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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Part 390

**[FDMS Docket Number FSIS–2005–0028]**

**RIN 0583–AD10**

## Availability of Lists of Retail Consignees During Meat or Poultry Product Recalls

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to provide that the Agency will make available to the public the names and locations of the retail consignees of meat and poultry products that have been recalled by a federally-inspected meat or poultry establishment if the recalled product has been distributed to the retail level. This rule will apply only where there is a reasonable probability that the use of the recalled product will cause serious adverse health consequences or death (Class I recalls).

FSIS will routinely post this information on its Web site as it compiles the information during its recall verification activities. FSIS is taking this action to provide an additional mechanism for prompting consumers to examine products stored in their refrigerator, freezer, or cupboard when there is a reasonable probability that the product will cause adverse health consequences. The retail consignee information will complement the product identification information that FSIS already makes available and will provide additional opportunities for local media outlets and State and local health officials to transmit more targeted information about the recall to consumers.

**EFFECTIVE DATE:** August 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** Philip Derfler, Assistant Administrator, Office of Policy and Program Development, Room 350-E, Jamie L. Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250; Telephone (202) 720–2709, Fax (202) 720–2025.

**SUPPLEMENTARY INFORMATION:**

### I. Background

FSIS is responsible for ensuring that meat and poultry products are safe, wholesome, and accurately labeled. FSIS enforces the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). These two statutes require Federal inspection and provide for Federal regulation of meat and poultry products prepared for distribution in commerce for use as human food. When there is reason to believe that meat or poultry products in commerce are adulterated or misbranded, FSIS requests that the establishment that introduced the products into commerce recall them. If the establishment does not agree to recall the products, FSIS has the authority to detain and seize the products.

When an establishment recalls products, it is responsible for promptly notifying each of its affected consignees about the recall. In general, the recalling establishment conveys the following information to its affected consignees:

- That the product in question is subject to a recall;
- That further distribution or use of any remaining product should cease immediately;
- Where applicable and required as part of the recall strategy, that the direct consignee should in turn notify its consignees that received the product about the recall;
- Instructions regarding what to do with the product; and
- Contact information for questions (e.g., a name and toll-free number).

Affected consignees carry out instructions provided to them by the recalling establishment and, when necessary, extend the recall to their consignees.

FSIS also widely disseminates recall information. For Class I or II recalls, defined in FSIS Directive 8080.1, Revision 4, Recall of Meat and Poultry Products, dated 5/24/04[1], as those situations where there is a reasonable (Class I) or remote (Class II) probability that the use of the product will cause serious adverse health consequences, FSIS typically issues a press release and distributes recall information to wire services and media outlets in the areas where the product was distributed. FSIS also alerts Congressional delegations and public health partners, such as the Association of Food and Drug Officials, and State departments of health and agriculture, concerning these recalls and posts the recall information on the FSIS Web site. For Class III recalls, defined as those situations where the use of the product will not cause adverse health consequences, FSIS usually does not issue a press release (except in cases of egregious economic adulteration). It distributes a Recall Notification Report (RNR) to the appropriate Federal, State, and local public health and food inspection agencies and posts it on FSIS' Web site.

Through press releases and RNRs, FSIS provides the public with pertinent information about the recalled products. To help consumers identify the product, FSIS provides a description of the food being recalled; any identifying codes, including lot numbers, when available; the reason for the recall; the name and official number of the producing establishment; the types of establishments and facilities to which the recall extends; the availability of product at the retail level; FSIS' classification of the recall; pictures of the product or label, when available; and the appropriate contact persons for FSIS and the recalling company. FSIS lists those States to which recalled product was shipped if fewer than 13 States were involved in the recall. If the recall extends to 13 or more States, it is considered a nationwide recall. To date, FSIS has not publicized the names or locations of the retail consignees that received recalled meat or poultry products, although FSIS has on occasion, identified a store or chain if it was the sole retail outlet for the recalled product.

During the recall process, FSIS obtains from the recalling establishment the names of the known consignees of the recalled product (based on its

[1] *http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/8080.1Rev4.pdf*

records). These consignees may include distributors, warehouses, and retailers.[2] FSIS uses this information to contact all of recalling establishment's affected consignees in order to verify that the establishment has notified all of them of the recall, and that the consignees have removed the recalled products from the market and disposed of them as directed by the recalling establishment.

FSIS also compiles lists of all subsequent consignees to which the recalling establishment's direct consignees distributed the recalled product by contacting those consignees to ensure that they were also notified of the recall. The Agency traces the recalled product forward to the retail level. When there is concern that the original distribution information is not accurate or complete, e.g., a generic list of chain stores is missing a few known stores, FSIS will prepare a list identifying the consignees or distributors that may have received the recalled product but were not included in the distribution information provided by the firm.

Through this process, as well as that of verifying the effectiveness of the recalling establishment in conducting the recall, FSIS develops a list of consignees, down to and including the retail level, that have, or have had, the recalled products in their possession. FSIS begins its process of verifying the effectiveness of the recalling establishment in conducting the recall, which is described in FSIS Directive 8080.1, as soon as possible within three working days of the initiation of a Class I recall and substantially completes it within 10 working days of the initiation of the recall.

On March 7, 2006, FSIS published a proposed rule in the **Federal Register** (71 FR 11326) in which the Agency proposed to post on its Web site the names and locations of the retail consignees of recalled meat and poultry products. FSIS proposed to post this information as the Agency obtained it during its recall verification activities described above. The proposal was developed by FSIS after its evaluation of requests from consumer groups and some State officials, who advocated the public release of information on where recalled meat and poultry products have been shipped or distributed. The State officials requested that this information be provided to them without the limitations imposed by FSIS' regulations,[3] believing that they would be better able to protect the public health with this information. Similarly, some consumer groups asserted that the public could use this information to identify more easily and effectively the product being recalled. These State officials and consumer groups believe that making the retail distribution information available will materially improve the effectiveness of recalls.

FSIS solicited comments on the proposal for thirty days. In addition, on April 24, 2006, FSIS held a public meeting to solicit comments on the proposal. A transcript of that meeting can be found at *http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/2006–0009_Transcript.pdf*. Following requests made during the public meeting and written requests submitted during the comment period, FSIS reopened the comment period on May 10, 2007, and solicited comments for an additional 30 days. (71 FR 27211).

In response to the proposed rule and public meeting, FSIS received almost 6,000 comments from consumers, consumer advocacy organizations, industry representatives, Federal and State agencies, and professional organizations. This number includes several comments made by individuals at the public meeting and taken from the transcript of that event. There was strong support for the rule from consumers, consumer advocacy organizations, Federal and State agencies, and professional organizations. Collectively, these individuals and groups filed 26 comments supporting the rule. The remainder of the comments supporting the rule were form letters. FSIS received nine comments from industry representatives opposed to the proposed rule. These comments expressed generally similar objections to the rule.

After carefully evaluating the comments, FSIS has decided to adopt the proposed rule with modifications. Specifically, the Agency has decided to limit the application of this final rule to Class I recalls, that is, recalls where the Agency has determined that there is a reasonable probability that the use of the product will cause serious adverse health consequences or death. FSIS proposed applying the rule to all classes of recalls. However, after evaluating the comments, including those that suggested that it is not necessary to make publicly available retail consignee lists in situations where food safety concerns are minimal, FSIS has concluded that it is prudent to modify the rule to apply only to those recalls involving products where there is a reasonable probability that the use of the recalled product will cause serious adverse health consequences or death.

In addition, this final rule makes clear that FSIS will make available the names and locations of all retail consignees of recalled meat or poultry products that the Agency compiles in connection with a Class I recall. The list will not be limited to those consignees that are actually the subject of FSIS recall effectiveness checks, which was how some commenters interpreted the proposed rule. Finally, FSIS simplified and removed unnecessary text from the codified language.

## II. Response to Comments

Some commenters asserted that knowing the names of retail consignees would help members of the public make better informed decisions in responding to recalls. Other commenters stated that providing retailer names and locations would enhance the usefulness to consumers of the information that FSIS already provides, such as the States in which product was distributed, because consumers would be more likely to check the meat and poultry products in their possession if they regularly shop at a store that sold the product involved in a recall. Therefore, these commenters believed that the overall effectiveness of recalls would be increased. Some commenters stated that the information currently provided by FSIS may not be sufficient because consumers may not know where to look for product codes or establishment numbers; others stated that this rule change is a common sense solution that will help consumers to identify recalled products if they have them in their possession and thus better protect themselves from adulterated or misbranded products.

The Agency believes that its current recall system has been effective, but when there is a reasonable probability that the product will cause adverse consequences, it would be useful to provide an additional mechanism for prompting consumers to examine products stored in their refrigerator, freezer, or cupboard. The retail consignee information will complement the product identification information that FSIS already makes available and will provide additional opportunities for local media outlets and State and local health officials to transmit more targeted information about the recall to consumers.

[2] This final rule applies to FSIS-regulated meat and poultry products only.

[3] 9 CFR 390.9(a)(1) requires a written statement establishing the State's authority to protect confidential distribution lists from public disclosure and a written commitment not to disclose any information provided by FSIS without the written permission of the submitter of the information or the written confirmation by FSIS that the information no longer has confidential status.

If the name of a store where a consumer shops appears on the posted list of consignees, it will very likely prompt the consumer to use product-specific information to determine whether recalled product is one he or she may have purchased and stored. If the consumer in fact has the recalled product, he or she can take appropriate action to either dispose of the product or return it to the retailer and not consume it.

As noted by the commenters who supported this rule change, the retail consignee information should be particularly helpful in recalls involving products where the product identification information is limited, such as non-branded product and meat and poultry products that are packaged at the retail level. Products packaged at the retail store usually do not bear the establishment number of the official establishment that is recalling the product.

Some commenters favoring the rule suggested that FSIS list the retail consignees in the press release because some people may not own a computer or know how to find the information on the FSIS Web site.

In most cases, FSIS will not have information on retail consignees available at the time the press release is issued, which generally occurs before the recall verification activities begin. Of course, FSIS will continue to provide in its press release the same important information about the recalled products currently made available, including a description of the food being recalled; any identifying codes, including lot numbers, when available; the name and official number of the producing establishment; the types of establishments and facilities to which the recall extends; the availability of product at the retail level; FSIS' classification of the recall; pictures of the product or label, when available; and the appropriate contact persons for FSIS and the recalling company in the press release.

FSIS intends to release the information regarding retail consignees of products subject to a Class I recall as soon as possible during the course of the recall. Generally, for Class I recalls, this information should be available within three to 10 working days.

One commenter generally concurred with the proposal but suggested that FSIS clarify the rule to explain that the posted information is incomplete because only those retail locations selected by the Agency in conducting recall effectiveness checks would be identified.

