragraphs (a)(20) through (a)(25);

f. Removing paragraph (a)(28);

g. Redesignating paragraph (a)(29) as paragraph (a)(26);

h. In paragraphs (b)(1) and (b)(2), revising the phrase ''(c)(2), (c)(3), and (c)(4)'' to read ''(c)(2), (c)(3), (c)(4), and (c)(5)'';

i. Revising paragraphs (c)(3)(i), (c)(3)(iii), and (c)(3)(iv)(C);

j. Adding paragraph (c)(3)(iv)(D);

k. In paragraph (c)(4)(v), revising the phrase ''requirements of paragraphs (c)(4) and (c)(5)'' to read ''requirements of paragraphs (c)(4) and (c)(6)'';

l. Redesignating paragraphs (c)(5) through (c)(10) as paragraphs (c)(6) through (c)(11);

m. Adding new paragraph (c)(5);

n. In newly redesignated paragraph (c)(6), revising the phrase ''(pursuant to paragraphs (c)(9)(ii) and (c)(10)(vi) of this section)'' to read ''(pursuant to paragraphs (c)(10)(ii) and (c)(11)(vi) of this section)'';

o. In newly redesignated paragraph (c)(7):

i. revising the paragraph heading;

ii. revising paragraph (i);

iii. in the introductory text of paragraph (ii), revising the phrase ''paragraphs (c)(6)(ii)(A) through (D)'' to read ''paragraphs (c)(7)(ii)(A) through (C)'';

iv. adding ''or'' at the end of paragraph (ii)(B);

v. removing paragraph (ii)(C) and redesignating paragraph (ii)(D) as paragraph (ii)(C);

vi. revising paragraph (iii);

vii. revising the heading to paragraph (iv); and

viii. in paragraph (iv), revising the phrase ''For purposes of paragraphs (c)(6)(ii) and (iii)'' to read ''For purposes of paragraphs (c)(7)(ii) and (iii)'';

p. Revising newly designated paragraph (c)(10)(ii);

q. In newly redesignated paragraph (c)(11):

i. in paragraph (i), revising the phrase ''paragraphs (c)(6) through (c)(9)'' to read ''paragraphs (c)(7) through (c)(10)'';

ii. revising paragraph (iii);

iii. in paragraph (iv), revising the phrase ''paragraph (c)(9)(iii) of this section'' to read ''paragraph (c)(10)(iii) of this section'';

iv. in the introductory text of paragraph (v), in the first sentence, revising ''paragraph (c)(9)(iv) of this section'' to read ''paragraph (c)(10)(iv) of this section'';

v. in paragraph (vi), revising the phrase ''paragraph (c)(9)(ii)'' to read ''paragraph (c)(10)(ii)'';

vi. in paragraph (vii), in the first sentence, revising the phrase ''this paragraph (c)(10)'' to read ''this paragraph (c)(11)''; and

vii. in paragraph (vii), in the second sentence, revising the phrase ''paragraphs (c)(6)(ii) (with respect to defaulted securities and events of insolvency) or (c)(7)(ii)'' to read ''paragraphs (c)(7)(ii) (with respect to defaulted securities and events of insolvency) or (c)(8)(ii)''; and

r. Revising the introductory text of paragraph (e) and in paragraph (e)(2) revising the phrase ''paragraph (c)(6)(iii) of this section'' to read ''paragraph (c)(7)(iii) of this section''.

These additions and revisions read as follows:

§ 270.2a–7 Money market funds.

(a) * * *

(10) *Eligible Security* means a security with a remaining maturity of 397 calendar days or less that the fund's board of directors determines presents minimal credit risks (which determination must be based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations).

* * * * *

(12) *First Tier Security* means a security the issuer of which the fund's board of directors has determined has the highest capacity to meet its short-term financial obligations.

* * * * *

(17) *Liquid Security* means a security that can be sold or disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the money market fund.

* * * * *

(c) * * *

(3) * * *

(i) *General.* The money market fund shall limit its portfolio investments to those United States Dollar-Denominated securities that are at the time of Acquisition Eligible Securities.

* * * * *

(iii) *Securities Subject to Guarantees.* A security that is subject to a Guarantee may be determined to be an Eligible Security or a First Tier Security based solely on whether the Guarantee is an Eligible Security or First Tier Security, as the case may be; Provided, however, that the issuer of the Guarantee, or another institution, has undertaken to promptly notify the holder of the security in the event the Guarantee is substituted with another Guarantee (if such substitution is permissible under the terms of the Guarantee).

(iv) * * *

(C) The issuer of the Demand Feature, or another institution, has undertaken to promptly notify the holder of the security in the event the Demand Feature is substituted with another Demand Feature (if such substitution is permissible under the terms of the Demand Feature); and

(D) The fund's board of directors determines that the Underlying Security or any Guarantee of such security presents minimal credit risks (which determination must be based on factors pertaining to credit quality).

* * * * *

(5) *Portfolio Liquidity.* The money market fund shall hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions in light of the fund's obligations under section 22(e) of the Act (15 U.S.C. 80a–22(e)) and any commitments it has made to shareholders; *Provided, however,* immediately after the Acquisition of any security, a money market fund shall not have invested more than ten percent of its Total Assets in securities that are not Liquid Securities.

* * * * *

(7) *Monitoring, Defaults and Other Events.*

(i) *Monitoring.* In the event the money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware of any information about a portfolio security or an issuer of a portfolio security that may suggest that the security may not continue to present minimal credit risks, the board of directors shall reassess promptly whether such security continues to present minimal credit risks and shall cause the fund to take such action as the board of directors determines is in the best interests of the money market fund and its shareholders.

* * * * *

(iii) *Notice to the Commission.* The money market fund shall promptly notify the Commission by electronic mail directed to the Director of the Division of Investment Management of any:

(A) Default with respect to one or more portfolio securities (other than an immaterial default unrelated to the financial condition of the issuer) or an Event of Insolvency with respect to the issuer of the security or any Demand Feature or Guarantee to which it is subject, where immediately before default the securities (or the securities subject to the Demand Feature or Guarantee) accounted for ½ of 1 percent or more of a money market fund's Total Assets, of such fact and the actions the money market fund intends to take in response to such situation; or

(B) Purchase of a security from the fund by an affiliated person or promoter of or principal underwriter for the fund

or an affiliated person of such a person in reliance on § 270.17a–9.

* * * * *

(iv) *Defaults for Purposes of Paragraphs (c)(7) (ii) and (iii).* * * *

* * * * *

(10) * * *

(ii) *Securities Subject to Demand Features or Guarantees.* In the case of a security subject to one or more Demand Features or Guarantees that the fund's board of directors has determined that the fund is not relying on to determine the quality (pursuant to paragraph (c)(3) of this section), maturity (pursuant to paragraph (d) of this section) or liquidity (pursuant to paragraph (c)(5) of this section) of the security subject to the Demand Feature or Guarantee, written procedures shall require periodic evaluation of such determination.

* * * * *

(11) * * *

(iii) *Credit Risk Analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record of the determination that a portfolio security presents minimal credit risks used to determine the status of the security as an Eligible Security shall be maintained and preserved in an easily accessible place.

* * * * *

(e) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section (other than the determinations required by paragraphs (c)(1) (board findings); (c)(7)(ii) (defaults and other events); (c)(8)(i) (general required procedures: Amortized Cost Method); (c)(8)(ii)(A) (shadow pricing), (B) (prompt consideration of deviation), and (C) (material dilution or unfair results); and (c)(9) (required procedures: Penny Rounding Method) of this section) provided:

* * * * *

3. Section 270.3a–7 is amended by:

a. Revising paragraph (a)(2) introductory text;

b. In paragraph (a)(2)(i) revising the phrase ''Any fixed-income securities may be sold'' to read ''Any fixed-income securities sold'';

c. In paragraph (a)(2)(ii), revising the phrase ''Any securities may be sold'' to read ''Any securities sold'';

d. In the undesignated paragraph after paragraph (a)(2)(ii), revise the phrase ''persons specified in paragraphs (a)(2)(i) and (ii) of this section'' to read ''persons specified in this section'';

e. Revising paragraph (a)(3)(ii); and

f. Revising paragraph (a)(4)(iii).

The revisions read as follows:

§ 270.3a–7 Issuers of asset-backed securities.

(a) * * *

(2) Securities sold by the issuer or any underwriter thereof are:

* * * * *

(3) * * *

(ii) The issuer has procedures to ensure that the acquisition or disposition does not adversely affect the full and timely payment of the outstanding fixed-income securities; and

* * * * *

(4) * * *

(iii) Takes actions necessary for the cash flows derived from eligible assets for the benefit of the holders of fixed-income securities to be deposited periodically in a segregated account consistent with the full and timely payment of the outstanding fixed-income securities.

* * * * *

4. Section 270.5b–3 is amended by:

a. Adding ''or'' at the end of paragraph (c)(1)(iv)(B);

b. Revising paragraph (c)(1)(iv)(C);

c. Removing paragraph (c)(1)(iv)(D);

d. Revising paragraph (c)(4)(iii);

e. Removing paragraphs (c)(5), (c)(6), and (c)(8); and

f. Redesignating paragraph (c)(7) as paragraph (c)(5).

The revisions read as follows:

§ 270.5b–3 Acquisition of repurchase agreement or refunded security treated as acquisition of underlying securities.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(C) Securities that the investment company's board of directors, or its delegate, determines at the time the repurchase agreement is entered into:

(*1*) Are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time;

(*2*) Are subject to no greater than minimal credit risk; and

(*3*) The issuer of which has the highest capacity to meet its financial obligations; and

* * * * *

(4) * * *

(iii) At the time the deposited securities are placed in the escrow account, or at the time a substitution of the deposited securities is made, an independent certified public accountant has certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the Refunded Securities.

* * * * *

5. Section 270.10f–3 is amended by:

a. Revising paragraph (a)(3);

b. Removing paragraph (a)(5); and

c. Redesignating paragraphs (a)(6), (a)(7), and (a)(8) as paragraphs (a)(5), (a)(6), and (a)(7).

The revision reads as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

(a) * * *

(3) *Eligible Municipal Securities* means ''municipal securities,'' as defined in section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)), that are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time and either:

(i) Are subject to no greater than moderate credit risk; or

(ii) If the issuer of the municipal securities, or the entity supplying the revenues or other payments from which the issue is to be paid, has been in continuous operation for less than three years, including the operation of any predecessors, the securities are subject to a minimal or low amount of credit risk.

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

6. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

7. Section 275.206(3)–3T is amended by revising paragraph (c) to read as follows:

§ 275.206(3)–3T Temporary rule for principal trades with certain advisory clients.

* * * * *

(c) For purposes of paragraph (a)(2) of this section, an *investment grade debt security* means a non-convertible debt security that, at the time of sale, the investment adviser has determined to be subject to no greater than moderate credit risk and sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time.

* * * * *

By the Commission.

Dated: July 1, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15282 Filed 7–10–08; 8:45 am]

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Friday,
July 11, 2008

Part V

Securities and Exchange Commission

17 CFR Parts 200 and 241

Commission Guidance and Amendment to the Rules Relating to Organization and Program Management Concerning Proposed Rule Changes Filed by Self-Regulatory Organizations; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 241

[Release No. 34–58092]

Commission Guidance and Amendment to the Rules Relating to Organization and Program Management Concerning Proposed Rule Changes Filed by Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and interpretation.

SUMMARY: The Securities and Exchange Commission (''Commission'') is providing guidance regarding a rule under the Securities Exchange Act of 1934 (''Exchange Act'') concerning filings with respect to proposed rule changes of self-regulatory organizations (''SROs'') that the Commission expects will streamline the process by which SROs file proposed rule changes with the Commission and result in a broader range of rule changes qualifying for immediate effectiveness. Further, the Commission is amending its rules to delegate authority to the Director of the Division of Trading and Markets. These actions are intended to facilitate more expeditious handling of proposed rule changes submitted by SROs pursuant to Exchange Act section 19(b).

DATES: *Effective Date:* July 11, 2008.

FOR FURTHER INFORMATION CONTACT: Marlon Quintanilla Paz, Senior Counsel to the Director, at (202) 551–5703, or Richard Holley III, Senior Special Counsel, at (202) 551–5614, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

I. Introduction

Self-regulation, with oversight by the Commission, is a basic premise of the Exchange Act. For example, Congress recognized the regulatory role of national securities exchanges in section 6 of the Exchange Act,[1] requiring all existing securities exchanges to register with the Commission and to function as self-regulatory organizations. SROs (such as exchanges, registered national securities associations, and clearing agencies) are subject to various requirements under the Exchange Act, including the requirement in section 19(b) and Rule 19b–4 thereunder[2] to file their proposed rule changes with the Commission. Commission review and the public comment process are intended, among other things, to help ensure that SROs carry out the purposes of the Exchange Act.[3]

National securities exchanges registered under section 6(a) of the Exchange Act[4] face increased competitive pressures from entities that trade the same or similar financial instruments, such as foreign exchanges, futures exchanges,[5] electronic communications networks (''ECNs''), and alternative trading systems (''ATSs''). These competitors, however, can change their trading rules or trade new products with greater ease and without the required Commission review.[6]

The Commission previously has stated its belief that, ''investors are best served by a regulatory structure that facilitates fair and vigorous competition among market participants and fosters investor protection'' and that, ''[e]nhancing the SROs'' ability to implement and to respond quickly to changes in the marketplace should encourage innovation and better services to investors. * * *''[7] Consequently, the Commission periodically has revised the SRO rule filing requirements to balance the needs of the exchanges in a competitive financial marketplace against maintaining the statutorily required Commission oversight of the SROs and the SRO rule change process.

In 1994, the Commission adopted amendments to Rule 19b–4 to allow certain non-controversial proposed rule changes and proposed rule changes for minor systems changes to ''become immediately effective'' upon filing and without Commission approval.[8] In 1998, the Commission again amended Rule 19b–4 to allow for the listing and trading of certain derivative securities products without prior submission of a proposed rule change under section 19(b).[9] The 1998 rulemaking was intended to speed the introduction of new derivative securities products and enable exchanges to remain competitive with foreign and over-the-counter derivatives markets that are not subject to section 19(b).

In 2001, the Commission proposed comprehensive changes to the SRO rule filing process.[10] The Commission proposed to completely replace Rule 19b–4, the rule governing the requirements for SRO rule filings, with proposed new Rule 19b–6. Proposed Rule 19b–6, among other things, would have defined terms used in proposed Rule 19b–6 to allow most exchange trading rules, other than proposals involving fundamental market structure changes, to be immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Exchange Act. The Commission also proposed related changes that would have imposed a number of new obligations on SROs filing proposed rule changes with the Commission. For example, in proposed Rule 19b–6, the Commission would have required, among other things, that a senior SRO official certify the accuracy and completeness of the proposal. The Commission also proposed to eliminate the 30-day operational date and the five-day pre-filing requirement for non-controversial rule filings.

The Commission received 21 comment letters on proposed Rule 19b–6, many of which opposed various aspects of the proposal, though for widely divergent reasons. Four commenters explicitly supported the proposal to make certain trading rules effective upon filing.[11] Several SROs believed that the proposal provided only minor benefits that were potentially outweighed by new burdensome requirements.[12] A few

[1] 15 U.S.C. 78f.

[2] 15 U.S.C. 78s(b) and 17 CFR 240.19b–4, respectively. *See also* Form 19b–4. The rule filing requirements of Section 19(b) also apply to other SROs, such as national securities associations, clearing agencies, and the Municipal Securities Rulemaking Board (''MSRB'').

[3] *See* Section 19 of the Exchange Act, 15 U.S.C. 78s. *See also* Market 2000: An Examination Of Current Equity Market Developments, Study VI, Division of Market Regulation, U.S. Securities and Exchange Commission (January 1994).

[4] 15 U.S.C. 78f(a).

[5] Certain futures exchanges are also registered as national securities exchanges under Section 6(g) of the Exchange Act, 15 U.S.C. 78f(g), solely for the purpose of trading security futures products.

[6] While a security futures exchange registered under Section 6(g) of the Exchange Act is required to file certain proposed rule changes with the Commission, few such filings must receive Commission approval under Section 19(b)(2). If they must be filed at all, most may be filed under Section 19(b)(3)(A) of the Exchange Act. *See* 15 U.S.C. 78f(g)(4)(B).

[7] Securities Exchange Act Release No. 43860 (January 19, 2001), 66 FR 8912 (February 5, 2001) (S7–03–01) (''Rule 19b–6 Proposing Release'').

[8] *See* Securities Exchange Act Release No. 35123 (December 20, 1994), 59 FR 66692 (December 28, 1994) (S7–17–94) (''Non-Controversial Rule Adopting Release'').

[9] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (S7–13–98) (''New Products Adopting Release'').

[10] *See* Rule 19b–6 Proposing Release, *supra* note 7.

[11] *See* Comment letters from Nasdaq (dated April 6, 2001); the Pacific Exchange (dated April 24, 2001); Bloomberg Tradebook LLC (dated April 5, 2001); and the Chicago Stock Exchange (dated April 5, 2001).

[12] *See*, *e.g.*, Comment letters from The Options Clearing Corporation (dated April 6, 2001); the Philadelphia Stock Exchange (dated April 6, 2001); the Chicago Stock Exchange (dated April 5, 2001); the International Securities Exchange (dated March 23, 2001); and the Chicago Board Options Exchange (dated April 11, 2001).

commenters believed that the category of trading rules eligible for immediate effectiveness was too narrow, or that more objective standards were needed to determine what qualifies as a trading rule.[13] In contrast, other commenters were concerned that the proposal might reduce the opportunity to comment on proposed rule changes,[14] and that the Commission might be hesitant to abrogate immediately effective filings.[15] Several commenters explicitly opposed making certain types of trading rules immediately effective, noting that such rule changes may have particular importance to the public or have a major impact on market participants.[16] Several commenters also opposed the proposal to remove the operative delay [17] from Rule 19b–4(f)(6).[18] In addition, several commenters expressed support for Commission issuance of notice of a proposed rule change within 10 business days or such longer period as the SRO consents.[19]

The Commission has considered thoroughly all of these comments. The Commission is not taking action today on proposed Rule 19b–6 nor with regard to any of the other related changes,[20] but the Commission's action in this release is consistent with the objectives underlying the Rule 19b–6 proposal and takes into account the varying views expressed in the comments.

The Commission notes that the guidance and rule adopted herein do not alter the existing legal obligations for SROs filing proposed rule changes. The Commission today is not modifying or replacing Rule 19b–4, nor is it imposing related obligations on SROs with regard to the rule filing process and, therefore, the Commission believes that the additional requirements proposed in the Rule 19b–6 Proposing Release are not necessary at this time. As discussed below, the guidance in this release addresses a much narrower part of the SRO rule filing process and imposes no new obligations on SROs.

The Commission believes that it is now appropriate to issue guidance related to the filing of certain immediately effective proposed rule changes by SROs and to adopt a rule amendment designed to streamline further the SRO proposed rule change process. Specifically, the Commission today is (1) providing an interpretation of the Commission's views as to which SRO rule filings could be filed as immediately effective and (2) modifying only its own internal processes.

II. Background on the Current Rule Filing Process

Section 19(b)(1) of the Exchange Act requires an SRO to file with the Commission any proposed rule change,[21] which must be ''accompanied by a concise general statement of the basis and purpose of such proposed rule change'' and be submitted electronically on Form 19b–4, in accordance with the General Instructions thereto.[22] Exhibit 1 of Form 19b–4 requires an SRO to prepare the notice of its proposed rule change for publication in the **Federal Register**.[23] A proposed rule change may not take effect unless it is approved by the Commission [24] or becomes immediately effective upon filing pursuant to section 19(b)(3)(A) of the Exchange Act.[25]

A. Proposals Subject to Commission Approval

For those proposals that are subject to Commission approval, section 19(b)(2) of the Exchange Act specifies the standards and time periods for Commission action either to approve a proposed rule change or to institute proceedings to determine whether a

[13] *See, e.g.*, Comment letters from Credit Suisse First Boston (dated March 26, 2001); the International Securities Exchange (dated March 23, 2001); the Philadelphia Stock Exchange (dated April 6, 2001); the Pacific Exchange (dated April 24, 2001); Nasdaq (dated April 6, 2001); the Chicago Board Options Exchange (dated April 11, 2001); the Chicago Stock Exchange (dated April 5, 2001); and the Mercatus Center of George Mason University (dated April 9, 2001).

[14] *See, e.g.*, Comment letters from the Investment Company Institute (dated April 6, 2001); Bloomberg Tradebook LLC (dated April 5, 2001); Brunelle & Hadjikow (dated April 4, 2001); the Consumer Federation of America (dated April 6, 2001); the Securities Industry Association (dated April 6, 2001); and the American Council of Life Insurers (dated April 10, 2001). *See* discussion below in Section III.A.2(b) regarding the importance of public comment to the SRO proposed rule change process.

[15] *See, e.g.*, Comment letters from Credit Suisse First Boston (dated March 26, 2001); the Council of Institutional Investors (dated March 26, 2001); the Investment Company Institute (dated April 6, 2001); and the Consumer Federation of America (dated April 6, 2001). *See* discussion below in Section IV regarding abrogation of immediately effective proposals.

[16] *See, e.g.*, Comment letters from the Securities Industry Association (dated April 6, 2001) and Brunelle & Hadjikow (dated April 4, 2001). These commenters believed that entities that are familiar with the technology and operation of SRO trading systems should be given an opportunity to comment on proposed changes to such systems. *See* Section III.A.2(b), below (''Opportunity for Public Comment With Regard to Immediately Effective Rule Filings'').

[17] A proposed rule change designated immediately effective normally becomes operative upon filing with the Commission, except for a proposal submitted pursuant to Rule 19b–4(f)(6), which becomes operative 30 days after the date of filing with the Commission or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. 17 CFR 240.19b–4(f)(6)(iii).

[18] *See, e.g.*, Comment letters from the Investment Company Institute (dated April 6, 2001); the State of Wisconsin Investment Board (dated March 28, 2001); Brunelle & Hadjikow (dated April 4, 2001); the Consumer Federation of America (dated April 6, 2001); the Securities Industry Association (dated April 6, 2001); and the American Council of Life Insurers (dated April 10, 2001). One commenter suggested that a delay between the effective and operative date would allow the Commission to abrogate a rule with a minimum of disruption to an SRO's operations. *See* Comment letter from the State of Wisconsin Investment Board (dated March 28, 2001).

[19] *See* Comment letters from Credit Suisse First Boston (dated March 26, 2001); the Chicago Stock Exchange (dated April 5, 2001); the Philadelphia Stock Exchange (dated April 6, 2001); Nasdaq (dated April 6, 2001); the Securities Industry Association (dated April 6, 2001); the Pacific Exchange (dated April 24, 2001); the Government Securities Clearing Corporation (dated March 20, 2001); NASD Dispute Resolution and NASD Regulation (dated May 3, 2001). One commenter suggested that the Commission publish notice of a proposed rule change within ten calendar days, not business days, and recommended that there be a mechanism to ensure compliance with the requirement. *See* Comment letter from the Chicago Board Options Exchange (dated April 11, 2001).

[20] For example, the Commission is taking no further action at this time on the Rule 19b–6 proposal to require certifications or to remove the pre-filing or operative delay from Rule 19b–4(f)(6) under the Exchange Act.

[21] Section 19(b)(1) of the Exchange Act defines a ''proposed rule change'' as ''any proposed rule, or any proposed change in, addition to, or deletion from the rules of'' an SRO. 15 U.S.C. 78s(b)(1). Section 3(a)(27) of the Exchange Act defines ''rules'' to include ''the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing * * * and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.'' 15 U.S.C. 78c(a)(27).

[22] 17 CFR 249.819. Among other things, the General Instructions to Form 19b–4 specify that an SRO's proposal must be clear and complete before it will be accepted as filed by the Commission. *See* General Instruction B to Form 19b–4 (''This form, including the exhibits, is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the [Exchange] Act and the rules and regulations thereunder * * * The [SRO] must provide all the information called for by the form, including the exhibits, and must present the information in a clear and comprehensible manner * * * Any filing that does not comply with the requirements of this form may be returned to the [SRO] at any time before the issuance of the notice of filing. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission''). *See also* Rule 0–3 under the Exchange Act, 17 CFR 240.0–3 (''The date on which papers are actually received by the Commission shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with. * * *'').

[23] If the conditions of Rule 19b–4 and Form 19b–4 are satisfied, a proposed rule change submitted electronically via the Commission's Electronic Form Filing System on or before 5:30 p.m. Eastern Time on a business day is deemed ''filed'' on that business day, and all filings submitted after 5:30 p.m. Eastern Time are deemed filed on the next business day. *See* Rule 19b–4(k), 17 CFR 240.19b–4(k).

[24] *See* 15 U.S.C. 78s(b)(2).

[25] 15 U.S.C. 78s(b)(3)(A).

proposed rule change should be disapproved.[26] After expiration of the applicable comment period and due consideration of any comment letters received, the Commission shall approve a proposed rule change if it finds such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the SRO.[27] The Commission shall disapprove a proposed rule change if it cannot make such a finding.[28]

B. Immediately Effective Proposals

Section 19(b)(3)(A) of the Exchange Act provides that, notwithstanding the provisions of section 19(b)(2), a proposed rule change may take effect upon filing with the Commission if designated by the SRO as:

(i) Constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization;

(ii) Establishing or changing a due, fee, or other charge imposed by the self-regulatory organization; or

(iii) Concerned solely with the administration of the self-regulatory organization or other matters which the Commission, by rule * * * may specify * * *.[29]

Section 19(b)(3)(A)(iii) of the Exchange Act grants the Commission authority to expand the scope of proposed rule changes entitled to qualify for immediate effectiveness to other matters which the Commission, by rule, consistent with the public interest and the purposes of section 19(b) of the Exchange Act, may specify. Rule 19b–4(f) under the Exchange Act[30] specifies the following types of proposed rule changes that may take effect upon filing with the Commission pursuant to section 19(b)(3)(A) if properly designated by an SRO as:

(1) Constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule;

(2) Establishing or changing a due, fee, or other charge applicable to a member;

(3) Concerned solely with the administration of the self-regulatory organization;

(4) Effecting a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service;

(5) Effecting a change in an existing order-entry or trading system of a self-regulatory organization that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system; or

(6) Effecting a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change (the ''pre-filing''), or such shorter time as designated by the Commission.[31]

As with a proposed rule change filed pursuant to section 19(b)(2) of the Exchange Act, the Commission publishes notice in the **Federal Register** of a proposed rule change designated for immediate effectiveness under section 19(b)(3)(A).[32] An immediately effective filing becomes operative upon filing with the Commission, except for a proposal submitted pursuant to Rule 19b–4(f)(6), which becomes operative 30 days after the date of filing with the Commission or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[33]

Further, the Exchange Act provides that at any time within 60 days of the date of filing of a proposed rule change designated for immediate effectiveness under section 19(b)(3)(A) of the Exchange Act and Rule 19b–4(f) thereunder, the Commission summarily may abrogate the proposed rule change and require that the SRO re-file the proposal under section 19(b)(2) of the Exchange Act ''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 Exchange Act].''[34]

III. Interpretive Guidance on the Rule Filing Process

The Commission today takes several actions, discussed in greater detail below, intended to facilitate more expeditious handling of proposed rule changes submitted by SROs. The Commission is providing interpretive guidance regarding the range of proposed changes to exchange trading rules that qualify for immediate effectiveness pursuant to Exchange Act Rule 19b–4(f)(6) as not significantly affecting the protection of investors or the public interest and not imposing any significant burden on competition.[35] The Commission anticipates that the guidance will result in exchanges filing a broader range of proposed changes to trading rules for immediate effectiveness under Rule 19b–4(f)(6).

[26] *See* 15 U.S.C. 78s(b)(2). The Commission must either approve or institute disapproval proceedings within thirty-five days of the date of publication of notice of the filing in the **Federal Register**, or within such longer period as the Commission may designate (up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding) or as to which the SRO consents. *See id.*

[27] The Commission may approve a proposed rule change on an accelerated basis prior to the 30th day after publication of the notice in the **Federal Register** if it finds good cause and publishes its reasons for so doing. *See id.*

[28] *See id.*

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f).

[31] The five-day period commences from the date the Commission receives the SRO's pre-filing. The pre-filing requirement was designed to serve as an opportunity for Commission staff to ''discuss with the SRO whether there exists an adequate basis upon which the proposed rule change may properly qualify'' for immediate effectiveness under Rule 19b–4(f)(6), and allows the SRO to ''elicit guidance from Commission staff to help the SRO identify those aspects of a proposed rule change that the Commission deems important'' in order to ''help the SRO articulate in its subsequent filing the purpose and effects of the proposed rule change, which in turn should further facilitate and expedite the filing process.'' Securities Exchange Act Release No. 34140 (June 1, 1994), 59 FR 29393, 29395 (June 7, 1994) (S7–17–94) (''Non-Controversial Rule Proposing Release''). The Commission also notes that it has enhanced its electronic system through which SROs file proposed rule changes to allow the electronic submission of pre-filings.

[32] An SRO must designate the basis for immediate effectiveness of the proposed rule change in Item 7 of Form 19b–4. *See* Item 7 of Form 19b–4 (''Basis for Summary Effectiveness Pursuant to Section 19(b)(3)(A) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)'').

[33] With respect to amendments to filings designated for immediate effectiveness pursuant to Rule 19b–4(f)(6), the Commission has stated that ''any substantive amendment would trigger a new 30-day period, assuming the changes do not render the filing ineligible for this category.'' Non-Controversial Rule Adopting Release, *supra* note 8, 59 FR at 66695. The Commission staff, however, has ''discretion to accept editorial changes without triggering a new 30-day period.'' *Id.* Such proposals should not require extensive amendments, since ''[a] filing requiring further substantive amendments may indicate that it is not appropriate for the expedited treatment afforded by the noncontroversial category.'' *Id.*

[34] 15 U.S.C. 78s(b)(3)(C).

[35] *See* Rule 19b–4(f)(6), 17 CFR 240.19b–4(f)(6).

Additionally, the Commission is providing guidance on proposed rule changes relating to an SRO's minor rule violation plan (''MRVP'') and ''copycat'' filings relating to SRO rules other than trading rules. The guidance provided herein as it relates to proposed changes to trading rules is directed at SROs that operate trading systems (*i.e.*, the national securities exchanges). The additional guidance is applicable to all SROs, including exchanges, national securities associations, clearing agencies, and the MSRB.

Further, as discussed in section V below, the Commission is adopting an amendment to Rule 200.30–3(a)(12) relating to the delegation of authority to the Director of the Division of Trading and Markets regarding the publication of proposed rule changes.[36] Amended Rule 200.30–3(a)(12) applies with regard to all SRO rule filings.

A. Interpretive Guidance on Immediately Effective Proposed Rule Changes

The national securities exchanges' need to implement quickly new trading rules has become increasingly critical, particularly given the evolving role of securities exchanges, innovations in U.S. and cross-border trading, and the increasingly competitive financial marketplace. Specifically, the Commission recognizes that the national securities exchanges registered under section 6(a) of the Exchange Act[37] face increased competitive pressures from entities that trade the same or similar financial instruments—such as foreign exchanges, futures exchanges, ECNs, and ATSs. These competitors can change their trading rules or trade new products with greater ease, and without filing them with the Commission.