The commenter misunderstood the Agency's proposal. FSIS intends to post the names and locations of all known retail consignees identified as having received meat or poultry products subject to a Class I recall, irrespective of whether the Agency conducted a recall effectiveness check at that location. FSIS has modified 9 CFR 390.10 to make this clear.

Several commenters supported the proposed rule but stated that it did not go far enough. In addition to identifying the retail consignees, they believe that FSIS should also make available the names of intermediate consignees, including hotels, restaurants, food service institutions, and intermediate distributors. Intermediate consignees may receive product directly from the manufacturer or from a distributor at the wholesale level. Intermediate consignees prepare their products for immediate, on-site consumption, not for delayed consumer preparation at home.

Several commenters supporting the rule believe that limiting distribution information to retail consignees will create an unnecessary hurdle for State or local public health agencies to overcome to obtain timely distribution information. One commenter stated that providing this information for food service establishments would ''provide consumers greater protection from the risks associated with tainted meat or poultry,'' while another suggested that restaurants be included so that individuals are fully aware of the scope of recalls.

FSIS is making no changes based on these comments, which are outside the scope of this rulemaking. The Agency is taking this action to provide an additional mechanism for prompting consumers to examine products stored in their refrigerators, freezers, or cupboards when there is a reasonable probability that the product will cause adverse health consequences so that they can take appropriate action to either dispose of the product or return it to the retail store at which it was purchased. Making available the names of intermediate consignees will not advance the purposes of this rulemaking because there is no reason to believe that this information will help consumers to determine that they have the recalled products in their possession.

Further, FSIS does not agree that publicly identifying food service establishments would provide consumers greater protection from the risks associated with tainted meat or poultry. To ensure that Class I recalled products held by intermediate consignees do not reach consumers, intermediate consignees that have recalled products in their possession are obligated to segregate them from all other non-recalled products and dispose of them as directed by the recalling establishment. This is also true of recalled products held by retail consignees. In addition, FSIS already has in place a process to share distribution information, including the names and addresses of intermediate consignees, with State and local public health agencies to ensure that intermediate consignees have disposed of the recalled product.[4]

Several commenters opposed to the rule stated that adoption of the proposal would hamper the currently effective recall procedures and adversely affect public health. These commenters stated that providing consumers with the names of retail consignees will hamper recall efficiency because this information may be inaccurate, leading to increased returns of product that has not been recalled. One commenter stated that the lists of retail consignees will be untimely and may lead to consumer apathy and failure to heed recall notices. A few commenters stated that consumers have all the information they need to identify recalled product, and that they do not require retail store information to identify implicated product.

FSIS disagrees that publishing the names of retail consignees will diminish the effectiveness of the Agency's recall procedures, hamper identification of recalled product, or result in the release of untimely or inaccurate information. As they currently do, the FSIS verification procedures will ensure that any inaccuracies in the retail consignee list are identified and corrected quickly. FSIS has determined that starting to post the names and locations of retail consignees within three working days of the initiation of a Class I recall will make its lists timely. FSIS does not believe consumers will ignore the product specific information that the Agency currently provides to assist them in accurately identifying the recalled product. Rather, retail consignee information will complement the product identification information that FSIS already makes available and will provide additional opportunities for local media outlets and State and local health officials to transmit more targeted information about the recall to consumers.

Further, FSIS notes that in some recalls, product specific information is limited. Some products do not bear product codes or establishment

[4] *See* 9 CFR 390.9.

numbers. They are packaged at the retail level and thus have limited identification. In 2007, almost 9 percent of the recalled meat and poultry products sold at retail stores were non-branded. Providing the names and locations of retail consignees, in conjunction with the other information provided, in these cases, will be particularly important for prompt identification.

In addition, for a variety of reasons, consumers may remove product from the original packaging and store it in containers that lack the identification information. In these situations, publishing only the establishment number, product codes, and States where the product was distributed is of little use to the consumer. However, identifying the retail store at which the product was available for sale by name and location provides consumers with additional information that will trigger efforts on their part to determine whether they purchased the recalled product.

FSIS is providing this information on the retail consignees of a Class I recalled product so that consumers can use it in conjunction with the information the Agency already provides to identify the recalled products and to act appropriately with respect to those that have actually been recalled. Returning recalled products to the store at which they were purchased is just one option consumers have. Consumers may also dispose of such products at home. The objective of the rule is to provide an additional mechanism for prompting consumers to examine products stored in their refrigerator, freezer, or cupboard when there is a reasonable probability that the product will cause adverse health consequences. The retail consignee information will complement the product identification information that FSIS already makes available and will provide additional opportunities for local media outlets and State and local health officials to transmit more targeted information about the recall to consumers.

In response to commenters and to ensure that consumers do not misunderstand the retail consignee list, FSIS will provide the following explanatory statement that will accompany the list that will make it clear that the list is still under development:

> FSIS has reason to believe that the following retail locations received [describe meat or poultry products that are subject of recall] that has been recalled by [name of company]. This list may be incomplete. Please use the product-specific identification information, which is available at [insert link to specific recall] to check meat or poultry products in your possession to see if they have been recalled.
>
> FSIS continues its investigation in conjunction with this recall and will update this list, as appropriate.

Significantly, the statement gives the Agency an opportunity to urge people to consult the identifying information about the product.

Some of the commenters opposed the rule because they believed that the provision of incomplete lists of retailers by FSIS could weaken public health protection by providing consumers a false sense of security. These commenters felt that incomplete lists, even if accompanied by an appropriate explanation, would not be helpful. Consumers might assume that product from unlisted stores was safe to eat, and they would not check the product information provided in the Agency's press release in addition to the store information. Other commenters believed that incomplete lists would force consumers to return repeatedly to FSIS' Web site. An explanatory statement, in itself, they stated, indicates that consumers should not place confidence in the list when deciding what to do about recalled products. On the other hand, commenters favoring the proposal said that some information is better then none, and that FSIS should post the retail consignee information, even if incomplete, along with an appropriate explanation stating that, for example, the posting consists of retail consignees known to date.

FSIS has concluded that the retail consignee information will effectively complement the product information currently made available and will be helpful to consumers in responding to the recall. While there is always some slight potential for misinterpretation of the retail consignee information, FSIS has also concluded that an appropriate explanatory statement will minimize any such potential. As discussed previously, FSIS will post an explanatory statement on its Web site, along with the retail consignee information.

The Agency also thinks that local media outlets, including television stations and newspapers, will publicize the names and locations of new retail consignees as they are posted on FSIS' Web site. FSIS will also notify relevant State officials if retail stores in their states are identified as having received recalled product.

One commenter suggested that, as an alternative to this rulemaking, the Agency might consider providing additional consumer education materials that would encourage consumers to focus on available product identification information.

While FSIS agrees that improvements in consumer education might encourage consumers to focus on available product identification information, improving consumer education alone will not achieve the goals of this rule. As stated previously, the retail consignee information will complement the product identification information that FSIS already makes available and will provide additional opportunities for local media outlets and State and local health officials to transmit more targeted information about the recall to consumers. FSIS will certainly explore additional ways to improve communication and consumer education concerning recalls and hopes to work with industry, consumer groups, and other stakeholders to achieve this end.

FSIS' goal in a recall is to provide the important information that allows consumers to identify recalled product and to determine whether that product is in their possession as effectively and quickly as possible. FSIS has already taken several steps to assist consumers in identifying recalled product. FSIS agrees with the commenter, for example, that information about the frequent availability of photos of the recalled product labels on the FSIS Web site should be promoted. That is why each Agency press release or other information on the FSIS Web site already includes photographs of the recalled products' labels, if available. A fact sheet on recalls, which can be found on the Agency's Web site at *http://www.fsis.usda.gov/Fact_Sheets/FSIS_Food_Recalls/index.asp*, also informs readers that FSIS includes pictures of the recalled product as part of the online recall press release. Each press release or RNR also informs consumers that the label bears the establishment number inside the USDA seal of inspection and provides the timeframe during which the recalled product was produced, another piece of information that the commenter believes consumers would find useful.

Some industry commenters opposing the proposal stated that retail consignee information is protected from mandatory public disclosure by exemption 4 of the FOIA because it is confidential business or commercial information, and the potential value of this information would not outweigh the competitive harm that would be caused by its release. They pointed out that FSIS has traditionally treated a

company's distribution list as confidential business information.[5]

The FOIA generally requires that agencies disclose records unless the records fall within one of the FOIA exemptions from disclosure, such as the exemption for trade secrets and commercial or financial information found in 5 U.S.C. 552(b)(4). In this situation, an agency must analyze whether the information constitutes privileged or confidential commercial information within the meaning of 5 U.S.C. 552(b)(4).

FSIS, however, in considering the application of Exemption 4, has determined that the names and locations of retail consignees of recalled meat and poultry products compiled by the Agency do not constitute confidential commercial information because the disclosure of this information will not impair the Agency's ability to obtain necessary information in the future and will not cause substantial harm to the competitive position of any business.

As noted in the proposed rule in this proceeding, FSIS is not releasing a firm's distribution list to the public. The Agency is also not posting the names and locations of any of the intermediate consignees that received recalled product or that routinely receive product from that firm. Rather, FSIS is making public a list that FSIS personnel compile of only the retail consignees that received recalled product. This would be true even in those rare instances in which the list of retail consignees includes all of the recalling establishment's customers.

Because of the complex food distribution system in the United States, which can include multiple wholesalers or other intermediate distributors, it is quite possible, and perhaps likely, that the retail consignees that ultimately sell the product to the consumer are not customers of the federal establishment that produced the product. Therefore, only very rarely, if ever, will the names and locations of retail consignees expose a recalling establishment's entire customer or distribution list. Even in such circumstances, the establishment's customer list will not be identified as such. As a result, members of the public and industry will not be able to determine what significance the list has for the recalling establishment.

The disclosure of the names and locations of retail consignees of recalled meat and poultry products compiled by the Agency is not likely to impair FSIS's ability to obtain the names of consignees that have received recalled product. Under the FMIA, PPIA, and the implementing regulations that FSIS has adopted under those Acts, persons engaged in the business of buying, selling, or transporting meat and poultry products are required to give representatives of FSIS access to their records.[6] Among the records that are required to be kept are those that provide a description of the articles sold, including the net weight of the articles, the name and address of the buyer of the articles sold by the person, and the name and address of the consignee or receiver, if other than the buyer.[7] Because retail consignees that have received recalled meat and poultry products are engaged in the business of buying (and selling) meat and poultry products, they must keep various required records associated with those products, and they must make them available to FSIS. As such, FSIS's disclosure of those retail consignee names is not likely to impair the Agency's ability to obtain the names of such consignees in the future.