Accordingly, to inform exchanges' understanding of the range of exchange trading rules eligible for immediate effectiveness and to encourage exchanges to consider filing a broader range of proposed changes to trading rules that do not ''significantly affect the protection of investors or the public interest''[38] or do not ''impose any significant burden on competition,''[39] and thus qualify for immediate effectiveness under Rule 19b–4(f)(6), the Commission is providing the interpretive guidance set forth in this release.

1. Previous Commission Guidance on Immediately Effective Proposals

As discussed above, Rule 19b–4(f)(6) permits a proposed rule change to become immediately effective if, among other things, it is properly designated by an SRO as effecting a change that does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition. Further, an immediately effective rule pursuant to Rule 19b–4(f)(6), by its terms, may not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the SRO has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

When adding paragraph (f)(6) to Rule 19b–4 in 1994, the Commission referred to it as the ''noncontroversial category'' and noted that it was intended to accommodate proposed rule changes that were generally ''less likely to engender adverse comments or require the degree of review attendant with more controversial filings.''[40] Accordingly, the Commission contemplated that proposals eligible for filing under paragraph (f)(6) of Rule 19b–4 would generally be ''inherently simple and concise'' and ''otherwise require little in the way of extended review or analysis by the Commission.''[41]

2. Interpretation of Rule 19b–4(f)(6) for Rule Proposals Involving Exchange Trading Rules

The rule filing process, by which national securities exchanges are required to file their proposed rule changes with the Commission, currently allows the exchanges to implement many of their proposed rule changes relating to trading rules on an expedited basis. The Commission believes that more rule filings pertaining to the operation of an SRO's trading systems qualify for immediate effectiveness than are currently filed as such. A number of proposed rule changes that could qualify for immediate effectiveness under section 19(b)(3)(A) of the Exchange Act are filed, instead, ''regular way'' under section 19(b)(2), thus requiring the Commission to issue a notice and an approval order.[42]

The Commission believes that a proposed trading rule change appropriately may be filed as an immediately effective rule so long as each policy issue raised by the proposed trading rule (i) has been considered previously by the Commission when the Commission approved another exchange's trading rule (that was subject to notice and comment) pursuant to Section 19(b)(2) of the Exchange Act, and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval. The Commission believes that filing such proposed rule changes for immediate effectiveness not only will reduce the time before which an exchange could implement its new rule or modify an existing one, but also will eliminate the need for the Commission to issue both a notice and an approval order for each such filing.

The Commission notes that certain types of proposals remain ineligible for immediate effectiveness under Rule 19b–4(f)(6). For example, proposals that introduce potentially anti-competitive or unfairly discriminatory aspects to an SRO's operation, or otherwise conflict with stated Commission policy, would not be eligible for immediate effectiveness since they would not meet the standard of Rule 19b–4(f)(6) and the interpretation. Similarly, proposals that would substantially alter an exchange's market structure would continue to be ineligible for immediate effectiveness.

(a) Examples of Trading Rules Eligible for Immediate Effectiveness

Below is a partial list of the types of trading rules that the Commission believes are appropriate for filing as immediately effective rule changes under this interpretation. The Commission emphasizes that this is a partial—not exhaustive—list, designed to assist exchanges in determining the types of proposed trading rule changes that are appropriately filed as immediately effective.

• *Protection of Limit Orders.* In approving exchange trading rules, the

[36] To assist the Commission in processing proposed rule changes expeditiously, the Commission emphasizes the obligation of each SRO to prepare proposed rule changes that are clear and complete. *See supra* note 22 and accompanying text. The Commission encourages SROs to devote sufficient resources to the rule filing process to assure quality work product to enable the Commission to evaluate efficiently whether the proposed rule change is consistent with the Exchange Act and applicable rules and regulations thereunder as well as the SRO's own rules.

[37] 15 U.S.C. 78f(a).

[38] 17 CFR 240.19b–4(f)(6)(i).

[39] 17 CFR 240.19b–4(f)(6)(ii).

[40] Non-Controversial Rule Adopting Release, *supra* note 8, 59 FR at 66696.

[41] *Id.* at 66695.

[42] The Commission understands, however, that there may be a variety of reasons why an SRO may file a proposed rule change under Section 19(b)(2), even though the rule change would have been appropriately filed as an immediately effective rule filing.

Commission carefully reviews whether they protect limit orders that are displayed on an exchange's book, since limit orders contribute to price discovery, provide liquidity to the market, and may narrow the quoted spread.[43] A proposed trading rule change is eligible for immediate effectiveness if the proposal facilitates trading of public customer orders, or otherwise enables them to interact with order flow on the exchange on an equitable basis (such as price/time priority).

• *Market Maker Obligations.* The Commission carefully reviews special advantages provided to market makers when it considers exchange trading rule proposals. Market makers can play an important role in providing liquidity to the market, and an exchange can appropriately reward them for that as well as the services they provide to the exchange's market, so long as the rewards are not disproportionate to the services provided.[44] For example, a proposed trading rule change that strengthens the market while providing benefits to market makers is eligible for immediate effectiveness if the benefits conferred are offset by corresponding responsibilities to the market that provide customer trading interest a net benefit.

• *Preferenced Order Flow.* The Commission recognizes that exchanges compete for preferenced order flow. A proposal to allow broker-dealers to execute preferenced orders on an exchange is eligible for immediate effectiveness if the rule change provides other market participants a reasonable opportunity to interact with preferenced orders and the proposal does not impinge upon the incentive for market participants to post competitive quotes.[45]

• *Trading Hours.* With respect to trading hours, the Commission believes that proposals to modify the trading hours of an exchange, provided there is a sufficient degree of quotation and last-sale transparency during any extended hours, also are eligible for immediate effectiveness under Rule 19b–4(f)(6).[46]

• *Conforming Rules to Approved Changes to NMS Plan or Commission Rule.* The Commission believes that proposed rule changes to implement provisions of an approved national market system plan (such as the Options Linkage Plan [47]) or a Commission rule are eligible for immediate effectiveness under Rule 19b–4(f)(6).

(b) Opportunity for Public Comment With Regard to Immediately Effective Rule Filings

Although the Commission is encouraging the exchanges to designate additional proposed changes in the category of trading rules as immediately effective, the Commission is not minimizing the importance of receiving public comments on proposed rule changes relating to trading rules. The Commission emphasizes that it continues to believe that the public interest is served by offering the public, investors, SRO members, and other market participants the opportunity to comment on SRO rule proposals. The Commission considers all comments it receives on each proposed rule change, and makes available all comments to the applicable SRO for its consideration as well.

Comments on an immediately effective filing help the Commission analyze the impact of the filing and evaluate whether to abrogate it.[48] Comments also help the exchange address legitimate concerns, in a manner that does not delay implementation of the proposed rule change, while still preserving the Commission's ability to act to abrogate when appropriate. For example, in response to a comment letter that raises significant concerns with an immediately effective rule change, an exchange could consider revising its rule (by submitting either another immediately effective proposal or a proposed rule change that requires notice and comment) in a manner that reasonably addresses the issues raised by the commenter.[49] As described below,[50] an exchange will decrease the likelihood of abrogation of an immediately effective filing by clearly describing the significance of the rule change and how the proposal is consistent with the standards applicable to exchange rules, such as the provisions set forth in section 6 and section 11A of the Exchange Act.[51]

[43] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (S7–30–95) (adopting Rule 11Ac1–4) (''The Commission believes that limit orders are a valuable component of price discovery. The uniform display of such orders will encourage tighter, deeper, and more efficient markets.'').

[44] *See, e.g.*, Securities Exchange Act Release Nos. 54580 (October 6, 2006), 71 FR 60781, 60782 (October 16, 2006) (SR–ISE–2006–40) (order approving the establishment of ISE's Second Market); 54238 (July 28, 2006), 71 FR 44758, 44761 (August 7, 2006) (SR–NYSE Arca–2006–13) (''Market Makers receive certain benefits for carrying out their duties. * * * The Commission believes that a Market Maker must have an affirmative obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment.''); 53652 (April 13, 2006), 71 FR 20422 (April 20, 2006) (SR–Amex–2005–100) (order approving the establishment of a new class of registered options trader called a Remote Registered Options Trader); 52094 (July 21, 2005), 70 FR 43913, 43915 (July 29, 2005) (SR–CHX–2004–11) (order approving a fully-automated electronic book for the display and execution of orders in securities that are not assigned to a specialist) (''Because market makers receive certain benefits for carrying out their duties, the Commission believes that they should have an affirmative obligation to hold themselves out as willing to buy and sell securities for their own account on a regular or continuous basis to justify this favorable treatment.''); and 51366 (March 14, 2005), 70 FR 13217, 13221 (March 18, 2005) (order approving the introduction of Remote Market Makers) (''In particular, the Commission believes that RMMs' affirmative obligations are sufficient to justify the benefits they receive as market makers.'').

[45] *See, e.g.*, Securities Exchange Act Release No. 37406 (March 29, 1996), 61 FR 15322 (April 5, 1996) (SR–CSE–95–03) (''The Commission has concluded that preferencing, as supplemented by the order handling policies, is not necessarily inconsistent with the attainment of best execution of customer orders, the maintenance of fair and orderly markets, or the protection of investors and the public interest under Section 6(b)(5) of the Act.''). *See also, e.g.*, Securities Exchange Act Release Nos. 50819 (December 8, 2004), 69 FR 75093, 75097 (December 15, 2004) (SR–ISE–2003–06) (order approving the establishment of rules to implement a price improvement mechanism) (''The Commission * * * has expressed its concern that proposals by options exchanges that guarantee a significant portion of orders to any market participant could erode the incentive to display aggressively priced quotes. Thus, the Commission must weigh whether the proposed participation right would so substantially reduce the ability of other market participants to trade with an order that it would reduce price competition.'').

[46] The Commission notes, however, that an exchange proposal to modify the ''regular trading hours,'' as defined in Rule 600(b)(64) of Regulation NMS (17 CFR 242.600(a)(64) (defining ''regular trading hours'' as the time between 9:30 a.m. and 4 p.m., Eastern Time)) for any NMS stocks that it lists—which thereby has the effect of extending the time during which all trading centers must protect quotations pursuant to Rule 611 of Regulation NMS (17 CFR 242.611)—must be filed under Section 19(b)(2) of the Exchange Act. The Commission believes that, because such a proposal could potentially raise significant competitive issues and could affect existing SRO surveillance and oversight programs, it must be considered by the Commission after prior notice and comment before it becomes operative. *See* Non-Controversial Rule Proposing Release, *supra* note 31, 59 FR at 29394 (noting that a proposal that would affect the surveillance or oversight capabilities of an SRO could directly impair the protection of investors and should be filed under Section 19(b)(2) of the Exchange Act).

[47] The Options Linkage Plan is a national market system plan for the purpose of creating and operating an intermarket linkage among the various participant exchanges.

[48] The Commission notes that no inference should be made regarding whether an SRO's proposed rule change ''impose[s] a significant burden on competition'' merely because an SRO's competitor objects to the rule filing.

[49] If the second proposal were filed under Rule 19b–4(f)(6), the Commission could consider waiving the five-day pre-filing period and the 30-day pre-operative period to permit the revision to the new rule to be operative as quickly as possible. *See* Rule 19b–4(f)(6)(iii).

[50] *See infra* Section IV.

[51] 15 U.S.C. 78f and 15 U.S.C. 78k–1, respectively.

B. Other Types of Immediately Effective Proposed Rule Changes

1. Filings Based on the Rules of Another SRO, Other Than Trading Rules

The Commission also is issuing interpretive guidance for all SROs with respect to ''copycat'' filings relating to SRO rules other than trading rules that are eligible for immediate effectiveness. The Commission previously had stated that filings that are ''virtually identical'' to an SRO filing already approved by the Commission are eligible for immediate effectiveness under Rule 19b–4(f)(6).[52] The Commission now clarifies that an SRO may designate a proposed rule change for immediate effectiveness even if not ''virtually identical'' to another SRO's rules.[53]

In particular, the Commission recognizes that, while each SRO is unique and has modified its rulebook over time to reflect its particular structure and terminology, all share basic similarities such that a proposed rule change need not be ''virtually identical'' to the precise text of another SRO's rules in order for the prescribed conduct and scope of the rule change to be consistent with the other SRO's rule on which it is based. The Commission believes that a proposed rule change appropriately may be filed as an immediately effective rule so long as it is based on and similar to another SRO's rule and each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange's rule (that was subject to notice and comment), and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval. For this class of proposed rule changes, in support of its designation for immediate effectiveness, the SRO is required under Item 8 of Form 19b–4 to identify the original SRO rule(s) on which its proposed rule change is based and explain any differences between its proposed rule change and the rule(s) upon which it is based.[54]

2. Changes to an SRO's Minor Rule Violation Plan

The Commission also believes that more filings relating to an SRO's MRVP could be appropriately filed as immediately effective upon filing under paragraph (f)(6) of Rule 19b–4. Based on its experience with MRVP proposals and various changes to those MRVPs over the years, the Commission believes that MRVPs have been useful elements of SROs' disciplinary function. The MRVP allows an SRO to impose a limited sanction on a member using an abbreviated process when a full disciplinary proceeding may not be warranted. Proposed rule changes that enable SROs to bring new rules into the MRVP sanctioning process rarely raise significant issues and promote compliance by the SRO's members with the SRO's rules and the rules of the Commission.

The Commission previously has stated that certain changes to an SRO's MRVP can be filed for immediate effectiveness pursuant to Rule 19b–4(f)(6) and reiterates that guidance here.[55] Moreover, consistent with ''copycat'' filings, the Commission believes that a change to an SRO's MRVP appropriately may be filed as an immediately effective rule so long as each policy issue raised (i) has been considered previously by the Commission when the Commission approved another exchange's MRVP rule change, and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.[56] Immediate effectiveness of such proposals reduces the administrative burdens on SROs that seek to expand the use of their MRVPs.

IV. Abrogation of Immediately Effective Proposals

We have designed the guidance to be principles-based because we cannot anticipate the content and nature of every proposed rule change that might be filed. By its nature, therefore, applying the guidance will involve an element of judgment. We encourage SROs to file immediately effective proposed rule changes when in the judgment of the SRO that approach is appropriate and consistent with the statute, rules, and this guidance.[57]

We acknowledge that the Commission ultimately may determine to abrogate the immediately effective proposed rule change. As described in greater detail above, pursuant to section 19(b)(3)(C), at any time within 60 days of the date of filing of an immediately effective proposed rule change, the Exchange Act permits the Commission summarily to abrogate the rule change ''if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of [the Exchange Act].'' [58]

In connection with the interpretation, the Commission also is removing its delegation of authority to the Director of the Division of Trading and Markets to abrogate SRO rule filings. We emphasize that abrogation does not necessarily imply that a proposed rule change is inconsistent with the Exchange Act.[59] If the Commission abrogates an SRO's proposed rule change filed for immediate effectiveness after it became effective but before it becomes operative (*i.e.*, 30 days after filing or such shorter period as the Commission may designate), the SRO would not have to revert to its previous rules, because they

[52] *See* Non-Controversial Rule Adopting Release, *supra* note 8, 59 FR at 66697.

[53] The Commission guidance contained herein applicable to ''copycat'' and MRVP filings that are based on SRO rule changes previously approved by the Commission is not intended to limit the ability of SROs to continue to file proposals under Section 19(b)(3)(A) of the Exchange Act where such proposals are based on another SRO's rules that also were effective pursuant to Section 19(b)(3)(A) of the Act.

[54] In identifying a rule on which its proposal is based, the SRO should cite to the Commission's approval order for that rule. *See* Item 8 of Form 19b–4.

[55] *See* Non-Controversial Rule Proposing Release, *supra* note 31, 59 FR at 29395 (noting that a proposed change that adds an existing rule to an SRO's MRVP, that is objective in nature, such as a reporting obligation, and does not involve a violation of the federal securities laws or the rules thereunder, could be eligible for filing as a ''non-controversial'' proposed rule change). *See also* Non-Controversial Rule Adopting Release, *supra* note 8, 59 FR at 66696 (noting that an NYSE proposal to add violations of an NYSE rule would have been eligible for immediate effectiveness under Rule 19b–4(f)(6)).

[56] As with any immediately effective filing, the Commission could abrogate an MRVP-related immediately effective proposed rule change that raises significant issues. For example, an MRVP filing that has the effect of excusing certain rule violations (by, for example, aggregating several instances of violative behavior as a single offense under the SRO's MRVP) would not be eligible for filing under Rule 19b–4(f)(6). In addition, when proposing a change to its MRVP, it would be helpful for the SRO to specify which violations trigger sanctions, and to cite the rules of conduct that may be enforced using the MRVP. If one of the rules of conduct is lengthy, to facilitate ease of reference, the SRO could consider including citations to the necessary sub-paragraphs in the MRVP rule. Providing a sufficient level of detail as to the rules and violations covered by the MRVP would help affected entities better understand the operation of the plan and would provide specificity useful to assist the SRO in administering its MRVP.

[57] An SRO that files an immediately effective proposed rule change with the Commission should try to anticipate and address concerns relating to the protection of investors, the public interest, and the burdens on competition. *See generally* Items 3 and 4 of Form 19b–4. The Commission further notes that conclusory statements made in Item 7 of Form 19b–4 could make it more difficult for the Commission to confirm that the proposed rule change has been properly designated. *See* Item 7 of Form 19b–4 (''Basis for Summary Effectiveness Pursuant to Section 19(b)(3)(A) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)'').

[58] 15 U.S.C. 78s(b)(3)(C).

[59] By its terms, Section 19(b)(3)(C) states that the Commission may abrogate a proposal and ''require that the proposed rule change be refiled * * *'' pursuant to Exchange Act Section 19(b)(1) to be reviewed by the Commission pursuant to Section 19(b)(2).

never ceased being operative.[60] A Commission determination to abrogate a proposed rule change does not affect the validity or force of the rule change during the period it was in effect.[61]

V. Amendment to Rule 200.30–3(a)(12)

The Commission believes that explicitly outlining the mechanism for issuance of notices of proposed SRO rule changes will further enhance the efficiency of the rule filing process. As such, the Commission is modifying its delegation of authority to the Director of the Division of Trading and Markets. The amended rule specifies that the Division shall issue notices of all proposed rule changes within 15 business days of filing thereof by the self-regulatory organization unless the Director of the Division personally directs otherwise, and, if the Director has so directed, he shall promptly notify the Commission and either the Commission or the Director may order publication of the notice thereafter.[62]

The Commission believes that this requirement will enhance transparency with respect to the rule filing process, which also will provide additional certainty to SROs with respect to the issuance of notices of proposed rule changes. The Commission also expects this requirement to significantly improve the efficiency of the processing of SRO proposed rule changes and the issuance of notices of proposed rule changes, particularly with respect to filings subject to notice and comment pursuant to section 19(b)(2) of the Exchange Act. The Commission believes that requiring the Division to issue notice of all proposed rule changes that are properly filed and comply with all applicable requirements within 15 business days of filing thereof will help SROs plan accordingly as well as assist the Commission staff in managing their work flow.

The Commission notes that SRO rule change proposals will continue to be required to be drafted with precision if they are to provide information necessary to elicit meaningful public comment on the proposed rule change. As is currently the case, a proposal that does not comply with the requirements of Form 19b–4 and Rule 19b–4 under the Exchange Act will not be accepted as filed.[63]

In order to provide for the possibility that there may be unusual and infrequent circumstances in which the 15 business day requirement is impractical, the rule permits the Director of the Division of Trading and Markets in such circumstances to direct otherwise. The rule provides that this function cannot be subdelegated.

VI. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act,[64] that the interpretive guidance issued today and amended Commission Rule 200.30–3(a)(12) relate solely to interpretations and agency organization, procedure, or practice. Accordingly, the guidance and Rule 200.30–3(a)(12) are not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication prior to their adoption.[65]

Further, publication of a substantive rule not less than 30 days before its effective date is required by the Administrative Procedure Act except as otherwise provided for in Section 553(d). However, interpretive rules may take effect less than 30 days after publication.[66] In addition, because the amended rule relates solely to the internal processes of the Commission with regard to the publication of proposed rule changes filed by SROs, the Commission finds that there is good cause for making amended Rule 200.30–3(a)(12) effective upon publication in the **Federal Register**.[67]

Finally, the rule and the Commission's interpretation do not contain any new or additional collections of information as defined by the Paperwork Reduction Act of 1995, as amended.[68]

VII. Costs and Benefits of the Proposed Amendments

The Commission is sensitive to the costs and benefits of its rules, and has considered carefully the costs and the benefits of the interpretive guidance and the rule amendment. To the extent that SROs decide to avail themselves of the guidance contained in this release, the Commission believes that more rule changes will be filed as immediately effective rule filings and more proposed rule changes relating to trading rules, MRVPs, and ''copycat'' proposals that currently are filed under section 19(b)(2) will take effect upon filing with the Commission. As SROs increase their use of section 19(b)(3)(A) to file more proposed rule changes for immediate effectiveness, SROs will be able to modify their trading systems and rules more quickly in response to competitive pressures, while still being subject to the protections provided by Exchange Act section 19(b). Further, as more proposed rule changes become effective upon filing, the burdens on the SROs, as well as on the Commission and its staff, are expected to be reduced since such proposals will be processed and take effect more quickly, as those rule changes would not be subject to the issuance of a Commission order before they may take effect. Also, to the extent that the guidance increases the percentage of SRO proposed rule changes that may take effect upon filing with the Commission, there will be efficiencies as the processing of such proposed rule changes requires fewer staff resources since the Commission is not required to issue an order approving such proposed rule changes.

In addition, the revised rule regarding the issuance of a notice of a proposed rule change within 15 business days of filing with the Commission will benefit SROs by providing additional certainty to them regarding the process, thereby enabling them to plan according, and improving the efficiency and the speed with which the Commission processes SRO rule filings. The Commission believes that this rule will increase the speed with which the Commission handles SRO proposed rule changes. The Commission does not expect its guidance and the rule amendment to increase the costs on SROs of filing proposed rule changes with the Commission.

Certain costs associated with the Commission's action today may potentially result from the change in the

[60] *See* 15 U.S.C. 78s(b)(3)(C). A proposed rule change filed pursuant to Rule 19b–4(f)(6) becomes effective upon filing, but may not become operative until 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. *See* 17 CFR 240.19b–4(f)(6)(iii).

[61] *See* 15 U.S.C. 78s(b)(3)(C).

[62] Nevertheless, the Division may continue to submit proposed rule changes and related matters to the Commission for its consideration as it considers appropriate.

The Commission notes that Commission rules require an SRO to post its proposed rule change on its Web site when the proposed rule change is submitted to the Commission. Further, the proposed rule change will be posted on the Commission's Web site shortly after the Commission issues notice thereof.

[63] *See supra* note 22.

[64] 5 U.S.C. 553(b)(3)(A).

[65] For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking); 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term ''rule'' does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

[66] *See* 5 U.S.C. 553(d)(2).

[67] *See* 5 U.S.C. 553(d)(3).

[68] 44 U.S.C. 3501.

amount of time that interested persons will have to comment on proposed changes to trading rules before they become operative. In particular, to the extent that SROs designate a greater number of proposed rule changes for immediate effectiveness pursuant to section 19(b)(3)(A) where they previously would have submitted them pursuant to section 19(b)(2), then the opportunity for interested persons to comment on such proposals will now occur after the proposal has taken effect upon filing with the Commission, since such proposals are not be subject to Commission approval before they become effective.

The Commission believes that this potential cost is limited by a number of factors. First, interested persons will continue to have an opportunity to submit written data, views, and arguments concerning such proposed rule changes before market participants must comply with the new rules because proposals that take effect upon filing with the Commission pursuant to Rule 19b–4(f)(6) ordinarily will not become operative until 30 days after filing with the Commission unless the SRO demonstrates to the Commission that waiver of the operative delay would be consistent with the protection of investors and the public interest. In addition, the Commission summarily may abrogate a proposed rule change. If an SRO were to re-file the proposed rule change pursuant to section 19(b)(2), the proposed rule change will be published for notice and comment.[69] The Commission's action or inaction with regard to abrogation will be informed by its own views, as well as the views expressed by commenters.

Finally, as currently is the case, a proposed rule change may take effect upon filing with the Commission only if it satisfies the standards set forth in section 19(b) of the Exchange Act and Rule 19b–4 thereunder. Additionally, the Commission guidance outlined above specifies that an immediately-effective proposed rule change involving a trading rule, MRVP, or copycat proposal may not raise policy issues that the Commission previously has not considered in a proposed rule change filed by another exchange that was approved by the Commission after notice and comment. Accordingly, since the rule on which the new proposal is modeled will have been previously subject to notice and comment, the interested persons will have had the opportunity to comment before the prior proposal (or proposals) became effective and on the immediately-effective rule filing, as well.

In addition, amended Rule 200.30–3(a)(12) relates to internal agency management. The Commission's rule amendment is intended to increase the efficiency of the Commission's review of SRO proposed rule changes by outlining the Commission's expectations with respect to Commission review of and the timing of issuance of a notice of an SRO's proposed rule change. Any increase in the costs of this amended rule fall on the Commission and its staff. In particular, the Commission will have to concentrate staff resources on reviewing and noticing within 15 days the proposed rule changes submitted by SROs. However, the ability of SROs to devote sufficient resources to preparing clear and complete proposals should enable the staff to review expeditiously a proposed rule change and issue the notice substantially in the form provided by the SRO when both are clear, complete, and consistent with all applicable requirements.

VIII. Effect on Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act[70] prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Rule 200.30–3(a)(12) applies to the Commission's delegation of authority with regard to the publication of notice of proposed rule changes filed by SROs pursuant to section 19(b)(1) of the Exchange Act.[71] Specifically, the modifications to the rule, which require the Division of Trading and Markets to issue notice of a proposed rule change within 15 business days of filing with the Commission, do not impose any burdens or costs on SROs. Further, the interpretation likely will facilitate the ability of SROs to modify their trading systems and rules more quickly in response to competitive pressures, while still preserving the protections provided by Exchange Act section 19(b).

The Commission expects the interpretive guidance and amended Rule 200.30–3(a)(12) to have a positive effect on efficiency, competition, and capital formation in that the exchanges that utilize the guidance are expected to find themselves in a better position to compete with entities that operate trading systems that are not subject to the rule filing processes of section 19(b) of the Exchange Act.

Furthermore, any increase in the number of proposed rule changes that may become effective upon filing with the Commission should improve the ability of SROs to amend their rules efficiently, particularly with respect to rules relating to trading systems and ''copycat'' proposals, which will enhance their ability to respond to competitive pressures by allowing them to file changes to their systems on an immediately effective basis. In addition, to the extent that SROs file an increasing number of their proposed rule changes for immediate effectiveness pursuant to section 19(b)(3)(A) of the Exchange Act rather than for Commission approval pursuant to section 19(b)(2) of the Exchange Act, this guidance should allow the Commission to focus on those filings that raise significant issues and that are required to be submitted under section 19(b)(2) of the Exchange Act for Commission approval.[72]

IX. Statutory Basis and Text of Amendments

This amendment to 17 CFR Part 200.30–3(a)(12) is being adopted pursuant to statutory authority granted to the Commission, including sections 4A, 6, 11A, 15A, 15B, 17A, 19, and 23 of the Exchange Act.[73]

List of Subjects

17 CFR Part 200

Administrative practice and procedures, Authority delegations (Government agencies).

17 CFR 241

Securities.

Text of the Adopted Rules

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1. The authority citation for part 200, subpart A continues to read in part as follows:

[69] *See* 15 U.S.C. 78s(b)(3)(C).

[70] 15 U.S.C. 78w(a)(2).

[71] 15 U.S.C. 78s(b)(1).

[72] 15 U.S.C. 78s(b)(2). The Commission notes that the majority of rule proposals filed by SROs are currently designated for immediate effectiveness. For example, in 2006, SROs filed 1,018 proposed rule changes with the Commission. Of those filings, 478 (47%) were filed pursuant to Section 19(b)(2) and 540 (53%) were filed pursuant to Section 19(b)(3)(A).

[73] 15 U.S.C. 78d–1, 78f, 78k–1, 78o–3, 78o–4, 78q–1, 78s, and 78w, respectively.

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.19a is amended by:

■ a. Revising the section heading as set forth below;

■ b. In the first sentence of the introductory text of the section, revise the phrase ''Division of Market Regulation'' to read ''Division of Trading and Markets''; and

■ c. Remove the authority citation following the section.

§ 200.19a Director of the Division of Trading and Markets.

* * * * *

■ 3. Section 200.30–1, paragraph (i), first sentence is amended by revising the phrase ''Division of Market Regulation'' to read ''Division of Trading and Markets''.

■ 4. Section 200.30–3 is amended by:

■ a. Revising the section heading as set forth below;

■ b. In the introductory text to the section, revising the phrase ''Division of Market Regulation'' to read ''Division of Trading and Markets'';

■ c. Adding two sentences to the end of paragraph (a)(12); and

■ d. removing and reserving paragraph (a)(58).

The revision and addition reads as follows:

§ 200.30–3 Delegation of authority to Director of Division of Trading and Markets.

* * * * *

(a) * * *

(12) * * * The Division shall issue such notices of proposed rule changes within 15 business days of filing by the self-regulatory organization unless the Director of the Division personally otherwise directs. If the Director has so directed, the Division Director shall promptly notify the Commission and either the Commission or the Director may order publication of the notice thereafter.

* * * * *

■ 5. In § 200.30–4, paragraph (a)(12), the first sentence is amended by revising the phrase ''Division of Market Regulation'' to read ''Division of Trading and Markets''.

■ 6. In § 200.30–11, paragraph (c)(2), is amended by revising the phrase ''Division of Market Regulation'' to read ''Division of Trading and Markets''.

■ 7. In § 200.30–18, introductory text of paragraph (h), is amended by revising the phrase ''Division of Market Regulation'' to read ''Division of Trading and Markets''.

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 8. Part 241 is amended by adding Release No. 58024 and the release date of June 25, 2008 to the list of interpretive releases.

By the Commission.

Dated: July 3, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15574 Filed 7–10–08; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,
July 11, 2008

Part VI

Federal Trade Commission

16 CFR Part 306

Automotive Fuel Ratings, Certification and Posting; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 306

RIN 3084–AA45

Automotive Fuel Ratings, Certification and Posting

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final rule.

SUMMARY: Section 205 of the Energy Independence and Security Act of 2007 requires the Commission to promulgate biodiesel and biomass-based diesel labeling requirements. In accordance with this directive, the Commission has completed the required rulemaking and is publishing final amendments to its rule for ''Automotive Fuel Ratings, Certification and Posting'' (''Fuel Rating Rule'' or ''Rule'') (16 CFR Part 306).

DATES: The amendments published in this final rule will become effective December 16, 2008. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 16, 2008.

ADDRESSES: Requests for copies of this document should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Matthew Wilshire, (202) 326-2976, or Hampton Newsome, (202) 326–2889, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Section 205 of the Energy Independence and Security Act of 2007 (''EISA'' or the ''Act'') (Pub. L. 110-140) requires the Commission to promulgate biodiesel and biomass-based diesel labeling requirements within 180 days of the law's passage. The Act addresses three categories of biodiesel and biomass-based diesel blends and specifies labeling requirements for two of them. The Act also contains definitions for the terms ''biomass-based diesel,'' ''biodiesel,'' and ''biomass-based diesel and biodiesel blends'' (hereinafter referred to collectively as ''biodiesel fuels''). Following enactment on December 19, 2007, the Commission published a Notice of Proposed Rulemaking (''NPRM'') on March 11, 2008.