FSIS has also determined that disclosing the names and locations of retail consignees that have received meat and poultry products that are the subject of a Class I recall will not cause substantial harm to any business. Companies have a general, affirmative interest in letting consumers know where product is available for purchase, and they make this information known in various ways, including company Web sites and advertising. Thus, where the product that is the subject of a Class I recall is branded, the company will suffer no substantial harm from the release of retail consignee names and locations.

Even when unbranded product is the subject of a Class I recall, there will not be substantial competitive harm from release of the consignee list. First, the fact that the company that produced the unbranded product is experiencing a recall is known. It is disclosed by the Agency's press release. Second, in this situation, the name of a supplier of unbranded product (e.g., ground beef) is of minimal to no commercial value. Furthermore, information as to the type of product sold in the store is readily available from its advertising or from visiting the store.

Finally, there is no reason to believe that the retailer would suffer substantial harm to its competitive position from the release of its name. Many retailers post notices of recalls in their stores, and some take affirmative steps to notify consumers of recalls by, for example, contacting holders of customer loyalty cards who purchased the product. This behavior is simply inconsistent with a claim of harm.

For all of these reasons, the Agency has determined that the retail consignee information does not constitute confidential commercial information.

FSIS does not intend to change how it compiles its lists of the consignees to whom recalled products have been distributed as a result of this rule, nor does it anticipate that recalling establishments will do so either. FSIS routinely compiles consignee information when a recall occurs, and it expects that recalling firms will continue to make available to the Agency information on the firms to which it has shipped the recalled products, consistent with regulatory and statutory requirements.

Some commenters stated that the proposal may force firms recalling product out of business because those firms' competitors will take their retail customers during a vulnerable time period. These commenters also stated that the rule will damage the relationship between processors and their customers, allowing competitors to take advantage of the situation.

FSIS disagrees. The situation described by the commenters already arises whenever there is a meat or poultry recall. When there is a recall, retail consignees seek to replace the recalled product as quickly as possible. To do so, they may turn to their regular supplier's competitor for a similar product, or they may ask their supplier to replace the recalled product. Whether the processor-retail consignee relationship is impaired by a recall is a function of the nature, scope, and circumstances of the recall, not of the disclosure of the consignee list.

FSIS recognizes that a retail consignee may be solicited by a new supplier attempting to use a recall as a basis for gaining new customers, and that the supplier may identify the consignee from the posted list. No evidence has been presented in this rulemaking proceeding, however, that the availability of a list of recall consignees will significantly enhance the effect of those efforts. In fact, through the years, many retail stores have made clear that they sold product that was the subject of a recall through signs, placards, and contacts with holders of bonus or club cards. Through these steps, these retail stores have made clear to the public that they carried the recalled product and thus they made themselves readily

[5] *See* ''Sharing Recall Distribution Lists With State and Other Federal Government Agencies,'' (67 FR 20009; April 24, 2002).

[6] 21 U.S.C. 642(a), 460(b) and 9 CFR 320.1(a), 320.4, 381.175(a), 381.178

[7] 9 CFR 320.1(b), 381.175(b).

identifiable to competitors of the recalling firm. Accordingly, the Agency has concluded that there is no basis upon which to conclude that any substantial harm will result.

A few commenters expressed concern that public interest groups may use the retail consignee lists to encourage their members to harass or boycott businesses involved in a recall and not to improve consumer awareness of recalls. These commenters expressed concern that such use could result in damage to the reputation of an establishment or its customers.

As discussed above, many retail stores have notified their customers and the public when they have sold recalled meat and poultry products. Nonetheless, the commenters raising this concern did not cite specific occurrences of retailer harassment or boycotts due to the self-release of retailer names, nor is the Agency aware of any situation where this information has been misused in the way suggested by the commenters.

One commenter suggested that distributing the names and locations of retail consignees to the public is not necessary for the proper performance of the functions of the Agency and suggested that the proposed rule was inconsistent with the Paperwork Reduction Act.

FSIS disagrees. This rule imposes no new information collection requirements on the regulated industry. Under this final rule, FSIS will continue to compile the names and locations of retail consignees that have received recalled meat and poultry products. The only change is that FSIS will be making this list public.

As previously noted, FSIS already requires federally-inspected establishments and companies that engage in the business of buying or selling meat or poultry products to maintain records that will fully and correctly disclose all transactions involved in their businesses subject to the FMIA and PPIA.[8] These entities must also allow representatives of the Secretary of Agriculture access to their places of business so that they can examine and copy all the records.[9]

FSIS routinely compiles information contained in these records in carrying out its existing recall procedures.[10] FSIS is not requiring companies to submit any new or different information to the Agency as a result of this rule. The burden remains on FSIS to compile and distribute the information.

Furthermore, sections 677 of the FMIA and 467d of the PPIA provide that section 9 of the Federal Trade Commission Act (FTCA) (15 U.S.C. 49) is applicable to the administration and enforcement of the FMIA and the PPIA. Under Section 9, duly authorized agents of the Secretary have, at all reasonable times, access to, for the purpose of examination, and the right to copy, any documentary evidence of any person, partnership, or corporation being investigated or proceeded against.

A few commenters stated that the proposal is not in conformity with the Data Quality Act (DQA) because the data will not be compiled by FSIS in a timely fashion and is not of sufficient quality because it could be inaccurate.

FSIS disagrees with these commenters and has determined that this rule fully complies with applicable requirements of the DQA and relevant guidelines issued thereunder. Under this rule, accurate, objective information will be disseminated to the public that will be useful in helping consumers to determine if they possess recalled meat and poultry products.

USDA's Information Quality Activities Regulatory Guidelines require that the information disseminated by USDA agencies and offices in conjunction with their rulemaking activities be reasonably reliable and reasonably timely. From direct contacts with the producer and distributors of the recalled product, FSIS compiles a list of retail consignees that have received recalled meat and poultry products, generally within 10 days of the initiation of the recall. It is from these contacts that the Agency will compile, and then post on its Web site, the listing of retail consignees that have received meat and poultry products subject to a Class I recall. Because the contacts with the producer and distributors are direct, FSIS has determined that the lists of retail consignees are reliable. FSIS is committed to posting the information in a timely fashion.

*Executive Order 12866 and Regulatory Flexibility Act*

This rule was reviewed by the Office of Management and Budget under Executive Order 12866 and was determined to be significant.

FSIS, after reviewing public comments to the proposed rule, concluded that further analysis of the costs and benefits of the rule, and a regulatory flexibility analysis was warranted. The Agency analyzed the potential impact of the final rule on small meat and poultry establishments and small retail firms as part of this Final Regulatory Flexibility Analysis. The Final Regulatory Flexibility Analysis data is included in this final regulatory impact analysis (FRIA) and is presented below.

This FRIA differs from the preliminary regulatory impact analysis (PRIA) that was published for the proposed rule. First, the FRIA now focuses only on Class I recalls. Even though this does not significantly affect the impact analysis, FSIS has concluded that it is prudent to modify the rule to apply only to those recalls involving products that present the greatest risk to public health. Second, more of the analytic information is provided so that the public can better understand the number of recalling establishments and retailers that are affected.

A. Need for the Rule

FSIS is taking this action to provide an additional mechanism for prompting consumers to examine products stored in their refrigerator, freezer, or cupboard when there is reasonable probability that the product will cause adverse health consequences. The retail consignee information will complement the product identification information that FSIS already makes available and may provide additional opportunities for local media outlets and State and local health officials to transmit more targeted information about the recall to consumers.

B. Baseline

The baseline provides a set of conditions against which the costs and benefits of the rule can be measured. It is important to note that the baseline for this rulemaking takes into account that, in some cases, Class I recalled products have not reached the retail level at the time the recall is initiated.

1. Recall Procedures

Once an establishment agrees to recall adulterated or misbranded meat or poultry products, FSIS widely disseminates information about the recalled product to the public. For Class I recalls, FSIS issues a press release to media outlets. The press release lists the names of the states to which recalled product was shipped, if less than 13 states are affected. If the recall extends to 13 or more states, it is considered to be a nationwide recall, and FSIS does not list the names of the states to which the recalled product was shipped. FSIS sends recall information to wire services and media services in the areas where the product was distributed. In addition, FSIS sends recall information to several

[8] 21 U.S.C. 642(a), 460(b) and 9 CFR 320.1, 381.175.

[9] 21 U.S.C. 642(a), 460(b) and 9 CFR 320.4, 381.178.

[10] OMB control number 0583–0015.

media and constituent list-servers. The Agency also informs or works with affected State and local public health officials to identify recalled products. These State and local public health officials then further publicize the information about the recalled products.

The only change in the recall process brought about by this rule is that FSIS will make available to the public the names and locations of retail consignees of meat and poultry products subject to a Class I recall, as they are identified by FSIS inspection program personnel.

2. Total Number and Size of Recalls

The total number of Class I recalls and the amount of product for all classes recalled for 2000–2007 are shown in Table 1. The last column shows that the majority of recalls are Class I recalls (ranging from 63.5% to 99.9% of total recalled products), although the number and the volume of Class 1 recalls varied from year to year.

TABLE 1.—NUMBER OF CLASS I RECALLS AND VOLUME OF CLASS I AND TOTAL RECALLS (IN POUNDS)

| Year of recalls | Number of class I recalls | Volume class I recalls | Total volume of all classes (I, II, and III) recalls | Class I as a percent of total recalls |
|---|---|---|---|---|
| 2000 | 65 | 21,099,672 | 22,743,092 | 92.8 |
| 2001 | 61 | 21,230,301 | 33,410,564 | 63.5 |
| 2002 | 81 | 56,415,558 | 58,911,071 | 95.8 |
| 2003 | 45 | 2,288,040 | 3,503,689 | 67.0 |
| 2004 | 40 | 2,454,558 | 2,882,018 | 85.4 |
| 2005 | 48 | 5,940,089 | 6,446,149 | 92.5 |
| 2006 | 26 | 4,785,669 | 5,947,933 | 80.5 |
| 2007 | 50 | 142,885,981 | 143,063,822 | 99.9 |

Source: FSIS, Recall Management Staff, March 2008. Historical recall information is available at: *www.fsis.usda.gov*.

3. Amount of Product Recovered

While the majority of recalls in the past eight years (2000–2007) were Class I recalls, the recovery rate of Class I recalled products was relatively low in six out of the eight years. The average annual percentage of product recovered from a Class I recall was only 27.7 percent (Table 2).

TABLE 2.—NUMBER OF FOOD PRODUCT CLASS I RECALLS: AMOUNT RECALLED, AND RECOVERED

| Year | Volume of recalls (in million lbs.) | Volume recovered (in million lbs.) | Percentage recovered |
|---|---|---|---|
| 2000 | 21.1 | 3.37 | 16.0 |
| 2001 | 21.23 | 4.46 | 21.0 |
| 2002 | 56.42 | 9.20 | 16.3 |
| 2003 | 2.29 | 0.49 | 20.6 |
| 2004 | 2.45 | 1.43 | 58.4 |
| 2005 | 5.94 | 4.46 | 74.4 |
| 2006 | 4.79 | 0.66 | 13.8 |
| 2007 | 142.89 | 1.65 | 1.2 |

Source: FSIS, Recall Management Staff, March 2008.

4. Number of Retail Consignees

Retail consignees are defined as establishments that receive product directly from a federally-inspected meat or poultry establishment or through an intermediary, i.e., distributor or wholesaler, also called an intermediate consignee. A retail consignee sells product received in this manner to the final consumer. Distributors or institutions that do not sell product directly to the general public are not retail consignees. Restaurants are not retail consignees.

The number and type of retail consignees potentially affected by the final rule are shown in Table 3. This is a total of about 73,215 retail firms. The retail trade sector comprises facilities engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise (U.S. Census Bureau, 2002 *Economic Census: Retail Trade*). Retailing is the final step in the distribution of merchandise.

TABLE 3.—RETAIL FIRMS HANDLING PRODUCT PRIMARILY SUBJECT TO RECALL

| NAICS code | Kind of business | Number of firms [1] | Number of small firms [2] |
|---|---|---|---|
| 44511 | Supermarket and other grocery (except convenience) stores | 42,318 | 34,638 |
| 44512 | Convenience stores | 25,527 | 25,410 |
| 44521 | Meat markets | 5,354 | 5,024 |
| 45291 | Warehouses and Supercenters | 16 | 3 |
| Total [3] | | 73,215 | 65,075 |

[1] Source: U.S. Census Bureau, 2002 *Economic Census: Retail Trade*. Establishment and Firm Size EC02–4455–52. November 2005.
[2] Small Business Administration, Office of Advocacy. Comment to FSIS Docket Clerk, May 4, 2006 regarding Docket No. 04–006P. Firms comprised of supermarkets, convenience stores, and warehouse clubs are defined as small if annual sales are less than $25 million; meat markets are small if sales are less that $6.5 million.
[3] This is an undercount of the number of retail firms that would be subject to recalls because there are firms that are primarily fueling stations or drug stores that sell relatively small quantities of milk, bread, convenience foods, and packaged lunch meat that are not counted by the U.S. Census Bureau.

The kinds of businesses identified as potentially subject to the final regulation are:

- 44511—Supermarkets and other grocery (except convenience) stores. These facilities sell a general line of food.
- 44512—Convenience stores. This industry comprises facilities known as convenience stores or food marts (except those with fuel pumps) primarily engaged in retailing a limited line of goods that generally includes milk, bread, convenience foods, soda, and snacks.
- 445210—Meat markets. These facilities are engaged in retailing fresh, frozen, or cured meats.
- 452910—Warehouse clubs and supercenters. This industry is comprised of facilities known as warehouse clubs, superstores, or supercenters primarily engaged in retailing a general line of groceries in combination with general lines of new merchandise, such as apparel, furniture, and appliances.
- In addition, there are a number of retail firms that would be subject to recalls because, while these firms primarily sell fuel or drug stores items, a small fraction of their sales represent milk, bread, convenience foods, and packaged lunch meat.

Most, if not all supermarkets, convenience stores, meat markets, and warehouse clubs sell product from federally-inspected establishments and derive a significant share of revenue from those products. While fueling stations and drug stores sell product from federally-inspected establishments, they derive an insignificant share of revenue from those products. If Class I recalled products from federally-inspected establishments were to be sold by these fueling stations and drug stores, then their names and locations would be made publicly available by FSIS during the relevant recall investigation since they would be considered retail consignees that have received Class I recalled meat and poultry products.

*C. Description of Alternatives*

FSIS considered several options, including amending its regulations to include local health departments as entities that could receive recall distribution lists or making the lists available only in response to Freedom of Information requests and to State agencies with agreements under 9 CFR 390.9. In addition, FSIS considered further education of consumers, but FSIS already has education programs and information on its Web site to inform consumers about how to identify recalled meat and poultry products. FSIS also considered making available to the public the names and locations of retail consignees of both Class I and Class II recalls. However, FSIS chose to limit the requirements of the final rule to Class I meat and poultry recalls because Class I recalls are reasonably likely to affect the public health, while Class II recalls are only remotely likely to affect the public health. Furthermore, most (64 to 99.9 percent) of the recalled products were Class I recalls (see Table 1). FSIS has adopted an approach that will alert individual consumers, State and local authorities, and other Federal agencies of the names of retail stores in which the Class I recalled products may be found in as expeditious a manner as possible.

*D. Analysis of Cost*

For this rule, the cost impacts for meat and poultry processors and retail consignees are expected to be minimal.

1. Impact on Meat and Poultry Processors

This action will not impose additional significant monetary cost on processing establishments conducting a Class I recall. FSIS acknowledges that some products might be incorrectly returned because they are similar to what is being recalled and are sold by the listed retailer. However, the Agency is aware that consumers already return products incorrectly (i.e., products not subject to recall) without knowing the retailers associated with the recalled products. Whether the incorrectly returned products would increase or decrease with the implementation of this rule is an empirical question. The Agency does anticipate that the volume of correctly returned products will increase as this rule is intended to enhance the effectiveness of recalls.

2. Impacts on Retail Outlets

The effects of this rule on the product and financial markets for retail facilities that receive Class I recalled product are likely to be even less pronounced than those for the processing firms that produce the adulterated or mislabeled product. Already, some retail facilities, such as Wegman's, notify customers about Class I recalled meat and poultry products. Some costs may accrue for retail consignees as a result of increased product handling and disposal. As mentioned before, it is not certain whether the incorrectly returned products and the associated costs will increase or decrease as a result of this rule.

*E. Analysis of Benefits*

If consumers use retail consignee information and are prompted to identify and return Class I recalled meat and poultry products, the recall process will be more timely and effective. Nonetheless, the Agency acknowledges that it is difficult, if not impossible to quantify, ex ante, the potential benefits, as one cannot predict what kind and how many recalls will take place in the future.

1. Increased Opportunity to Target Information to Consumers

Information about the safety of food will cause consumers to respond if there is a clear and relevant message, actions are advocated that consumers can understand and accomplish, and there are continued reminders. If consumers have access to recall information that is meaningful, recall recovery rates can be expected to increase for Class I recalls, given the level of risk.[11]

The current recall system will be augmented by providing targeted information to consumers about the retail destinations of products subject to a Class I recall.

The potential value of the Class I recall information depends on the consumer's ability to remember recent purchases of meat and poultry products and the ability of the information to trigger in the consumer the behavior to check whether he or she purchased the recalled product.

Consumers may be prompted to take action if they are informed that the product was sold at the retail location where they purchase groceries for themselves and their families. The retail consignee information will effectively complement the product identification information that FSIS already makes available and will provide additional opportunities for local media outlets and State and local health officials to transmit more targeted information about the recall to consumers.

2. Effectiveness of Recalls

The amount of product recovered during a recall depends on many factors. Among these factors are the amount of time taken to alert the public after the adulterated product has been identified, the time required by FSIS to perform recall verification activities, the type of product being recalled (some products are consumed within days of distribution), the amount of time the product is in distribution and retail channels, the efficiency of recalling establishment's recall management system, the depth into the distribution system the recall management system operates, the number of distributors through which the recalled product has moved, and the responsiveness of consumers to Class I recall information.

As mentioned above, the objective of this rule is to improve the current recall system by providing targeted information to consumers about the retail destinations of products subject to a Class I recall. FSIS believes this rule will have an impact on recall effectiveness primarily through consumer responsiveness. FSIS also believes that making information concerning retail destinations available to the public may also influence the firms' efforts to recall their products; however, it is difficult to predict all of the variables that could be affected, given the differences among the various distribution channels for meat and poultry products.

Because this rule provides an additional mechanism for prompting consumers to examine products, FSIS has determined that posting the list of retail consignees will enhance the effectiveness of Class I recalls.

*F. Net Benefits*

There is no evidence to suggest that the impacts on retail establishments would be significant because Class I recalled products are typically credited to the affected retail establishment by the processing establishment that manufactured the product.

The potential benefits of the rule hinge on the consumer being able to use the retail consignee information in combination with the information currently provided to identify product more quickly and effectively than he or she does currently, so that more illnesses and deaths can be avoided.

Based on these factors, the Agency has determined that the expected benefits of the proposal exceed potential costs.

**Final Regulatory Flexibility Analysis**

The Agency analyzed the potential impact of the final rule on small entity meat and poultry establishments and small entity retail firms that receive product subject to a Class I recall.

The Agency's analysis of the adverse impacts of the rule on small retail firms focuses on the increased amount of product returns retail stores would receive in response to a Class I recall, even product that is not subject to the recall. The number and type of small entity retail consignees potentially affected by the final rule is shown in Table 3. This is a total of about 65,075 small retail firms. Some costs may accrue as a result of increased product handling and disposal. But as mentioned above, it is not certain whether incorrectly returned products and their associated costs will increase or decrease as a result of this rule.

Based on the above analysis, the Agency has concluded that the rule will not have a significant economic impact on a substantial number of small entities.

*References*

1. Buzby, Jean, Paul D. Frenzen, and Barbara Rasco. 2001. ''Product Liability and Microbial Foodborne Illnesses,'' AER–799, USDA, Economic Research Service, Washington, DC.
2. RTI, International. June 2005. *Survey of Meat and Poultry Slaughter and Processing Plants. Final Report.* RTI Project Number 08893.007. Research Triangle Park, NC 27709.
3. RTI, International. April 2006. *Survey of Meat and Poultry Processing Only Plants. Final Report.* RTI Project Number 0208893.016. Research Triangle Park, NC 27709.
4. U.S. Census Bureau. 1997 Economic Census, Retail Trade. EC97R455–SM. Issued January 2001. *http://www.census.gov/prod/ec97/97r44-sm.pdf.*

**Paperwork Requirements**

No new paperwork requirements are associated with this final rule. FSIS is making available to the public on its Web site the names and locations of the retail consignees of recalled meat or poultry products that the Agency compiles in connection with its recall verification activities.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. When this final rule is adopted: (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**E-Government Act Compliance**

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

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2008_Final Rules_Index/*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to

[11] The rate of recovery of recalled product could be affected by other factors, however. The share of products affected by Class I recalls that are raw or ground is likely higher than that for other recall classes. Consequently, the product may move quickly through distribution and retail channels than processed or RTE products.

provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service that provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

**List of Subjects in 9 CFR Part 390**

Public information.