Based on comments received in response to the NPRM, the Commission now publishes final amendments to the Fuel Rating Rule (16 CFR Part 306) that incorporate EISA's labeling requirements. Under the final amendments, the rating and certification requirements of the existing Rule apply to fuels containing more than five percent biodiesel or more than five percent biomass-based diesel. This notice provides background on the Fuel Rating Rule, a short description of biodiesel and biomass-based diesel fuels, information about the new statutory labeling requirements for biodiesel fuels, a discussion of the comments submitted along with an explanation of the changes made in response to those comments, and a detailed description of the Commission's final amendments.

I. The Fuel Rating Rule

The Commission first promulgated the Fuel Rating Rule (then titled the ''Octane Certification and Posting Rule'') in 1979 in accordance with the Petroleum Marketing Practices Act (''PMPA'') (15 U.S.C. 2821 *et seq.*). In response to amendments to the PMPA, the Commission expanded the scope of the Rule in 1993 to cover liquid alternative fuels (58 FR 41356 (Aug. 3, 1993)). The Fuel Rating Rule, therefore, covers any alternative liquid fuel distributed for use in any motor vehicle including, but ''not limited to,'' methanol, denatured ethanol, liquefied natural gas, and coal-derived liquid fuels.[1] PMPA gives the Commission authority to designate methods for fuel rating, fuel certification, and posting for these fuels at the point of sale. *See* 15 U.S.C. 2822.

II. Biodiesel Fuels

EISA contains labeling requirements for ''biomass-based diesel'' and ''biodiesel.'' It defines biomass-based diesel as any fuel substitute that is produced from certain renewable resources and that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency (''EPA'') under 42 U.S.C. 7545,[2] but not necessarily the requirements of the ASTM International[3] (''ASTM'') standard D6751.[4]

''Biodiesel,'' as defined by EISA, is a diesel fuel produced using alcohol to transform animal fat or vegetable oil. Specifically, EISA (Sec. 205(c)) defines ''biodiesel'' to mean ''the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet: (A) the registration requirements for fuels and fuel additives under this section [42 U.S.C. 7545];[5] and (B) the requirements of ASTM standard D6751.''[6] Biodiesel serves as a substitute for diesel fuel for some diesel vehicles and is usually blended with diesel for sale at retail pumps. According to the Department of Energy, biodiesel in the United States is usually made from soybean oil or recycled restaurant grease. Some estimates suggest that biodiesel sales increased from 15 million gallons in 2002 to 250 million gallons in 2006.[7]

Finally, EISA (Sec. 205(c)(4)) defines ''biomass-based diesel and biodiesel blends'' as fuels consisting of '''biomass-based diesel' or 'biodiesel' . . . blended with petroleum-based diesel fuel.''

Although the FTC has never specifically addressed fuel labeling requirements for biodiesel fuels, the broad authority under PMPA allows the Commission to include these fuels

[1] In 1993, the Commission explained that ''[t]he Fuel Rating Rule . . . applies to all present and future alternative liquid automotive fuels.'' 58 FR 41355, 41358 (Aug. 3, 1993).

[2] The EPA has issued registration requirements for fuels and fuel additives (40 CFR Part 79 ''Registration of Fuels and Fuel Additives'') pursuant to 42 U.S.C. 7545. Those requirements constitute EPA's regulatory program for the registration of motor vehicle diesel fuel (including biomass-based diesel and biodiesel), motor vehicle gasoline, and their additives.

[3] ASTM International was formerly known as, and is referred to in the Fuel Rating Rule as, the American Society for Testing and Materials.

[4] ASTM D6751 is titled: ''Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels.'' EISA defines ''biomass-based diesel'' by referencing the definition of the term ''biodiesel'' provided in Section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)). The definition reads: ''a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under [42 U.S.C. 7545],'' and includes fuel derived from ''(i) animal wastes, including poultry fats and poultry wastes, and other waste materials; or (ii) municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.'' 42 U.S.C. 13220(f)(1)(A) and (B).

[5] EISA's definition of ''biodiesel'' specifically refers to the registration requirements for fuels and fuel additives under ''this section.'' However, there are no such registration requirements in Section 205 of EISA nor are there any in the FTC's Fuel Rating Rule (16 CFR Part 306). Accordingly, we assume the phrase ''this section'' refers to the EPA's registration requirements for fuels and fuel additives (40 CFR Part 79 ''Registration of Fuels and Fuel Additives'') issued pursuant to 42 U.S.C. 7545. Therefore, the definition of ''biodiesel'' in the final amendments references the requirements of 40 CFR Part 79.

[6] Because biodiesel, as defined by EISA, meets EPA's fuel registration requirements and is derived from renewable resources, biodiesel also meets the definition of biomass-based diesel, effectively making biodiesel a subset of biomass-based diesel.

[7] *See (http://www1.eere.energy.gov/biomass/renewable_diesel.html)* (2002 estimate) and *(http://www.biodiesel.org/pdf_files/fuelfactsheets/Biodiesel_Sales_Graph.pdf)* (2006 estimate).

under the rating, certification, and posting requirements of the Fuel Rating Rule. In light of Congress's specific directive in EISA to promulgate biodiesel fuel labeling requirements, the Commission now amends the Fuel Rating Rule to include biodiesel fuels in accordance with that directive.[8]

III. EISA's Directive

Section 205(a) of EISA provides that ''[e]ach retail diesel fuel pump shall be labeled in a manner that informs consumers of the percent of biomass-based diesel or biodiesel that is contained in the biomass-based diesel blend or biodiesel blend that is offered for sale, as determined by the Federal Trade Commission.'' EISA also specifically addresses three categories of biodiesel fuel blends, requiring labels with precise wording for two. First, fuel blends containing no more than five percent biodiesel and no more than five percent biomass-based diesel, and that meet ASTM D975 (''Standard Specification for Diesel Fuel Oils''), need not be labeled.[9] Second, fuel blends containing more than five but no more than twenty percent biomass-based diesel or biodiesel ''*shall be labeled* 'contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent.''' EISA, Sec. 205(b)(2) (emphasis added). Finally, blends containing more than twenty percent biodiesel or biomass-based diesel ''*shall be labeled* 'contains more than 20 percent biomass-based diesel or biodiesel.''' EISA, Sec. 205(b)(3) (emphasis added). Significantly, although Section 205 of EISA furnishes precise, mandatory label language, the Act leaves the FTC with discretion to determine the specific size, layout, and color of the required label, as well as to require any additional wording necessary to ''inform[] consumers of the percent of biomass-based diesel or biodiesel that is contained in the biomass-based diesel blend or biodiesel blend that is offered for sale.'' EISA, Sec. 205(a).

IV. Procedural History

On March 11, 2008, the Commission published an NPRM requesting comment on proposed amendments to the Rule. (73 FR 12916). The Commission designed the proposed amendments to: (1) explicitly include fuels containing more than five percent biodiesel or more than five percent biomass-based diesel as alternative fuels subject to the rating, certification, and posting requirements of the Fuel Rating Rule; and (2) promulgate labeling requirements for those fuels consistent with EISA's requirements. The NPRM also raised specific questions for comment.

V. Comments Received and the Commission's Response

The Commission received twelve comments.[10] Generally, the comments supported the FTC's proposed amendments. However, several commenters raised issues. This section addresses these issues in the following order: separate labeling for fuels containing biodiesel and for fuels containing biomass-based diesel; the appropriateness of the labeling scheme generally; the appropriate background color for the labels; modifications to the labels proposed by the commenters to benefit consumers; and whether to require specific percentage designations only for biodiesel fuel blends over twenty percent.

A. Separate Labeling for Fuels Containing Biodiesel and Biomass-Based Diesel

COMMENTS:

Several commenters noted that biomass-based diesel and biodiesel have significantly different qualities and, therefore, urged their separate treatment for the purposes of rating, certification, and labeling. Commenters further asserted that labeling both of them as ''biodiesel blends,'' as proposed in the NPRM, would lead to consumer confusion. They therefore proposed various revisions to eliminate that confusion.

Biomass-Based Diesel as Distinct from Biodiesel

Almost all of the comments expressed the view that biodiesel differs significantly from biomass-based diesel. For example, the Illinois Soybean Association (''ISA'') stated that

> there is a significant difference between biodiesel and biomass-based diesel fuel; consequently they should be labeled separately. Biodiesel is a defined fuel with a specific ASTM standard—D6751. . . . Biomass-based diesel fuel is a category of fuels, and could contain a number of different feedstocks and products, none of which currently have an ASTM specification.

In addition, the National Biodiesel Board (''NBB'') noted that several types of fuels conceivably could qualify as biomass-based diesel. Most significantly, ConocoPhillips, a producer of a type of biomass-based diesel known as renewable diesel, explained that, unlike biodiesel blends, its fuel is ''essentially indistinguishable from ASTM D 975 defined diesel fuel.'' ConocoPhillips noted that biodiesel blends contain methyl ester and that engine manufacturers generally recommend using fuels containing no more than a certain amount of methyl ester. By contrast, ConocoPhillip's renewable diesel blends do not currently contain methyl ester.

In addition, the American Trucking Associations, Inc. (''ATA'') agreed with ConocoPhillips' assertion that manufacturer warranties generally require a consumer to use fuels containing no more than a specific percentage of biodiesel. ATA stated that heavy duty diesel engines sold in America ''are designed and warranted to operate on diesel fuel formulated to meet [the ASTM] D-975 fuel standard.'' Thus, use of any fuel, including renewable diesel, that meets ASTM D975 will satisfy engine warranty standards for heavy duty diesel engines.

Archer Daniels Midland Company (''ADM''), however, asserted that ''biomass-based diesel and Biodiesel [sic] mean the same thing'' for purposes of labeling because EISA defines biomass-based diesel to mean ''biodiesel'' as defined in Section 312(f) of the Energy Policy Act of 1992.

Possible Consumer Harm from Confusion of Biodiesel and Biomass-Based Diesel

Because biomass-based diesel and biodiesel may have different properties, commenters expressed concerns that treating them as the same fuel for purposes of rating, certification, and labeling would cause consumer harm. NBB explained that some vehicle manufacturers' warranties require use of only biodiesel that meets the requirements of ASTM D6751 or diesel fuel that meets ASTM D975, and that different types of biomass-based diesel fuels would not necessarily meet this standard. NBB further asserted that using the designation ''B-XX'' for both fuels, as proposed in the NPRM, would confuse consumers regarding what fuel they are purchasing because consumers associate that designation solely with biodiesel blends. ADM and ISA likewise asserted that the proposed labels would

[8] The Fuel Rating Rule currently does not specify labeling requirements for petroleum-based diesel. *See* 58 FR 41356, 41368 (Aug. 3, 1993). The Commission, therefore, is not amending the Rule to include such requirements for diesel fuel as part of this proceeding.

[9] Specifically, EISA states that these fuels ''shall not require any additional labels.'' EISA, Sec. 205(b)(1). We understand this language to mean that although EISA does not require labeling of biodiesel and biomass-based diesel blends at concentrations of five percent or less, any label requirements otherwise applicable to such diesel fuel will continue to apply.

[10] Comments are available at: (*http://www.ftc.gov/os/comments/biodiesel/index.shtm.*)

cause consumer confusion regarding the content and properties of the biodiesel and biomass-based diesel blends. Finally, ConocoPhillips observed that, under the proposed amendments, fuel blends containing five percent or less renewable diesel and five percent or less biodiesel, but with a combined concentration of biodiesel and biomass-based diesel of over five percent, would be labeled ''contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent.'' Those blends, however, would not differ in terms of suitability for various engines from diesel fuel containing five percent or less combined biodiesel and biomass-based diesel, for which there is no label requirement.

Proposed Solutions

Commenters suggested several changes to distinguish biodiesel from biomass-based diesel. NBB proposed that ''a separate designation be required for a 'biodiesel blend''' and that the FTC ''create a system that allows each type of fuel within the biomass-based diesel pool to have its own label.'' NBB further urged reserving the designation ''B-XX'' for only biodiesel blends. Similarly, ConocoPhillips recommended that ''[r]ather than having headers read 'B–100 Biodiesel' and 'B–20 Biodiesel Blend,' [the headers should] be changed to 'B–100 Biomass Diesel' and 'B–20 Biomass Diesel Blend.''' ISA suggested prohibiting the use of the term ''biodiesel'' altogether on a label unless the fuel actually contains biodiesel. Finally, as an alternative to changing the label, the Alliance of Automobile Manufacturers (''AAM'') recommended altering the definition of ''biomass-based diesel'' in the Fuel Rating Rule to define it explicitly as ''biodiesel as defined in section 312(f) of the Energy Policy Act of 1992.''

DISCUSSION:

Based on the comments, it appears that fuel containing biomass-based diesel can differ significantly from fuel containing biodiesel and that these differences are significant for purposes of engine warranties. As the commenters explained, consumers may lose warranty coverage if they use fuels containing biodiesel in too high a concentration, whereas the use of the only biomass-based diesel currently on the market would not affect warranty coverage at any concentration. Furthermore, as the Commission noted in the NPRM, many original equipment manufacturers and customer service departments set biodiesel warranty thresholds at five or twenty percent.[11] In order to make these thresholds meaningful, it is critical that consumers understand whether a fuel contains biodiesel or biomass-based diesel. However, the label proposed in the NPRM makes no distinction between fuels containing biodiesel and biomass-based diesel. Therefore, it might lead consumers to mistake a biodiesel blend for a biomass-based diesel blend and, thus, wrongly conclude that they can properly use a biodiesel blend without voiding their warranty.

The Commission's proposed label also could cause a related problem. If a fuel contained both biodiesel and biomass-based diesel, the proposed amendments would require retailers to combine the percentage of biodiesel and biomass-based diesel present in the fuel for labeling purposes, thereby potentially confusing consumers regarding whether the fuel is suitable for their engines.[12]

Accordingly, as described in detail below, the Commission is altering the proposed amendments in four ways. First, the final amendments revise the definition of biomass-based diesel to make clear that biodiesel does not fall within the definition of biomass-based diesel for the purposes of the Fuel Rating Rule. Clarifying that the two fuels are distinct allows the Commission to require different labels for each.

Second, the final amendments require separate labels to disclose the presence of biodiesel and biomass-based diesel in a fuel blend.[13] The proposed amendments contained certain font, formatting, and heading requirements for biodiesel fuel labels. The final amendments retain these provisions. However, to distinguish between the two fuels, they also require biomass-based diesel labels to display headers that differ from those for biodiesel. Specifically, headers for biomass-based diesel labels will read ''Biomass-Based Diesel Blend,'' instead of ''Biodiesel Blend.'' In addition, while the headers for biomass-based diesel blends, like those for biodiesel blends, must contain a specific disclosure of the exact percentage of biomass-based diesel in blends over twenty percent (and may contain such a disclosure for blends below that level), the labels will not use the ''B-XX'' designation. Instead, they will display the numerical representation of the volume followed by the percentage sign (*e.g.* ''25%''). The final amendments limit the use of the ''B-XX'' designation to fuels containing biodiesel because, according to the commenters, consumers associate that designation solely with biodiesel blends.