■ For the reasons discussed in the preamble, FSIS is amending 9 CFR Chapter III, Subchapter D, as follows:

## PART 390—FREEDOM OF INFORMATION AND PUBLIC INFORMATION

■ 1. The authority citation for part 390 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552; 21 U.S.C. 451–471, 601–695; 7 CFR 1.3, 2.7.

■ 2. A new § 390.10 is added to read as follows:

**§ 390.10 Availability of Lists of Retail Consignees during Meat or Poultry Product Recalls.**

The Administrator of the Food Safety and Inspection Service will make publicly available the names and locations of retail consignees of recalled meat or poultry products that the Agency compiles in connection with a recall where there is a reasonable probability that the use of the product could cause serious adverse health consequences or death.

Done in Washington, DC, July 11, 2008.

**Alfred V. Almanza,**

*Administrator.*

[FR Doc. E8–16221 Filed 7–16–08; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2008–0639; Directorate Identifier 2007–NM–003–AD; Amendment 39–15564; AD 2008–13–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F27 Mark 050 Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During scheduled X-ray inspections of Fokker 50 (F27 Mark 050) engine mounting frames, welding defects were discovered. In two forward frames and one aft frame, defects were found in a total of 4 weld locations. Investigation showed that during manufacture of the frames, when the tubes were welded to the end fittings, unintentional sideways movement of the electric arc resulted in some welds running beside the borderline for a part of the tube circumference. Where a weld runs beside the borderline, there is no connection between tube and end fitting for that part of the circumference, directly affecting the structural integrity of the engine mounting frame connections. The defective welding process appears to have happened at some of the welds in an unknown number of engine mounting frames. This condition, if not corrected, could lead to failure of the engine mounting frame in cases where multiple welds are severely affected, potentially resulting in in-flight loss of an engine. * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** This AD becomes effective August 1, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 1, 2008.

We must receive comments on this AD by August 18, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The Civil Aviation Authority—The Netherlands (CAA-NL), which is the aviation authority for the Netherlands, has issued Dutch Airworthiness Directive NL–2005–015, dated November 30, 2005 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During scheduled X-ray inspections of Fokker 50 (F27 Mark 050) engine mounting frames, welding defects were discovered. In two forward frames and one aft frame, defects were found in a total of 4 weld locations. Investigation showed that during manufacture of the frames, when the tubes were welded to the end fittings, unintentional sideways movement of the electric arc resulted in some welds running beside the borderline for a part of the tube circumference. Where a weld runs beside the borderline, there is no connection between tube and end fitting for that part of the circumference, directly affecting the structural integrity of the engine mounting frame connections. The defective welding process appears to have happened at some of the welds in an unknown number of engine mounting frames. This condition, if not corrected, could lead to failure of the engine mounting frame in cases where multiple welds are severely affected, potentially resulting in in-flight loss of an engine. Since

an unsafe condition had been identified that may exist on aircraft of the same type design, Airworthiness Directive NL–2005–007 was issued to require * * * a one-time inspection for improper welds. The present AD further specifies the criteria and compliance times for the follow-up NDT (non-destructive test) inspection and repair or replacement of engine mounting frames, as necessary.

Corrective action includes contacting Fokker for repair instructions and repair. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Fokker Services B.V. has issued the service information identified in the following table. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

SERVICE INFORMATION

| Fokker Service Bulletin | Date |
|---|---|
| Component Service Bulletin F8200–035–71–10 | May 30, 2005. |
| Component Service Bulletin F8200–035–71–11 | October 25, 2005. |
| Service Bulletin SBF50–71–048 | May 30, 2005. |
| Service Bulletin SBF50–71–049 | October 25, 2005. |

**FAA's Determination and Requirements of This AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

**Differences Between the AD and the MCAI or Service Information**

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

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

**FAA's Determination of the Effective Date**

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0639; Directorate Identifier 2007–NM–003–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2008–13–01 Fokker Services B.V.:** Amendment 39–15564. Docket No. FAA–2008–0639; Directorate Identifier 2007–NM–003–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective August 1, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Fokker Model F27 Mark 050 airplanes, certificated in any category, all serial numbers.

**Subject**

(d) Air Transport Association (ATA) of America Code 71: Powerplant.

**Reason**

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

During scheduled X-ray inspections of Fokker 50 (F27 Mark 050) engine mounting frames, welding defects were discovered. In two forward frames and one aft frame, defects were found in a total of 4 weld locations. Investigation showed that during manufacture of the frames, when the tubes were welded to the end fittings, unintentional sideways movement of the electric arc resulted in some welds running beside the borderline for a part of the tube circumference. Where a weld runs beside the borderline, there is no connection between tube and end fitting for that part of the circumference, directly affecting the structural integrity of the engine mounting frame connections. The defective welding process appears to have happened at some of the welds in an unknown number of engine mounting frames. This condition, if not corrected, could lead to failure of the engine mounting frame in cases where multiple welds are severely affected, potentially resulting in in-flight loss of an engine. Since an unsafe condition had been identified that may exist on aircraft of the same type design, Airworthiness Directive NL–2005–007 was issued to require * * * a one-time inspection for improper welds. The [MCAI supersedes Airworthiness Directive NL–2005–007 and] further specifies the criteria and compliance times for the follow-up NDT (non-destructive test) inspection and repair or replacement of engine mounting frames, as necessary.

Corrective action includes contacting Fokker for repair instructions and repair.

**Actions and Compliance**

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

(1) Within 2 months after the effective date of this AD, inspect the engine mounting frames to identify those that have any sideways deviations in the welds, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–71–048, dated May 30, 2005. When deviations are found that are less than or equal to 2.0 mm, no further action is required on that frame and the aircraft may be returned to service.

(2) When, during the inspection required by paragraph (f)(1) of this AD, deviations are found that are greater than 2.0 mm but less than or equal to 2.5 mm on any of the welds of the engine mounting frame, except those of tubes 7, 8, and 12 of the rear frame: Within 12 months after the effective date of this AD, NDT (non-destructive test) inspect the affected frame tubes in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–71–049, dated October 25, 2005.

(3) When, during the inspection required by paragraph (f)(1) of this AD, deviations are found that are greater than 2.5 mm but less than or equal to 3.0 mm on any of the welds of the engine mounting frame, except those of tubes 7, 8, and 12 of the rear frame: Within 9 months after the effective date of this AD, NDT-inspect the affected frame tubes in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–71–049, dated October 25, 2005.

(4) When, during the inspection required by paragraph (f)(1) of this AD, deviations are found that are greater than 3.0 mm but less than or equal to 3.5 mm on any of the welds of the engine mounting frame, except those of tubes 7, 8, and 12 of the rear frame: Within 6 months after the effective date of this AD, NDT-inspect the affected frame tubes in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–71–049, dated October 25, 2005.

(5) When, during the inspection required by paragraph (f)(1) of this AD, deviations are found that are greater than 3.5 mm but less than or equal to 5.0 mm on any of the welds of the engine mounting frame, except those of tubes 7, 8, and 12 of the rear frame: Within 3 months after the effective date of this AD, NDT-inspect the affected frame tubes in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–71–049, dated October 25, 2005.

(6) When, during the inspection required by paragraph (f)(1) of this AD, deviations are found that are greater than 2.0 mm but less than or equal to 5.0 mm on tubes 7, 8, and 12 of the rear frame: Within 3 months after the effective date of this AD, NDT-inspect the affected frame tubes in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–71–049, dated October 25, 2005.

(7) Within 7 days after doing any NDT-inspection required by this AD, or within 30 days after the effective date of this AD, whichever occurs later, report all findings to Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

(8) Within 30 days after reporting in accordance with paragraph (f)(7) of this AD, or within 30 days after the effective date of this AD, whichever occurs later, repair any frame deviation in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or by the European Aviation Safety Agency (EASA) (or its designated agent).

(9) When, during the inspection required by paragraph (f)(1) of this AD, deviations are found exceeding 5 mm, before further flight, report the inspection findings to Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, and repair any such deviation in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or by EASA (or its designated agent).

(10) Except as provided by paragraphs (f)(10)(i), (f)(10)(ii), (f)(10)(iii), (f)(10)(iv), and (f)(10)(v) of this AD, as of the effective date of this AD, no person may install an engine mounting frame having part number F8200–035–427/–441/–451/–463 (forward frames); F8200–035–425/–443 (A-frames); or F8200–035–403/–439/–449/–461 (rear frames), as a replacement part, unless it has been inspected and found to have deviations less than or equal to 2.0 mm, in accordance with the requirements of Fokker Component Service Bulletin F8200–035–71–10, dated May 30, 2005.

(i) Any frame inspected in accordance with Fokker Component Service Bulletin F8200–035–71–10, and found to have any deviation greater than 2.0 mm but less than or equal to 2.5 mm on any tube, except tubes 7, 8, and 12 of the rear frame, is acceptable for installation. However, if a frame is installed in accordance with this paragraph, it must be NDT-inspected within 12 months after the installation, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–71–049, dated October 25, 2005.

(ii) Any frame inspected in accordance with Fokker Component Service Bulletin F8200–035–71–10, and found to have any deviation greater than 2.5 mm but less than or equal to 3.0 mm on any tube, except tubes 7, 8, and 12 of the rear frame, is acceptable for installation. However, if a frame is installed in accordance with this paragraph, it must be NDT-inspected within 9 months after the installation, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–71–049, dated October 25, 2005.

(iii) Any frame inspected in accordance with Fokker Component Service Bulletin F8200–035–71–10, and found to have any deviation greater than 3.0 mm but less than or equal to 3.5 mm on any tube, except tubes 7, 8, and 12 of the rear frame, is acceptable for installation. However, if a frame is installed in accordance with this paragraph, it must be NDT-inspected within 6 months after the installation, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–71–049, dated October 25, 2005.

(iv) Any frame inspected in accordance with Fokker Component Service Bulletin F8200–035–71–10, and found to have any deviation greater than 3.5 mm but less than or equal to 5.0 mm on any tube, except tubes 7, 8, and 12 of the rear frame, is acceptable for installation. However, if a frame is installed in accordance with this paragraph, it must be NDT-inspected within 3 months after the installation, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–71–049, dated October 25, 2005.

(v) Any tube 7, 8, or 12 of the rear frame, inspected in accordance with Fokker

Component Service Bulletin F8200–035–71–10, and found to have any deviation greater than 2.0 mm but less than or equal to 5.0 mm, is acceptable for installation. However, if a frame is installed in accordance with this paragraph, it must be NDT-inspected within 3 months after the installation, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–71–049, dated October 25, 2005.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**Related Information**

(h) Refer to Mandatory Continuing Airworthiness Information (MCAI) Dutch Airworthiness Directive NL–2005–015, dated November 30, 2005, and the service bulletins identified in Table 1 of this AD for related information.