Similarly, the final amendments provide separate labels for 100 percent (or ''neat'') biodiesel and biomass-based diesel. Neat biomass-based diesel labels will have a header reading ''100% Biomass-Based Diesel,'' with language underneath the header reading ''contains 100 percent biomass-based diesel.'' The label for neat biodiesel will remain the same as proposed in the NPRM (*i.e.* ''B–100 Biodiesel''), except that the language underneath the header will read: ''contains 100 percent biodiesel.'' The Commission is changing the text beneath the header to assist consumers in distinguishing neat biodiesel and neat biomass-based diesel.[14]

Third, to distinguish the fuels further, the final amendments change the background color for fuels containing biomass-based diesel to orange, rather than the blue required for biodiesel labels.[15] The Commission institutes this change for two reasons. First, the orange biomass-based diesel label will contrast with the blue biodiesel label, making it easier for consumers to distinguish between the two fuels. Second, biomass-based diesel, at least as it is currently sold, does not appear to pose engine warranty problems, or other unique concerns, for consumers. It is, therefore, appropriate to use the same background color as that used for all other previously covered alternative fuels.

Finally, the Commission is revising the amendments to make clear that, for purposes of determining whether and how to disclose the presence of

[11] *See, e.g.*, ''OEM Warranty Statements and Use of Biodiesel Blends over 5% (B5),'' National Biodiesel Board, available at: (*http://www.biodiesel.org/pdf_files/B5_warranty_statement_32206.pdf.*)

[12] For example, the proposed label for fuel containing eighteen percent biodiesel and three percent biomass-based diesel would be ''B-21 Biodiesel Blend,'' wrongly implying that the amount of biodiesel in the fuel exceeds the significant threshold of twenty percent.

[13] As required by EISA, the Commission does not require retailers to disclose the presence of five percent or less biomass-based diesel in a fuel blend. However, if a blend contains more than five percent of biomass-based diesel and more than five percent biodiesel, the final amendments require both a biodiesel label and a biomass-based diesel label on the pump.

[14] As discussed below, the Commission is not altering the text below the header for biodiesel and biomass-based diesel blends. However, because EISA only provides specific labeling requirements for biodiesel and biomass-based diesel blends—and neat biodiesel and biomass-based diesel are not blends—the Commission has discretion to omit the term ''biomass-based diesel'' from neat biodiesel labels and vice versa.

[15] In the NPRM, the Commission proposed biodiesel fuel labels with a background color of purple. For reasons explained in Section V.C below, the Commission is now changing the required color for biodiesel to blue.

biodiesel or biomass-based diesel in fuels, their concentrations should be counted separately. Thus, the final amendments define the term ''biodiesel blend'' as a blend containing more than five percent biodiesel, and it defines a new term, ''biomass-based diesel blend,'' as a blend containing more than five percent biomass-based diesel. The final amendments also explicitly do not cover blends that ''contain less than or equal to 5 percent biodiesel by volume and less than or equal to 5 percent biomass-based diesel by volume.'' These changes are consistent with EISA's provision that retailers need not disclose biodiesel and biomass-based diesel in concentrations of five percent or less.

Furthermore, the Commission is incorporating these new terms into the rating and certification requirements. Therefore, covered entities must rate and certify the percentage of biodiesel and/or biomass-based diesel in a fuel blend independently. As noted above, because biodiesel and biomass-based diesel must be separately rated and disclosed on separate labels, it is theoretically possible that a single fuel blend could contain more than five percent of each and, therefore, would require two separate labels. However, the Commission has no evidence that there is any substantial market for such dual blends at this time. If this requirement becomes unwieldy at some future date, any affected party may petition for revisions to the Rule.

Although the final amendments require separate labeling of biodiesel and biomass-based diesel fuels, they do not change the text below the label's black band for either biodiesel or biomass-based diesel blends, notwithstanding several commenters' views that the text could confuse consumers. As explained above, EISA requires that this specific language appear on the label. Section 205(b) explicitly states that blends at concentrations of more than five percent and no more than twenty percent ''*shall be labeled* 'contains biomass-based diesel or biodiesel in quantities between 5 and 20 percent'" and that blends at concentrations above twenty percent ''*shall be labeled* 'contains more than 20 percent biomass-based diesel or biodiesel.'" EISA, Sec. 205(b) (emphasis added). The Commission, therefore, does not have discretion to allow different language.

Examples

To illustrate the application of the revised labeling requirements, the Commission provides the following examples:

1) A fuel blend containing five percent biomass-based diesel and five percent biodiesel does not require any additional labeling because the Rule only applies to diesel blends containing more than five percent biodiesel and/or more than five percent biomass-based diesel.

2) A blend containing six percent biodiesel and five percent biomass-based diesel requires a blue label with either ''B-6 Biodiesel Blend'' or ''Biodiesel Blend'' in the header and with the text ''contains biomass-based diesel or biodiesel in quantities between 5 and 20 percent'' below the header. The header of the label does not disclose the presence of biomass-based diesel because it comprises only five percent of the fuel.

3) A blend containing twenty-one percent biodiesel and five percent biomass-based diesel requires a blue label with ''B-21 Biodiesel Blend'' in the header and with the text ''contains more than 20 percent biomass-based diesel or biodiesel'' below the header. The header of the label does not disclose the presence of biomass-based diesel because it comprises only five percent of the fuel by volume. Furthermore, because the fuel contains only five percent biomass-based diesel, retailers should not include it for the purposes of determining the specific blend designation.

B. General Appropriateness of Label

COMMENTS:

None of the commenters objected to the Commission's explicit inclusion of fuels containing more than five percent biodiesel or biomass-based diesel within the scope of the Fuel Rating Rule, nor did commenters object to the size or format of the labels. For example, ATA supported the labels as ''distinctive and not likely to confuse consumers.'' The commenters also concurred with the general categories of information disclosed on the labels. For example, the American Petroleum Institute (''API'') expressed the view that the labels ''provide[] the consumer with the information necessary to fuel properly his/her vehicle.''

DISCUSSION:

Because the size, format, and general layout requirements of the biodiesel and biomass-based diesel blend labels are consistent with requirements for other fuels, and because none of the commenters objected to those requirements, the Commission retains those aspects of the proposed labels.

C. Appropriateness of Background Color

The NPRM proposed a background color of purple, PMS 2562, for biodiesel and biomass-based diesel labels. The Commission requested comment on whether purple, blue, or another color was most appropriate.

COMMENTS:

API supported purple as the background color, noting that it ''provides an appropriate contrast between regular diesel labels (often green), gasoline-octane labels (yellow) and E85 labels (orange).'' Most commenters, however, believed a different color would be more appropriate for biodiesel. Significantly, both ISA and ADM favored a blue background because it would be consistent with state biodiesel labeling requirements already in place.

DISCUSSION:

The Commission agrees with ISA and ADM that biodiesel labels should have a blue background. A blue label is consistent with pre-existing state requirements, and blue will sufficiently contrast with colors used for other fuel labels, reducing the risk of consumers mistaking biodiesel for biomass-based diesel.[16]

The final amendments, however, require biomass-based diesel labels to have an orange background. As explained above, the use of currently available biomass-based diesel blends does not raise the same engine warranty concerns as biodiesel, and, therefore, it is appropriate to use the same orange background as that used for all other previously covered alternative fuels.

D. Proposed Modifications to Increase Benefits to Consumers

COMMENTS:

Five commenters proposed modifications to the labels to increase the benefit to consumers. AAM proposed adding the text: ''Consult manufacturer fuel recommendations.'' ATA suggested requiring a similar warning on labels for blends of more than twenty percent biodiesel. API suggested adding the word ''MAXIMUM'' in all capital letters to precede the specific blend disclosure for blends above B-20. Similarly, BP Products North America (''BP'') urged altering proposed Part 306.5(b) to

[16] Some commenters suggested green as an appropriate background color for biodiesel. However, as noted by API, the color green is associated with diesel fuel, and biodiesel labels should present a significant contrast to 100 percent petroleum-based diesel to avoid the risk of confusion.

require that the labels display the maximum volume of biodiesel and/or biomass-based diesel in a blend. Finally, the Engine Manufacturers Association (''EMA'') proposed requiring the label for neat biodiesel to state whether the fuel meets the standards of ASTM D6751.

DISCUSSION:

The final amendments do not incorporate these suggestions. Requiring a ''consult manufacturer fuel recommendations'' warning is inconsistent with the Fuel Rating Rule's treatment of other alternative fuels. The Commission notes, however, that nothing in the regulations prohibits a retailer from disclosing the warnings proposed by AMA and ATA. In addition, the Commission does not agree with API's and BP's suggestion that the term ''maximum'' appear on biodiesel fuel labels. The final amendments already require ratings and posting of a specific percentage designation for biodiesel fuels at concentrations of over twenty percent and, therefore, such a designation would be confusing. Finally, the Commission declines to adopt EMA's proposed language for neat biodiesel. In light of the final amendments, which now require different labels for neat biodiesel and neat biomass-based diesel, retailers may only label a fuel as ''Biodiesel'' if it meets the definition of ''biodiesel'' in Part 306.0, which specifically incorporates ASTM D6751 by reference.

E. Allowing Nonspecific Percentage Designations (''Biodiesel Blend'') for Blends at Concentrations of Up to Twenty Percent and Requiring Specific Designations (''B–XX'') for Concentrations Exceeding Twenty Percent

In the NPRM, the Commission sought comment on whether it should revise the Fuel Rating Rule to require a specific designation (*e.g.*, ''B–15'') of the percentage of biodiesel and/or biomass-based diesel in a blend. As proposed in the NPRM, the amendments would have required specific designations for concentrations in excess of twenty percent, and allowed, but not required, the designations for concentrations up to twenty percent.

COMMENTS:

Concentrations of Twenty Percent or Less

All commenters agreed that the final amendments should not require a specific percentage disclosure at concentrations of twenty percent or less. Several noted that compliance with such a requirement would be impractical. ATA, for example, asserted that retailers often mix different biodiesel fuels with concentration levels ranging from five to twenty percent at the point of sale, making it extremely difficult to know the exact concentration of a biodiesel fuel blend sold from a given dispenser. Similarly, the Petroleum Marketers Association of America (''PMAA'') noted that ''[a] label with a generic range would give retailers the flexibility to increase or decrease biodiesel blends to meet supply without changing the label.'' In addition, EMA explained that ''many manufacturers approve the use of biodiesel blends up to 20%. Consequently, there is no quality reason or rationale to make a specific delineation among blends less than 20%. A single designation is sufficient to assure the quality of a blended fuel.''

However, while not advocating for an exact percentage designation, ATA and individual commenter Johnas Carson suggested requiring disclosure of the percentage of biodiesel and biomass-based diesel in a fuel using blend increments of five percentage points (*e.g.*, ''contains biodiesel in amounts between B–10 and B–15'').

Concentrations of More than Twenty Percent

Commenters generally supported the Commission's proposal to require a specific designation when disclosing the presence of more than twenty percent biodiesel and/or biomass-based diesel in a blend. NBB explained that for blends exceeding twenty percent,

> performance varies based on climate, raw materials, and equipment, which means consumers need to be more aware of the specific blend level they are purchasing. Further, the impact on equipment of higher blends has not been thoroughly tested and there is a higher likelihood of known problems or issues with high blends that are not present or are of lesser importance when using blends of B20 or lower. Blends higher than 20% can not be considered a direct replacement for petroleum diesel fuel and may require significant additional precautions, handling and maintenance considerations as well as potential fuel system and engine modification.

Comments from AAM, EMA, ADM, and BP all concurred with NBB's position. The only objection to a specific designation came from ATA, which argued for disclosure of concentration levels using five percentage point increments for blends at all concentrations.

DISCUSSION:

The Commission agrees with the majority of commenters that it should retain the requirements of nonspecific designations of biodiesel or biomass-based diesel in concentrations of over five, but not over twenty, percent and continue to require specific designations for blends over twenty percent. The Commission understands that manufacturers' warranties generally allow use of biodiesel blends at concentrations of either no more than five or no more than twenty percent. Thus, there is less benefit to consumers from disclosure of a specific percentage in this range. Indeed, EISA implicitly recognizes this fact by prescribing the same labeling language for blends in the range. Furthermore, based on ATA's comment, retailers apparently would have difficulty determining the precise percentage of biodiesel or biomass-based diesel in blends up to twenty percent. Thus, requiring a specific designation for these blends would impose costs on industry members without significantly benefitting consumers. The seller, however, would have discretion to disclose the percentage of biodiesel or biomass-based diesel in blends up to twenty percent.[17]

By contrast, as noted in NBB's comment, the performance of blends containing more than twenty percent biodiesel is uncertain and can vary significantly. In addition, we understand that there are no biomass-based diesel fuels currently marketed at concentrations above twenty percent, and the properties of any such fuels that may be marketed in the future are unknown. Moreover, the commenters did not object to a specific designation for biomass-based diesel blends above twenty percent. Therefore, the Commission is retaining the specific percentage designation requirement for biodiesel and biomass-based diesel blends of more than twenty percent. The Commission further notes that this requirement will provide information of interest to those consumers who favor a fuel blend with a high percentage of nonpetroleum components.[18]

[17] *See* note 23, *infra*, and accompanying text.

[18] Commenters raised two additional topics that went beyond the scope of EISA or the Fuel Rating Rule. First, API asserted that biodiesel may not be compatible with ''the existing retail-diesel infrastructure'' and states that ''[t]his is an area that we believe should be addressed.'' Second, individual commenter Jeff Cohan inquired about accuracy of media reports concerning the interaction of biodiesel fuels and fuel efficiency requirements. As these comments involve matters beyond the scope of this rulemaking, the Commission does not address them.

VI. Final Amendments to the Fuel Rating Rule

In light of the comments described above, and pursuant to EISA's directive, the Commission is amending the Fuel Rating Rule to: 1) incorporate the definitions for the terms ''biomass-based diesel,'' ''biodiesel,'' and ''biomass-based diesel and biodiesel blends'' contained in Section 205 of EISA; 2) revise the definition of ''automotive fuel'' to make clear that those fuels are subject to the rating, certification, and posting requirements of the Fuel Rating Rule; and 3) require labeling of fuels containing more than five percent biomass-based diesel and/or more than five percent biodiesel, consistent with the language in Section 205 of EISA and state model rules proposed by the National Conference on Weights and Measures (''NCWM'').

A. Definitions

As noted above, Section 205 of EISA requires the Commission to promulgate labeling requirements for ''biomass-based diesel,'' ''biodiesel,'' and ''biomass-based diesel and biodiesel blends,'' as those terms are defined in the Section 205(c) of the statute. The Commission, therefore, adds the statutorily required terms to Part 306.0 of the Fuel Rating Rule. Additionally, the Commission adds ''biomass-based diesel blend'' and ''biodiesel blend'' as separate terms to allow for separate rating, certification, and labeling requirements.

B. Alternative Fuels, Automotive Fuel Rating, and Certification

Part 306.0(i)(2) of the Rule currently lists examples of alternative fuels, but specifically states that alternative fuels are ''not limited to'' those listed. The final amendments expressly add biomass-based diesel and biodiesel, as well as blends containing more than five percent biodiesel and/or five percent biomass-based diesel, to this nonexclusive list. By specifically including these terms, the final amendments clarify that these fuels are covered by the rating and certification requirements of Part 306 of the Rule.[19]

Incorporating biodiesel fuels into the Fuel Rating Rule and subjecting them to these rating and certification requirements should help ensure the accuracy of the information on biodiesel fuel labels. The current rating requirements in Part 306.5 and the certification procedures in Part 306.6 provide the means to substantiate fuel ratings throughout the chain of sale. Specifically, under the current Rule, refiners, importers, producers, and distributors of alternative liquid automotive fuels must have ''competent and reliable evidence'' supporting their advertised fuel rating (Sec. 306.5(b) and Sec. 306.8(b)). In addition, sellers must certify that percentage when they transfer the fuel to anyone other than a consumer (Sec. 306.6 and Sec. 306.8(c)).[20]

Finally, to comply with EISA's labeling requirements, the final amendments make minor changes to the rating and certification provisions of the Rule for biodiesel fuel blends. First, the final amendments modify language in the Rule's certification provision (306.5(b)) to clarify that biodiesel and biomass-based diesel blends should be rated by the percentage of biodiesel and/or biomass-based diesel fuel in the blend, not necessarily by the percentage of the principal component of the fuel like other alternative fuels.[21] Second, the certification requirements in Part 306.6(b) currently allow transferors of alternative automotive fuels to certify fuel ratings with a letter of certification, which remains valid so long as the fuel transferred contains the same or a greater rating of the principal component. However, a change in the concentration of biodiesel or biomass-based diesel in an automotive fuel may trigger different labeling requirements under EISA even if the concentration of the principal fuel increases (*e.g.*, a change from B-25 to B-20). Therefore, the final amendment to Part 306.6(b) states that if transferors of biodiesel fuels choose to use a letter of certification, that letter will be valid only as long as the fuel transferred contains the same percentage of biodiesel or biomass-based diesel as previous fuel transfers covered by the letter.