TABLE 1.—SERVICE INFORMATION

| Fokker Service Bulletin | Date |
|---|---|
| Component Service Bulletin F8200–035–71–10 | May 30, 2005. |
| Component Service Bulletin F8200–035–71–11 | October 25, 2005. |
| Service Bulletin SBF50–71–048 | May 30, 2005. |
| Service Bulletin SBF50–71–049 | October 25, 2005. |

**Material Incorporated by Reference**

(i) You must use the service information specified in Table 2 of this AD to do the actions required by this AD, as applicable, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

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

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

| Service Bulletin | Date |
|---|---|
| Fokker Component Service Bulletin F8200–035–71–10 | May 30, 2005. |
| Fokker Service Bulletin SBF50–71–048 | May 30, 2005. |
| Fokker Service Bulletin SBF50–71–049 | October 25, 2005. |

Issued in Renton, Washington, on June 26, 2008.

**Dionne Palermo,**

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

[FR Doc. E8–15711 Filed 7–16–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0543 Directorate Identifier 2007–CE–092–AD; Amendment 39–15607; AD 2008–14–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Pacific Aerospace Limited Model FU–24 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

To prevent the possible in-flight failure of the vertical fin, leading to loss of control of the aircraft * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective August 21, 2008.

On August 21, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S.

Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 13, 2008 (73 FR 27479). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> To prevent the possible in-flight failure of the vertical fin, leading to loss of control of the aircraft * * *

The MCAI requires inspections of the vertical fin for cracking, corrosion, scratches, dents, creases, and/or buckling and the repair of any damaged area.

## Comments

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

## Conclusion

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

## Differences Between This AD and the MCAI or Service Information

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

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

## Costs of Compliance

Based on the service information, we estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $160 or $80 per product.

In addition, we estimate that any necessary follow-on actions would take about 24 work-hours and require parts costing $1,000, for a cost of $2,920 per product. We have no way of determining the number of products that may need these actions.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## Examining the AD Docket

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

# PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2008–14–12 Pacific Aerospace Corporation, Ltd:** Amendment 39–15607; Docket No. FAA–2008–0543; Directorate Identifier 2007–CE–092–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective August 21, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to FU–24 airplanes, all serial numbers, certificated in any category.

**Subject**

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

**Reason**

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

> To prevent the possible in-flight failure of the vertical fin, leading to loss of control of the aircraft * * *

The MCAI requires inspections of the vertical fin for cracking, corrosion, scratches, dents, creases, and/or buckling and the repair of any damaged area.

**Actions and Compliance**

(f) Unless already done, after August 21, 2008 (the effective date of this AD), do the following actions following Chapter 05, page 25 of the FU–24–950 Series Maintenance Manual:

(1) Before the first flight of each day, visually inspect the vertical stabilizer leading

edge skin and fin for any cracking, corrosion, scratches, dents, creases, and/or buckling and repair as necessary. All non-transparent protective coatings and their adhesive must be removed for this inspection.

(2) Within 100 hours time-in-service (TIS) after August 21, 2008 (the effective date of this AD), and repetitively thereafter at intervals not to exceed 100 hours TIS, perform a detailed inspection of the vertical stabilizer leading edge skin, leading edge, fin skin, and the fin forward attachment point for any cracking, corrosion, scratches, dents, creases, and/or buckling to include:

(i) Inspection of the entire leading edge down to the forward attach fitting and removal of dorsal fin extensions if installed in order to inspect the obscured areas of the fin.

(ii) Inspection of the fin skin for corrosion and cracks, paying particular attention to the center rib rivet holes and the skin joint at the fin base.

(iii) Inspection of the fin forward attachment point for corrosion, removal of the fin tip, and inspection of the top rib for cracks at the skin stiffener cutouts.

(3) If any damage is found during any inspection required in paragraph (f)(1) or (f)(2) of this AD, before further flight, obtain an FAA-approved repair scheme from the manufacturer and incorporate that repair.

(4) The following transparent polyurethane protective tapes have been assessed as suitable for use to re-protect the leading edge and may remain in situ for subsequent inspections, provided they are sound and in a condition to permit visual inspection of the skin beneath them:

| Manufacturer | Product |
|---|---|
| (i) 3M | 8591, or 8671, 8672 and 8681HS (aeronautical grade). |
| (ii) Scapa | Aeroshield P2604 (transparent). |

**Note 1:** You may apply for an alternative method of compliance (AMOC) for an alternative to the transparent polyurethane protective tapes listed above.

**FAA AD Differences**

**Note 2:** This AD differs from the MCAI and/or service information as follows:

(1) The inspections required in this AD must be performed by a person authorized under 14 CFR part 43 to perform inspections, as opposed to the MCAI, which allows the holder of a pilot license to perform the inspections.

(2) The 50-hour inspection required in the MCAI goes away because the ''before the first flight of each day'' inspection captures the intent.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to MCAI Civil Aviation Authority of New Zealand AD DCA/FU24/176C, dated September 27, 2007, for related information.

**Material Incorporated by Reference**

(i) You must use Chapter 05, page 25 of the FU–24–950 Series Maintenance Manual, issued December 1978, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Pacific Aerospace Limited, Hamilton Airport, Private Bag, 3027 Hamilton, New Zealand; *telephone:* +64 7–843–6144; *facsimile:* +64 7–843–6134.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on June 30, 2008.

**Kim Smith,**

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

[FR Doc. E8–16191 Filed 7–16–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0267; Directorate Identifier 2007–NM–245–AD; Amendment 39–15609; AD 2008–14–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–400 and 747–400D Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Boeing Model 747–400 and 747–400D series airplanes. This AD requires a general visual inspection of the power feeder wire bundle of the auxiliary power unit (APU) where it crosses the hydraulic system 4 return tube to determine if parts are installed to provide separation between the wire bundle and hydraulic tube. This AD also requires related investigative and corrective actions if necessary. This AD results from a report that the power feeder wire bundle of the APU was found touching the hydraulic system return tube during inspection of an airplane. We are issuing this AD to prevent insufficient clearance between the wire bundle and hydraulic tube that could lead to chafing of the wire bundle, which could cause arcing and a consequent hydraulic fluid fire in an area outside of the smoke detection and fire extinguishing zone; this condition could result in an uncontrolled fire on the airplane.

**DATES:** This AD is effective August 21, 2008.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of August 21, 2008.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 747–400 and 747–400D series airplanes. That NPRM was published in the **Federal Register** on December 4, 2007 (72 FR 68106). That NPRM proposed to require a general visual inspection of the power feeder wire bundle of the auxiliary power unit (APU) where it crosses the hydraulic system 4 return tube to determine if parts are installed to provide separation between the wire bundle and hydraulic tube. That NPRM also proposed to require related investigative and corrective actions if necessary.

### Comments

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

### Supportive Comment

The commenters Adam W. Rocks and Boeing support the NPRM.

### Request To Revise Applicability

Brady J. Mitchell, an employee of Boeing, requests that all Boeing Model 747–400 series airplanes converted from a passenger-to-freighter configuration be excluded from the applicability of the NPRM. Mr. Mitchell states that those airplanes will have new hydraulic tubes and eliminate the possibility of an insufficient clearance or potential chafing condition between the tubes and the power feeder wire bundles of the APU between stations 2040 and 2060. Mr. Mitchell concludes that such a configuration change fulfills the requirements in paragraph (f) of the NPRM.

We do not agree. We have reviewed the details of the passenger-to-freighter conversion to which the commenter refers. We have determined that there is not a common configuration for each airplane that is converted. Rather, the details of each conversion are likely to be different from airplane to airplane. Therefore, each conversion configuration needs to be evaluated to ensure the unsafe condition identified in this AD is corrected. For this reason, providing a blanket exception for all airplanes that are converted to a freighter configuration is not appropriate. However, anyone may apply for an alternative method of compliance (AMOC) for relief from the requirements of this AD. Under the provisions of paragraph (h) of this AD, we may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that a passenger-to-freighter configuration change would provide an acceptable level of safety.

### Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

### Costs of Compliance

There are about 462 airplanes of the affected design in the worldwide fleet. This AD affects 61 airplanes of U.S. registry. The required inspection takes 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $4,880, or $80 per airplane.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2008–14–14 Boeing:** Amendment 39–15609. Docket No. FAA–2007–0267; Directorate Identifier 2007–NM–245–AD.

#### Effective Date

(a) This airworthiness directive (AD) is effective August 21, 2008.

#### Affected ADs

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 747–400 and 747–400D series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 747–24–2257, Revision 1, dated August 2, 2007.

**Unsafe Condition**

(d) This AD results from a report that the power feeder wire bundle of the auxiliary power unit (APU) was found touching the hydraulic system return tube during inspection of an airplane. We are issuing this AD to prevent insufficient clearance between the wire bundle and hydraulic tube that could lead to chafing of the wire bundle, which could cause arcing and a consequent hydraulic fluid fire in an area outside of the smoke detection and fire extinguishing zone; this condition could result in an uncontrolled fire on the airplane.

**Compliance**

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

**Inspection and Related Investigative and Corrective Actions**

(f) Within 24 months after the effective date of this AD, do a general visual inspection of the power feeder wire bundle of the APU where it crosses the hydraulic system 4 return tube to determine if parts are installed to provide separation between the wire bundle and hydraulic tube, and do all the related investigative and corrective actions as applicable, by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–24–2257, Revision 1, dated August 2, 2007. The related investigative and corrective actions must be accomplished before further flight after the inspection.

**Credit for Actions Done According to Previous Issue of Service Bulletin**

(g) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 747–24–2257, dated May 18, 2006, are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Material Incorporated by Reference**

(i) You must use Boeing Special Attention Service Bulletin 747–24–2257, Revision 1, dated August 2, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on June 27, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–15710 Filed 7–16–08; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0362; Directorate Identifier 2007–NM–308–AD; Amendment 39–15611; AD 2008–14–16]**

**RIN 2120-AA64**

## Airworthiness Directives; 328 Support Services GmbH Dornier Model 328–100 and –300 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

At least one incident has occurred where, immediately after take-off, the passenger door of a Dornier 328 completely opened. * * * Substantial damage to the door, handrails, door hinge arms and fuselage skin were found.

* * * Although final proof could not be obtained, the most likely way in which the door opened was that the door handle was inadvertently operated during the take-off run.

* * * * *

[T]his Airworthiness Directive (AD) aims to prevent further incidents of inadvertent opening and possible detachment of a passenger door in-flight, likely resulting in damage to airframe and systems and, under less favorable circumstances, loss of control of the aircraft.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective August 21, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 21, 2008.

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

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 27, 2008 (73 FR 16219). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

At least one incident has occurred where, immediately after take-off, the passenger door of a Dornier 328 completely opened. The flight crew reportedly had no cockpit indication or audible chime prior to this event. The aircraft returned to the departure airfield and made an uneventful emergency landing. Substantial damage to the door, handrails, door hinge arms and fuselage skin were found.

The subsequent investigation could not find any deficiency in the design of the main cabin door locking mechanism. In addition, no technical failure could be determined that precipitated the event. The flight data recorder showed that the door was closed and locked before take-off and opened shortly afterward. Although final proof could not be obtained, the most likely way in which the door opened was that the door handle was inadvertently operated during the take-off run.

In response to the incident, AvCraft (the TC (type certificate) holder at the time)

developed a placard set to warn the occupants against touching the door handle, as well as a structural modification of the passenger door hinge supports to make certain that the door does not separate from the aircraft when inadvertently opened during flight, allowing a safe descent and landing.

Although the event described above did not prevent the flight crew from landing the aircraft safely, the condition of the aircraft immediately after the opening of the door has been determined to have been unsafe. [T]his Airworthiness Directive (AD) aims to prevent further incidents of inadvertent opening and possible detachment of a passenger door in-flight, likely resulting in damage to airframe and systems and, under less favorable circumstances, loss of control of the aircraft.

* * * * *

Corrective actions include installing warning placards on the doors, and doing a modification that includes replacing the hinge supports and support struts of the passenger doors with new, improved hinge supports and support struts. You may obtain further information by examining the MCAI in the AD docket.

**Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter provided information on an incident that occurred on a Dornier Model 228 airplane and asked for the procedure for reporting the incident to additional agencies so that appropriate action is taken. The applicability in the NPRM is for Dornier Model 328–100 and –300 airplanes; therefore, the comment does not apply to this AD. The comment has been forwarded to the appropriate FAA office and will be addressed by that office accordingly.

**Conclusion**

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

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

We estimate that this AD will affect 106 products of U.S. registry. We also estimate that it will take 38 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $11,961 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,590,106, or $15,001 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**Examining the AD Docket**

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2008–14–16 328 Support Services GmbH (Formerly AvCraft Aerospace GmbH formerly Fairchild Dornier GmbH, formerly Dornier Luftfahrt GmbH):** Amendment 39–15611. Docket No. FAA–2008–0362; Directorate Identifier 2007–NM–308–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective August 21, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to 328 Support Services GmbH Dornier Model 328–100 airplanes, having serial numbers (S/Ns) 3005 through 3098, 3100, 3101, 3106, 3107, 3109, 3110, 3112, 3113, 3115, 3117 and 3119; and Model 328–300 airplanes, having S/Ns 3102, 3105, 3108, 3111, 3114, 3116, 3118, and 3120 through 3224; certificated in any category.

**Subject**

(d) Air Transport Association (ATA) of America Code 11: Placards and Markings; and Code 52: Doors.

**Reason**

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

At least one incident has occurred where, immediately after take-off, the passenger door of a Dornier 328 completely opened. The flight crew reportedly had no cockpit indication or audible chime prior to this event. The aircraft returned to the departure airfield and made an uneventful emergency landing. Substantial damage to the door, handrails, door hinge arms and fuselage skin were found.

The subsequent investigation could not find any deficiency in the design of the main cabin door locking mechanism. In addition, no technical failure could be determined that precipitated the event. The flight data recorder showed that the door was closed and locked before take-off and opened shortly afterward. Although final proof could not be obtained, the most likely way in which the door opened was that the door handle was inadvertently operated during the take-off run.

In response to the incident, AvCraft (the TC (type certificate) holder at the time) developed a placard set to warn the occupants against touching the door handle, as well as a structural modification of the passenger door hinge supports to make certain that the door does not separate from the aircraft when inadvertently opened during flight, allowing a safe descent and landing.

Although the event described above did not prevent the flight crew from landing the aircraft safely, the condition of the aircraft immediately after the opening of the door has been determined to have been unsafe. [T]his Airworthiness Directive (AD) aims to prevent further incidents of inadvertent opening and possible detachment of a passenger door in-flight, likely resulting in damage to airframe and systems and, under less favorable circumstances, loss of control of the aircraft.

* * * * *

Corrective actions include installing warning placards on the doors, and doing a modification that includes replacing the hinge supports and support struts of the passenger doors with new, improved hinge supports and support struts.

**Actions and Compliance**

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

(1) Within 30 days after the effective date of this AD, install warning placards on the inside of the passenger door and service doors, in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328–11–454 (for Model 328–100 airplanes) or SB–328J–11–209 (for Model 328–300 airplanes), both dated May 3, 2004, as applicable.

(2) Within 12 months after the effective date of this AD, modify the hinge supports and support struts of the passenger doors, in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328–52–460 (for Model 328–100 airplanes) or SB–328J–52–213, (for Model 328–300 airplanes), both dated February 4, 2005, as applicable.

**FAA AD Differences**

**Note:** This AD differs from the MCAI and/or service information as follows: differences.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0199, dated July 25, 2007 (corrected July 26, 2007), and the service bulletins described in Table 1 of this AD, for related information.

TABLE 1.—SERVICE INFORMATION

| Dornier Service Bulletin | Dated |
|---|---|
| SB–328–11–454 | May 3, 2004. |
| SB–328–52–460 | February 4, 2005. |
| SB–328J–11–209 | May 3, 2004. |
| SB–328J–52–213 | February 4, 2005. |

**Material Incorporated by Reference**

(i) You must use the service information specified in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

| Dornier Service Bulletin | Dated |
|---|---|
| SB–328–11–454 | May 3, 2004. |
| SB–328–52–460 | February 4, 2005. |
| SB–328J–11–209 | May 3, 2004. |
| SB–328J–52–213 | February 4, 2005. |

(Only the title page of these documents contains the revision level and date of the documents.)

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

(2) For service information identified in this AD, contact 328 Support Services GmbH, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany.

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

Issued in Renton, Washington, on June 26, 2008.

**Dionne Palermo,**

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

[FR Doc. E8–15709 Filed 7–16–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0232; Directorate Identifier 2007–NM–309–AD; Amendment 39–15612; AD 2008–14–17]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330–200 and A340–300 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During fatigue tests (EF3) on the A340–600, multiple damage were found in the upper side shell structure at skin and frame (FR) 84 & 85 interface, from stringer 6 to 15 LH/RH. This damage occurred between 58,341 and 72,891 simulated Flight Cycles (FC).

Due to the higher Design Service Goal and different design (*e.g.* skin thickness) for A330–200 and A340–300 aircraft series, the damage assessment concluded on [a] potential impact on these aircraft series.

* * * * *

The unsafe condition is loss of integrity of the upper shell structure of the fuselage. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective August 21, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 21, 2008.

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

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 3, 2008 (73 FR 11364). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During fatigue tests (EF3) on the A340–600, multiple damage were found in the upper side shell structure at skin and frame (FR) 84 & 85 interface, from stringer 6 to 15 LH/RH. This damage occurred between 58,341 and 72,891 simulated Flight Cycles (FC).

Due to the higher Design Service Goal and different design (*e.g.* skin thickness) for A330–200 and A340–300 aircraft series, the damage assessment concluded on [a] potential impact on these aircraft series.

In order to allow early detection of cracks which could avoid possible crack propagation and consequently to maintain the structural integrity of the upper side shell structure between FR84 and FR87, this Airworthiness Directive (AD) mandates an inspection program of this area [for cracking] using a high frequency eddy current (HFEC) method and a modification to improve the upper shell structure.

This Revision 1 is issued to clarify that this AD is not applicable to aircraft A340–300 series on which both AIRBUS modifications 44205 and 45012 have been embodied in production.

The unsafe condition is loss of integrity of the upper shell structure of the fuselage between FR84 and FR87. Corrective actions include contacting Airbus and repairing any crack. You may obtain further information by examining the MCAI in the AD docket.

### Comments

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

### Request To Remove Reference to Modification

Air Transport Association (ATA) on behalf of its member Northwest Airlines (NWA), requests that we remove the reference to Airbus Modification (Mod.) 44205 from paragraph (c), ''Applicability,'' of the NPRM. The commenters explain that Mod. 44205 defines common structure for Section 19. Mod. 45012, which is in paragraph (f)(1) of the NPRM, modifies the Section 19 upper side shell on A330–200 series airplanes.

We disagree. Cracks can develop on this area of Section 19 that affect basic airplanes fitted with the same features (i.e., post-Mod. 44205). For Model A340–300 series airplanes, Mod. 45012 addresses the unsafe condition. Therefore, only Model A340–300 series airplanes on which both Mod. 44205 and 45012 have been done in production are exempt. Analysis further to these findings established that cracking would also affect airplanes post-Mod. 45012 on Model A330–200 series airplanes. The mandated action separates pre- or post-Mod. 45012, as specified in paragraphs (f)(1) and (f)(2) of this AD. We have made no change to the AD in this regard.

### Request To Exclude Certain Airplanes

The same commenters request that we exclude from paragraph (f)(1) and Table 1 of the NPRM airplanes that have Mod. 52974 or 53223 embodied. The commenters explain that paragraph (c) excludes these airplanes, but paragraph (f)(1) and Table 1 do not exclude them. Without the exclusion, four more NWA airplanes are affected by the AD.

We disagree. Paragraph (f)(1), which includes Table 1, refers to paragraph (c) where the two modifications are listed as exclusions. There is no need to exclude the airplanes again in paragraph (f)(1) or Table 1 of the AD. We have made no change to the AD in this regard.

### Request To Move ''Before Further Flight'' Requirement

The same commenters request that we move the requirement to ''Do all applicable corrective actions before further flight'' from paragraph (f)(1) of the NPRM to the ''Threshold'' column of Table 1 of the NPRM. The commenters explain that moving this statement would make it clear that corrective action is required at the time of the mandated inspection thresholds and not before.

We disagree. Paragraph (f)(1)(i) of this AD, which includes Table 1, gives thresholds for doing the HFEC inspection. Paragraph (f)(1)(ii) of this AD also gives a possible threshold for the HFEC inspection. The requirement is to do the applicable corrective actions before further flight. We have made no change to the AD in this regard.

### Conclusion

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

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

We estimate that this AD will affect about 7 products of U.S. registry. We also estimate that it will take about 601 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $52,160 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD on the U.S. operators to be $701,680, or $100,240 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**Examining the AD Docket**

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2008–14–17 Airbus:** Amendment 39–15612. Docket No. FAA–2008–0232; Directorate Identifier 2007–NM–309–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective August 21, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A330–200 and A340–300 series airplanes, certificated in any category, all certified models; all serial numbers on which Airbus Modification 44205 has been embodied in production, except those on which Airbus Modification 52974 or 53223 has been embodied in production. This AD is not applicable to Model A340–300 series airplanes on which both Modifications 44205 and 45012 have been embodied in production.