C. Labeling

The labeling requirements in the final amendments employ the language mandated by EISA. In accordance with Section 205 of the Act, and consistent with the FTC's authority under PMPA, the final amendments address labeling for fuels containing biodiesel and/or biomass-based diesel at four different concentration levels.[22] First, retailers do not have to disclose the presence of five percent or less biodiesel and/or five percent or less biomass-based diesel in a fuel, provided that the fuel meets the specifications contained in ASTM D975. Second, for fuel blends containing more than five percent but no more than twenty percent biomass-based diesel or biodiesel, the label contains the language required by Section 205(b)(2) of EISA. Third, for fuels containing biodiesel or biomass-based diesel at concentrations of more than twenty percent but less than 100 percent, the label contains the language required by Section 205(b)(3) of EISA. Finally, pursuant to the Commission's authority under PMPA and consistent with EISA's direction, the final amendments require labels for neat (*i.e.*, 100 percent) biodiesel and biomass-based diesel.

In addition to the specific disclosures required by EISA, the labels contain fuel terms on their headings that are consistent with both the draft model rules proposed by the NCWM and the Fuel Rating Rule's treatment of other alternative fuels. Specifically, as proposed in the NPRM, the heading in a label for a biodiesel blend containing more than five but no more than twenty percent biodiesel must display either: 1) the capital letter ''B'' followed first by a numeric representation of the percentage of biodiesel and then by the term ''Biodiesel Blend,'' such as ''B-20 Biodiesel Blend''; or 2) the term ''Biodiesel Blend.''[23] Similarly, as discussed above, the Commission has revised the proposed labels so that the heading for biomass-based diesel blends in the same more than five but no more than twenty percent concentration category must display either: 1) a numeric representation of the percentage of biomass-based diesel followed first by the percent symbol (%) and then by the term ''Biomass-Based Diesel Blend,'' such as ''20% Biomass-Based Diesel Blend''; or 2) the term ''Biomass-Based Diesel Blend.''

For biodiesel and biomass-based diesel blends containing more than

[19] Consistent with EISA (Sec. 205(b)(1)), the final amendments to Part 306.0 indicate that biodiesel blends and biomass-based diesel blends that contain less than or equal to five percent biomass-based diesel and less than or equal to five percent biodiesel by volume, and that meet ASTM D975, are not automotive fuels covered by the requirements of this Rule.

[20] As the Commission explained in the NPRM, an entity blending biodiesel fuels is responsible for determining the amount of biodiesel and/or biomass-based diesel in the fuel it sells. This includes the need to account for biodiesel and/or biomass-based diesel in any diesel fuel (*e.g.*, diesel fuel containing biodiesel at five percent or less) it uses to create blends that must be rated, certified, or labeled under the Rule.

[21] For example, a twenty-five percent biodiesel/diesel blend should be rated as twenty-five percent biodiesel, not seventy-five percent diesel.

[22] Appendix (''App.'') A summarizes the labeling requirements for biodiesel fuels at each of these concentrations.

[23] The choice of designation (*e.g.*, ''B-15 Biodiesel Blend'' or ''Biodiesel Blend'') is at the discretion of the seller. Giving sellers this choice is consistent with the model rules under consideration by the NCWM and with Section 205 of EISA, which require disclosing only that the fuel contains between five and twenty percent biodiesel or biomass-based diesel, rather than a specific amount.

twenty percent, the final amendments require a specific blend designation (*e.g.*, ''B-80'' for biodiesel and ''80%'' for biomass-based diesel) in the heading. The Commission has slightly revised the proposed requirements so that the designation is followed by either the term ''Biodiesel Blend'' or ''Biomass-Based Diesel Blend,'' as appropriate. Finally, as explained above, the final amendments provide for neat biodiesel and biomass-based diesel labels. The heading for these fuels must display either ''B-100 Biodiesel'' or ''100% Biomass-Based Diesel,'' along with the explanatory text of either ''contains 100 percent biodiesel'' or ''contains 100 percent biomass-based diesel.'' Inclusion of these terms on the label is consistent with draft model rules currently under consideration by the NCWM,[24] and with the Fuel Rating Rule's labels for other alternative fuels, which must disclose the type of alternative fuel on the heading of the label (*e.g.*, ''E-85'' for eighty-five percent ethanol blends).

The final amendments also specify the size, font, and format requirements for the draft labels. These requirements are consistent with those in place for other alternative liquid fuels in the Rule (*see* Sec. 306.12). The Rule requires a blue (PMS[25] 277 or its equivalent) background for labels disclosing the presence of biodiesel and an orange background (PMS 1495 or its equivalent) for biomass-based diesel. The blue background for biodiesel will allow retail consumers easily to distinguish biodiesel blends from biomass-based diesel, as well as other fuels sold at retail pumps (*e.g.*, the yellow octane label), and will help minimize the likelihood that consumers will use the wrong fuel in their vehicle. In addition, the final amendments require, as for other alternative fuels, the text to be in Helvetica black type and centered on the label. The Commission is amending Part 306.12(f) to provide sample illustrations of biodiesel and biomass-based diesel labels.

VII. Paperwork Reduction Act

The certification and labeling requirements announced in this notice constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (''PRA''). Consistent with the Fuel Rating Rule's requirements for other alternative fuels, the final amendments require refiners, producers, importers, distributors, and retailers of biodiesel fuels to retain, for one year, records of any delivery tickets, letters of certification, or tests upon which they based the automotive fuel ratings that they certify or post. The covered parties also must make these records available for inspection by Commission and EPA staff as well as by persons authorized by the Commission or EPA. Finally, retailers must produce, distribute, and post fuel rating labels on fuel pumps.

In its NPRM, the Commission provided estimated recordkeeping and disclosure burdens for entities covered under the Rule and sought comment on the accuracy of those estimates. Commenters have not disputed those estimates, and the Office of Management and Budget (''OMB'') has approved the collections of information required by the amendments.

The Commission believes that the minor changes made since the NPRM do not affect the previous burden estimate. In the following sections, the Commission discusses comments regarding burden estimates in more detail, explains why it believes those estimates are not affected by the revisions, and restates those estimates.

A. Comments on Burden to Covered Entities

Significantly, the commenters did not dispute the Commission's estimates of burden, nor did they identify a burden that the Commission did not discuss in the NPRM. Indeed, individual commenter Johnas Carson affirmed that ''the costs of the decals and installation quoted in this notice are accurate.'' NBB described these costs as ''minor.'' Similarly, PMAA, an association of independent fuel retailers, stated that ''[c]osts associated with the rulemaking are minimal so long as the requirements are written in a flexible manner that would not require dispenser owners to affix new labels every time there is a change in the biodiesel blend concentration.'' The final amendments announced in this notice retain such flexibility by not requiring a specific percentage designation for fuel blends containing twenty percent or less biodiesel or biomass-based diesel.[26]

B. Changes to the Proposed Labeling Requirements

As explained in detail above, the Commission has revised its labeling requirements to provide for separate labeling of biodiesel and biomass-based diesel. As amended, the label requirements make clear that retailers need not disclose the presence of five percent or less biodiesel or biomass-based diesel in a fuel blend. This final amendment reduces the burden on covered entities because it makes clear that retailers need not label fuels that cumulatively contain more than five percent biodiesel and biomass-based diesel, but less than five percent of each. However, the final amendments also could conceivably require a retailer to use two labels for a fuel blend that contained more than five percent biodiesel and more than five percent biomass-based diesel.

Notwithstanding this possibility, the Commission is not changing its burden estimates. Specifically, there is no evidence that retailers are selling any fuel blends containing more than five percent biomass-based diesel and, therefore, no evidence that any retailer will incur the burden of posting two labels on a fuel dispenser. In the NPRM, the Commission specifically sought comments on the market for biomass-based diesel. Other than ConocoPhillip's acknowledgment that it markets renewable diesel blends at an unspecified concentration, the Commission received no comments in response to this request. Based on this record, and the lack of any objection to the Commission's burden analysis in the NPRM, the Commission assumes that there is no significant burden impact from the revisions.[27]

C. The Recordkeeping and Disclosure Burdens

The Commission previously estimated the burden associated with the Fuel Rating Rule's recordkeeping requirements to be no more than five minutes per year per industry member, and it previously estimated the burden associated with the Rule's disclosure requirements to affect no more than 1/8th of industry members in any given year at one hour per member affected–or, averaged across all industry members, 1/8th hour per year. These estimated burdens do not include recordkeeping in which covered

[24] *See* ''National Conference on Weights and Measures Laws and Regulations Committee & Petroleum Subcommittee Interim Meeting for the 93rd NCWM Annual Conference; Supplement to NCWM Publication 15'' (Section 3.15).

[25] Pantone Matching System. We are also amending the Rule to allow the use of non-Pantone equivalents for all alternative fuels to prevent unnecessarily favoring the Pantone system over other suitable color schemes.

[26] While not commenting on the burden estimate, ATA urged that ''[c]entrally fueled fleets should not be subject to the labeling requirements, as they do not sell fuel to the public . . . .'' As amended, the labeling requirements of the Fuel Rating Rule apply only to retailers that sell to the ''general public.'' 16 CFR 306.0(f).

[27] The Commission has also revised its labeling requirements to substitute blue for purple as the background color and to require different headers for biomass-based diesel blends and pure biomass-based diesel fuel. These changes are cosmetic and do not impact the recordkeeping or disclosure burdens.

industry members already engage in their normal course of business.[28]

Because the procedures for distributing and selling biodiesel fuels are no different from those for other automotive fuels, the Commission expects that, consistent with practices in the fuel industry generally, the covered parties in the biodiesel fuel industry will record the fuel rating certification on documents (*e.g.*, shipping receipts) already in use, or will employ a one-time letter of certification. Furthermore, the Commission expects that labeling of biodiesel fuel pumps will be consistent with practices in the fuel industry generally. The information collection burden, therefore, will be the same as for other automotive fuels: five minutes per year for recordkeeping and 1/8th hour per year for disclosure.

Based on statistics provided by NBB, the Commission estimates that there are approximately 200 producers, 1500 retailers, and 2000 distributors of biodiesel.[29] Conservatively assuming that each producer, distributor, and retailer of biodiesel is a distinct entity, and that each seller of biodiesel will spend five minutes (or 1/12th hour) per year complying with the recordkeeping requirements, and assuming that each retailer will spend 1/8th hour per year complying with the disclosure requirements, the Commission estimates an incremental annual burden of 308 hours for recordkeeping (1/12th hour per year x 3700 entities) and 188 hours for disclosure (1/8th hour per year x 1,500 retailers).

D. Approval by OMB

Pursuant to the PRA, 44 U.S.C. 3501–3521, the FTC submitted to OMB for review and approval the collections of information contained in the Rule. On May 23, 2008, under OMB Control No. 3084–0068, OMB granted approval through May 31, 2011.

[28] For OMB purposes, ''burden'' does not include efforts to comply with a collection of information that a covered party would expend in any event. 5 CFR 1320.3(b)(2).

[29] Because the biodiesel industry is young, estimates of its size may not be as accurate as estimates of the size of more mature industries. Therefore, we have conservatively rounded up from the actual statistics provided by the NBB. In a document dated January 25, 2008, the NBB estimated a total of 171 producers of biodiesel and biodiesel blends. *See (http://www.biodiesel.org/pdf_files/fuelfactsheets/Production_Capacity.pdf.)* In addition, the NBB's website lists all known distributors (*http://www.biodiesel.org/buyingbiodiesel/distributors/showall.asp*) and retailers (*http://www.biodiesel.org/buyingbiodiesel/retailfuelingsites/showall.asp*) of biodiesel. As of February 4, 2008, the site listed approximately 1250 retailers and 1775 distributors of biodiesel and biodiesel blends.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601-612, requires an agency to provide a Final Regulatory Flexibility Analysis with a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

In light of the comments submitted in response to the NPRM, the FTC reaffirms its belief that the final amendments will not have a significant economic impact on a substantial number of small entities. As explained in Section VII above, each entity in the biodiesel industry will spend, at most, five minutes per year complying with the recordkeeping requirements and 1/8th hour per year complying with the disclosure requirements. Staff estimates the mean hourly wage for employees of producers, importers, and distributors of biodiesel fuels to be $21.39,[30] and the mean hourly wage for employees of biodiesel retailers to be $14.35.[31] Conservatively assuming that all biodiesel producers, distributors, and retailers are small entities, compliance with the recordkeeping requirements will cost producers and distributors $1.78 per year ($21.39 x 1/12th hour) and retailers $1.20 ($14.35 x 1/12th hour). In addition, under the same conservative assumptions, compliance with the disclosure requirements will cost retailers $1.79 ($14.35 x 1/8th hour).

Retailers will also incur the cost of procuring and replacing fuel dispenser labels to comply with the disclosure requirements of the Rule. The Commission has previously estimated that the price per automotive fuel label is approximately fifty cents and that the average automotive fuel retailer has six dispensers. Applying those estimates to the biodiesel fuel industry results in an initial cost to retailers of $3.00 (6 pumps x $0.50). In addition, the Commission has previously estimated the useful life of dispenser labels to range from six to ten years. Assuming a useful life of eight years, the mean of that range, and distributing the costs on a per-year basis, staff estimates the total annual replacement labeling cost to be $0.06 (1/8 x $0.50).

This document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission is providing a final analysis in order to inquire into the impact of the final amendments on small entities. Therefore, the Commission has prepared the following analysis.

[30] Bureau of Labor Statistics, 2006 Employment Statistics Survey, Annual Average Hourly Earnings for Oil and Gas Extraction Production workers.

[31] Bureau of Labor Statistics, May 2006 Occupational Employment Statistics Survey, ''Correspondence Clerks,'' Table 1.

A. Statement of the need for, and objectives of, the final amendments

Section 205 of EISA requires the Commission to promulgate biodiesel fuel labeling requirements that inform consumers of the percent of biomass-based diesel or biodiesel contained in a fuel sold at a retail pump. The Commission is publishing these final amendments in compliance with that congressional requirement.

B. Issues raised by comments in response to the initial regulatory flexibility analysis

Commenters did not raise any specific issues with respect to the regulatory flexibility analysis in the NPRM. As noted above, commenters, including an association of independent fuel retailers, supported adding biodiesel fuels to the coverage of the Fuel Rating Rule. Furthermore, the commenters agreed that the recordkeeping and disclosure burdens of the final amendments are ''minimal.''

C. Estimate of the number of small entities to which the final amendments will apply

As discussed above, the biodiesel fuel industry is young and still developing. Although the Commission has evidence of the size of the industry generally, it does not have any evidence regarding the number of small businesses within that industry. In the NPRM, the Commission assumed that all industry members are small businesses, and none of the commenters disagreed with that assumption. Accordingly, the Commission reaffirms its assumption for the purposes of this regulatory flexibility analysis that the 200 producers, 1500 retailers, and 2000 distributors of biodiesel are all small businesses.

D. Projected reporting, recordkeeping, and other compliance requirements

The final amendments make clear that the recordkeeping and certification requirements of the Fuel Rating Rule apply to biodiesel fuels. Small entities potentially affected are producers, distributors, and retailers of biodiesel fuels. The Commission expects that the recordkeeping and certification tasks are done by industry members in the normal course of their business. Accordingly, we do not expect the final amendments to require any professional skills beyond those of persons already

employed by industry members, namely, administrative.

E. Alternatives Considered

Section 205 of EISA requires that ''[e]ach retail diesel fuel pump be labeled in a manner that informs consumers of the percent of biomass-based diesel or biodiesel that is contained in the biomass-based diesel or biodiesel blend that is offered for sale, as determined by the Federal Trade Commission.'' The Commission, therefore, must require covered entities to accurately rate, certify, and label biodiesel fuels.

The Commission has amended the Fuel Rating Rule in a manner that minimizes the economic impact, if any, from Section 205's labeling requirements. As explained above, the Commission has designed the rating, certification, and labeling requirements so that industry members may use documents already in use to certify a biodiesel fuel's rating. Furthermore, the Commission is promulgating labeling provisions requiring only language specifically provided by Section 205 or necessary to inform consumers of the percentage of biodiesel or biomass-based diesel contained in a fuel. Moreover, the commenters have not identified any alternative requirements that would reduce this burden. Accordingly, the Commission concludes that there are no alternative requirements that would reduce the burden on industry members and satisfy EISA's mandate.

IX. Final Rule Language

List of Subjects in 16 CFR Part 306

Energy conservation, Gasoline, Incorporation by reference, Labeling, Reporting and recordkeeping requirements.

■ For the reasons set out above, the Commission amends 16 CFR Part 306 as follows:

PART 306—AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING

■ 1. The authority citation for part 306 continues to read as follows:

AUTHORITY: 15 U.S.C. 2801 *et seq.*; Pub. L. 110-140.

■ 2. Section 306.0 is amended as follows:

■ a. Paragraph (i)(2) is revised.

■ b. Paragraph (i)(3) is added.

■ c. Paragraph (j)(2) is revised.

■ d. Paragraph (j)(3) is added.

■ e. Paragraphs (k), (l), (m), and (n) are added.

§ 306.0 Definitions.

* * * * *

(i) * * *

(2) Alternative liquid automotive fuels, including, but not limited to:

(i) Methanol, denatured ethanol, and other alcohols;

(ii) Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and/or other alcohols (or such other percentage, but not less than 70 percent, as determined by the Secretary of the United States Department of Energy, by rule, to provide for requirements relating to cold start, safety, or vehicle functions), with gasoline or other fuels;

(iii) Liquefied natural gas;

(iv) Liquefied petroleum gas;

(v) Coal-derived liquid fuels;

(vi) Biodiesel;

(vii) Biomass-based diesel;

(viii) Biodiesel blends containing more than 5 percent biodiesel by volume; and

(ix) Biomass-based diesel blends containing more than 5 percent biomass-based diesel by volume.

(3) Biodiesel blends and biomass-based diesel blends that contain less than or equal to 5 percent biodiesel by volume and less than or equal to 5 percent biomass-based diesel by volume, and that meet American Society for Testing and Materials (''ASTM'') standard D975-07b (''Standard Specification for Diesel Fuel Oils''), are not automotive fuels covered by the requirements of this Part. The incorporation of ASTM D975-07b by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of ASTM D975-07b may be obtained from ASTM International, 1916 Race Street, Philadelphia, PA, 19103, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C., or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: (*http://www.archives.gov/federal_register/cfr/ibr_locations.html.*)

(j) * * *

(2) For an alternative liquid automotive fuel other than biodiesel, biomass-based diesel, biodiesel blend, or biomass-based diesel blend, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

(3) For biomass-based diesel, biodiesel, biomass-based diesel blends with more than five percent biomass-based diesel, and biodiesel blends with more than five percent biodiesel, a disclosure of the biomass-based diesel or biodiesel component, expressed as the percentage by volume.

(k) *Biomass-based diesel* means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under 42 U.S.C. 7545, and includes fuel derived from animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater, except that the term does not include biodiesel as defined in this Part.

(l) *Biodiesel* means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet: the registration requirements for fuels and fuel additives under 40 CFR Part 79; and the requirements of the American Society for Testing and Materials standard D6751–07b (''Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels''). The incorporation of ASTM D6751–07b by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of ASTM D6751–07b may be obtained from ASTM International, 1916 Race Street, Philadelphia, PA, 19103, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C., or at NARA. For information on the availability of this material at NARA, call 202–741–6030, or go to: (*http://www.archives.gov/federal_register/cfr/ibr_locations.html*).

(m) *Biodiesel blend* means a blend of petroleum-based diesel fuel with biodiesel.

(n) *Biomass-based diesel blend* means a blend of petroleum-based diesel fuel with biomass-based diesel.

■ 3. Section 306.5(b) is revised to read as follows:

§ 306.5 Automotive fuel rating.

* * * * *

(b) To determine automotive fuel ratings for alternative liquid automotive fuels other than biodiesel blends and biomass-based diesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the alternative liquid automotive fuel that you must disclose.

In the case of biodiesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biodiesel contained in the fuel, and in the case of biomass-based diesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biomass-based diesel contained in the fuel. You also must have a reasonable basis, consisting of competent and reliable evidence, for the minimum percentages by volume of other components that you choose to disclose.

■ 4. Section 306.6(b) is revised to read as follows:

§ 306.6 Certification.

* * * * *

(b) Give the person a letter or other written statement. This letter must include the date, your name, the other person's name, and the automotive fuel rating of any automotive fuel you will transfer to that person from the date of the letter onwards. Octane rating numbers may be rounded to a whole or half number equal to or less than the number determined by you. This letter of certification will be good until you transfer automotive fuel with a lower automotive fuel rating, except that a letter certifying the fuel rating of biomass-based diesel, biodiesel, biomass-based diesel blend, and/or biodiesel blend will be good only until you transfer those fuels with a different automotive fuel rating, whether the rating is higher or lower. When this happens, you must certify the automotive fuel rating of the new automotive fuel either with a delivery ticket or by sending a new letter of certification.

* * * * *

■ 5. Section 306.10(f) is revised to read as follows:

§ 306.10 Automotive fuel rating posting.

* * * * *

(f) The following examples of automotive fuel rating disclosures for some presently available alternative liquid automotive fuels are meant to serve as illustrations of compliance with this part, but do not limit the Rule's coverage to only the mentioned fuels:

(1) ''Methanol/Minimum ___% Methanol''

(2) ''Ethanol/Minimum ___% Ethanol''

(3) ''M—85/Minimum ___% Methanol''

(4) ''E—85/Minimum ___% Ethanol''

(5) ''LPG/Minimum ___% Propane'' or ''LPG/Minimum ___% Propane and ___% Butane''

(6) ''LNG/Minimum ___% Methane''

(7) ''B–20 Biodiesel Blend/contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent''

(8) ''20% Biomass-Based Diesel Blend/contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent''

(9) ''B–100 Biodiesel/contains 100 percent biodiesel''

(10) ''100% Biomass-Based Diesel/contains 100 percent biomass-based diesel''

■ 6. Section 306.12 is amended as follows:

■ a. Paragraph (a)(2) is revised.

■ b. Paragraphs (a)(4) through (a)(9) are added.

■ c. Paragraph (c)(2) is revised and paragraph (c)(3) is added.

■ d. Graphics are added at the end of the section.

§ 306.12 Labels.

* * * * *

(a) * * *

(2) *For alternative liquid automotive fuel labels (one principal component) other than biodiesel, biomass-based diesel, biodiesel blends, and biomass-based diesel blends.* The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. ''Helvetica black'' type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1 inch (2.54 cm) deep. Spacing of the fuel name is 1/4 inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 1/8 inch (.32 cm) from the bottom of the black band. All type below the black band is centered horizontally, with 1/8 inch (.32 cm) between each line. The bottom line of type is 3/16 inch (.48 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label. If you wish to change the dimensions of this single component label to accommodate a fuel descriptor that is longer than shown in the sample labels, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, D.C. 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

* * * * *

(4) *For biodiesel blends containing more than 5 percent and no greater than 20 percent biodiesel by volume.* (i) The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. ''Helvetica black'' type is used throughout. All type is centered. The band at the top of the label contains either:

(A) The capital letter ''B'' followed immediately by the numerical value representing the volume percentage of biodiesel in the fuel (e. g., ''B–20'') and then by the term ''Biodiesel Blend''; or

(B) The term ''Biodiesel Blend.''

(ii) The band should measure 1 inch (2.54 cm) deep. Spacing of the text in the band is 1/4 inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. Directly underneath the black band, the label shall read ''contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent.'' The script underneath the black band must be centered horizontally, with 1/8 inch (.32 cm) between each line. The bottom line of type is 1/4 inch (.64 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label.

(5) *For biomass-based diesel blends containing more than 5 percent and no greater than 20 percent biomass-based diesel by volume.* (i) The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. ''Helvetica black'' type is used throughout. All type is centered. The band at the top of the label contains either:

(A) The numerical value representing the volume percentage of biomass-based diesel in the fuel followed immediately by the percentage symbol (*e.g.*, ''20%'') and then by the term ''Biomass-Based Diesel Blend''; or

(B) The term ''Biomass-Based Diesel Blend.''

(ii) The band should measure 1 inch (2.54 cm) deep. Spacing of the text in the band is 1/4 inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. Directly underneath the black band, the label shall read ''contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent.'' The script underneath the black band must be centered horizontally, with 1/8 inch (.32 cm) between each line. The bottom line of type is 1/4 inch (.64 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label.

(6) *For biodiesel blends containing more than 20 percent biodiesel by volume.* The requirements are the same as in paragraph (a)(4) of this section, except that the black band at the top of the label shall contain the capital letter

''B'' followed immediately by the numerical value representing the volume percentage of biodiesel in the fuel (*e.g.*, ''B–70'') and then the term ''Biodiesel Blend.'' In addition, the words directly underneath the black band shall read ''contains more than 20 percent biomass-based diesel or biodiesel.''

(7) *For biomass-based diesel blends containing more than 20 percent biomass-based diesel by volume.* The requirements are the same as in paragraph (a)(5) of this section, except that the black band at the top of the label shall contain the numerical value representing the volume percentage of biomass-based diesel in the fuel followed immediately by the percentage symbol (*e.g.*, ''70%'') and then the term ''Biomass-Based Diesel Blend.'' In addition, the words directly underneath the black band shall read ''contains more than 20 percent biomass-based diesel or biodiesel.''

(8) *For 100% biodiesel.* The requirements are the same as in paragraph (a)(4) of this section, except that the black band at the top of the label shall contain the phrase ''B-100 Biodiesel.'' In addition, the words directly underneath the black band shall read ''contains 100 percent biodiesel.''

(9) *For 100% biomass-based diesel.* The requirements are the same as in paragraph (a)(5) of this section, except that the black band at the top of the label shall contain the phrase ''100% Biomass-Based Diesel.'' In addition, the words directly underneath the black band shall read ''contains 100 percent biomass-based diesel.''

* * * * *

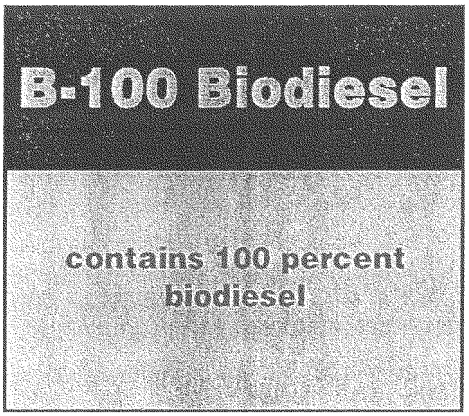
(c) * * * *

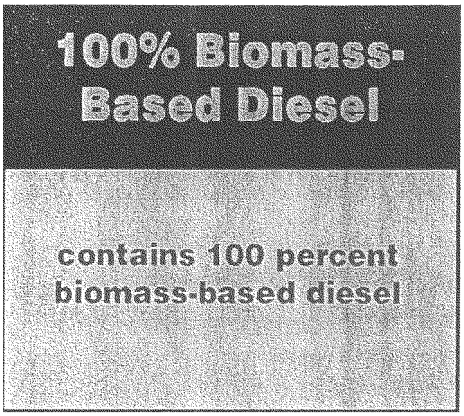
(2) *For alternative liquid automotive fuel labels other than biodiesel and biodiesel blends.* The background color on all the labels is Orange: PMS 1495 or its equivalent. The knock-out type within the black band is Orange: PMS 1495 or its equivalent. All other type is process black. All borders are process black. All colors must be non-fade.

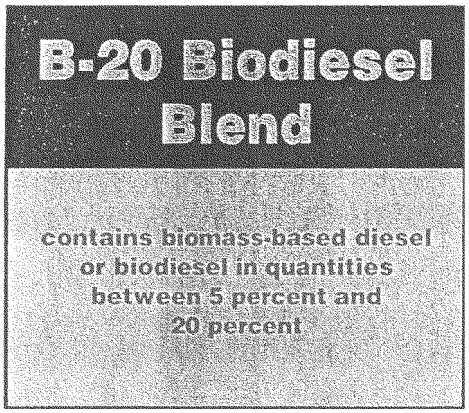
(3) *For biodiesel and biodiesel blends.* The background color on all the labels is Blue: PMS 277 or its equivalent. The knock-out type within the black band is Blue: PMS 277 or its equivalent. All other type is process black. All borders are process black. All colors must be non-fade.

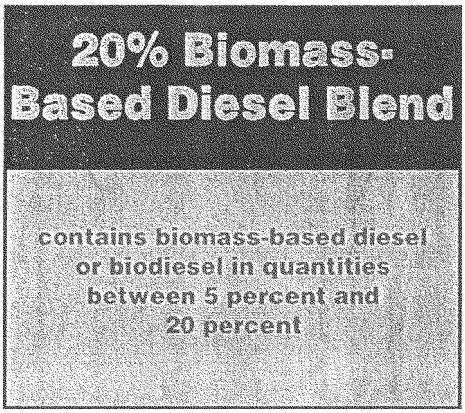
* * * * *

(f)* * *









■ 7. Appendix A to Part 306 is added to read as follows:

APPENDIX A TO PART 306 - SUMMARY OF LABELING REQUIREMENTS FOR BIODIESEL FUELS

(Part 1 of 2)

Fuel type	Blends of 5 percent or less	Blends of more than 5 but not more than 20 percent		
		Header	Text	Color
Biodiesel	No label required	Either "B-XX Biodiesel Blend" or "Biodiesel Blend"	contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent	Blue
Biomass-Based Diesel	No label required	Either "XX% Biomass-Based Diesel Blend" or "Biomass-Based Diesel Blend"	contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent	Orange

APPENDIX A TO PART 306 - SUMMARY OF LABELING REQUIREMENTS FOR BIODIESEL FUELS

(Part 2 of 2)

Fuel type	Blends of more than 20 percent			Pure (100%) Biodiesel or Biomass-Based diesel		
	Header	Text	Color	Header	Text	Color
Biodiesel	B-XX Biodiesel Blend	contains more than 20 percent biomass-based diesel or biodiesel	Blue	B-100 Biodiesel	contains 100 percent biodiesel	Blue
Biomass-Based Diesel	XX% Biomass-Based Diesel Blend	contains more than 20 percent biomass-based diesel or biodiesel	Orange	100% Biomass-Based Diesel	contains 100 percent biomass-based diesel	Orange

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. E8–15245 Filed 7–10–08: 8:45 am]

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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 "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

CORRECTION

In the **List of Public Laws** printed in the *Federal Register* on July 1, 2008, H.R. 2642, Public Law 110–252, was printed incorrectly. It should read as follows:

H.R. 2642/P.L. 110–252

Supplemental Appropriations Act, 2008 (June 30, 2008; 122 Stat. 2323)

Last List July 2, 2008

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