**Subject**

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

**Reason**

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

During fatigue tests (EF3) on the A340–600, multiple damage were found in the upper side shell structure at skin and frame (FR) 84 & 85 interface, from stringer 6 to 15 LH/RH. This damage occurred between 58,341 and 72,891 simulated Flight Cycles (FC).

Due to the higher Design Service Goal and different design (*e.g.* skin thickness) for A330–200 and A340–300 aircraft series, the damage assessment concluded on [a] potential impact on these aircraft series.

In order to allow early detection of cracks which could avoid possible crack propagation and consequently to maintain the structural integrity of the upper side shell structure between FR84 and FR87, this Airworthiness Directive (AD) mandates an inspection program of this area [for cracking] using a high frequency eddy current (HFEC) method and a modification to improve the upper shell structure.

This Revision 1 is issued to clarify that this AD is not applicable to aircraft A340–300 series on which both AIRBUS modifications 44205 and 45012 have been embodied in production.

The unsafe condition is loss of integrity of the upper shell structure of the fuselage between FR84 and FR87. Corrective actions include contacting Airbus and repairing any crack.

**Actions and Compliance**

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

(1) For Airbus Model A330–200 series airplanes, as identified in paragraph (c) of this AD, on which Modification 45012 has been embodied in production: At the later of the compliance times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, do the HFEC inspection for cracking, and corrective actions as applicable; and modify the upper shell structure of the fuselage; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3152, dated April 10, 2007. Do all applicable corrective actions before further flight.

(i) Prior to the compliance time shown in Table 1 of this AD after the first flight of the airplane, depending on airplane configuration.

TABLE 1.—COMPLIANCE TIMES FOR MODEL A330 SERIES AIRPLANES WITH MODIFICATION 45012 EMBODIED

| Airplane configuration | Threshold |
|---|---|
| Pre-modification 48827 (WV20 to WV27) | 25,400 total flight cycles. |
| Post-modification 48827 (WV50 to WV56) | 17,100 total flight cycles or 94,700 total flight hours, whichever occurs first. |

(ii) Within 90 days after the effective date of this AD.

(2) For Airbus Model A330–200 and A340–300 series airplanes as identified in paragraph (c) of this AD, on which Modification 45012 has not been embodied in production: At the later of the compliance times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD, modify the upper shell structure of the fuselage in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3157 or Airbus Service Bulletin A340–53–4163, both dated July 5, 2006, as applicable.

(i) Prior to the compliance time shown in Table 2 of this AD after the first flight of the airplane.

TABLE 2.—COMPLIANCE TIMES FOR MODEL A330–200 AND A340–300 SERIES AIRPLANES WITHOUT MODIFICATION 45012 EMBODIED

| Airplane series | Threshold |
|---|---|
| A330–200 | 6,600 total flight cycles. |
| A340–300 | 14,000 total flight cycles. |

(ii) Within 90 days after the effective date of this AD.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0269R1, dated October 15, 2007; Airbus Service Bulletin A330–53–3152, dated April 10, 2007; Airbus Service Bulletin A330–53–3157, dated July 5, 2006; and Airbus Service Bulletin A340–53–4163, dated July 5, 2006; for related information.

**Material Incorporated by Reference**

(i) You must use the applicable service information specified in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

| Service Bulletin | Date |
|---|---|
| Airbus Service Bulletin A330–53–3152 | April 10, 2007. |
| Airbus Service Bulletin A330–53–3157 | July 5, 2006. |
| Airbus Service Bulletin A340–53–4163 | July 5, 2006. |

Issued in Renton, Washington, on June 27, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–15708 Filed 7–16–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0327; Directorate Identifier 2007–SW–21–AD; Amendment 39–15600; AD 2008–14–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Agusta S.p.A. Model A109E and A119 Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E and A119 helicopters. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The European Aviation Safety Agency (EASA), the Technical Agent for Italy, with which we have a bilateral agreement, states in the MCAI: ''Some cases of interference between the hydraulic pipe, P/N 109–0761–65–103, and the tail rotor control

rod assembly have been detected on Model A109E helicopters * * * The interference, if not corrected, could damage the hydraulic pipes and lead to the loss of the hydraulic system No. 1 in flight. This AD * * * is issued to extend the same mandatory corrective actions to A119 model due to its design similarity with A109E.''

This AD requires actions that are intended to address this unsafe condition.

**DATES:** This AD becomes effective on August 21, 2008.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of August 21, 2008.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://regulations.gov* or in person at the Docket Operations office, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

*Examining The AD Docket:* The AD docket contains the Notice of Proposed Rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647–5527) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

**FOR FURTHER INFORMATION CONTACT:** Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to Agusta Model A109E and A119 helicopters on March 10, 2008. That NPRM was published in the **Federal Register** on March 19, 2008 (73 FR 14733). That NPRM proposed the following:

- Within the next 50 hours time-in-service (TIS) and thereafter at intervals not to exceed 100 hours TIS, inspecting for interference between the hydraulic lines, part number (P/N) 109–0761–64–103 and P/N 109–0761–65–103, and the tail rotor control rod assembly, P/N 109–0032–01–41, and, if interference is found, replacing the hydraulic lines with hydraulic lines, P/N 109–0763–96–101 and P/N 109–0763–97–101.
- Within 180 days, replacing hydraulic lines, P/N 109–0761–64–103 and P/N 109–0761–65–103, with hydraulic lines, P/N 109–0763–96–101 and P/N 109–0763–97–101.

You may obtain further information by examining the MCAI and any related service information in the AD docket.

## Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

## Relevant Service Information

Agusta has issued Bollettino Tecnico (BT) No. 109EP–73, dated December 4, 2006, applicable to Model A109E helicopters, and BT No. 119–22, dated July 11, 2007, applicable to Model A119 helicopters. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

## Differences Between This AD and the MCAI

We have reviewed the MCAI and related service information and, in general, agree with their substance. However, this AD requires replacing the hydraulic lines within 180 days, unless previously accomplished, instead of replacing the hydraulic lines on the dates specified in the MCAI. In making this change, we do not intend to differ substantively from the information provided in the MCAI and related service information. This difference is highlighted in the ''Differences Between This AD and the MCAI'' section in the AD.

## Costs of Compliance

We estimate that this AD will affect about 78 helicopters of U.S. registry and that it will take about 2 work-hours per helicopter to inspect and 16 work-hours per helicopter to replace the hydraulic lines. The average labor rate is $80 per work-hour. Required parts will cost about $562 per helicopter, assuming these parts are no longer under warranty. However, because the service information lists these parts as covered under warranty, we have assumed that there is no charge for these parts. Therefore, as we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD on U.S. operators to be $112,320, or $1,440 per helicopter.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

*Therefore, I certify this AD:*

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2008–14–05 Agusta. S.p.A.:** Amendment 39–15600. Docket No. FAA–2008–0327; Directorate Identifier 2007–SW–21–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective on August 21, 2008.

**Other Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Agusta S.p.A. Model A109E and A119 helicopters, with hydraulic lines, part number (P/N) 109–0761–64–103 or P/N 109–0761–65–103, installed, certificated in any category.

**Reason**

(d) The mandatory continuing airworthiness information (MCAI) states: ''Some cases of interference between the hydraulic pipe, P/N 109–0761–65–103, and the tail rotor control rod assembly have been detected on Model A109E helicopters * * * The interference, if not corrected, could damage the hydraulic pipes and lead to the loss of the hydraulic system No. 1 in flight. This AD * * * is issued to extend the same mandatory corrective actions to A119 model due to its design similarity with A109E.''

This AD requires actions that are intended to address this unsafe condition.

**Actions and Compliance**

(e) Within the next 50 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 100 hours TIS:

(1) Inspect for interference between the hydraulic lines, P/N 109–0761–64–103 and P/N 109–0761–65–103, and the tail rotor control rod assembly, P/N 109–0032–01–41, in accordance with the Compliance Instructions, Part I, paragraph 3, of Agusta Bollettino Tecnico (BT) No. 109EP–73, dated December 4, 2006 (BT A109E), which is applicable to Model A109E helicopters, or BT 119–22, dated July 11, 2007 (BT 119–22), which is applicable to Model A119 helicopters.

(2) If you find interference between the hydraulic lines and the tail rotor control rod assembly, replace the hydraulic lines, P/N 109–0761–64–103 and P/N 109–0761–65–103, with hydraulic lines, P/N 109–0763–96–101 and P/N 109–0763–97–101, respectively, in accordance with the Compliance Instructions, Part II of BT A109E or BT 119–22, whichever is applicable to your model helicopter.

(f) Within 180 days, replace hydraulic lines, P/N 109–0761–64–103 and P/N 109–0761–65–103, with hydraulic lines, P/N 109–0763–96–101 and P/N 109–0763–97–101, respectively, in accordance with the Compliance Instructions, Part II, of BT A109E or BT 119–22, whichever is applicable to your model helicopter.

**Differences Between This AD and the MCAI**

(g) This AD requires replacement of hydraulic lines, P/N 109–0761–64–103 and P/N 109–0761–65–103, within 180 days, unless previously accomplished, instead of replacing the hydraulic lines on the dates specified in the MCAI.

**Other Information**

(h) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

**Related Information**

(i) MCAI EASA AD No 2007–0231, dated August 23, 2007, contains related information.

**Air Transport Association of America (ATA) Tracking Code**

(j) ATA Code 2910—Main Hydraulic System.

**Material Incorporated by Reference**

(k) You must use the specified portions of Agusta Bollettino Tecnico No. 109EP–73, dated December 4, 2006, or No. 119–22, dated July 11, 2007, as applicable, to do the actions required.

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

(2) For service information identified in this AD, contact Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76193; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on June 19, 2008.

**Judy I. Carl,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. E8–14727 Filed 7–16–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2003–NM–33–AD; Amendment 39–15613; AD 2008–15–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, that requires revising the airplane flight manual to include operational limitations for use of the autopilot, installing two placards that advise the flight crew to check the pitch trim before descent, and modifying the elevator trim system, which would terminate the requirements of the AD. The actions specified by this AD are intended to prevent pitch trim upsets if the pitch trim actuators jam or freeze, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 21, 2008.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 21, 2008.

**ADDRESSES:** The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all EMBRAER

Model EMB–120 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 8, 2008 (73 FR 7494). That action proposed to require revising the airplane flight manual to include operational limitations for use of the autopilot, installing two placards (with revised language) that advise the flight crew to check the pitch trim before descent, and modifying the elevator trim system, which would terminate the requirements of the AD.

**New Relevant Service Information**

The supplemental NPRM referred to EMBRAER Service Bulletins 120–27–0095 and 120–27–0096, both dated February 16, 2007, as the appropriate sources of service information for the elevator trim system modification. EMBRAER has since revised these service bulletins. Service Bulletins 120–27–0095, Revision 01, dated October 30, 2007; and 120–27–0096, Revision 01, dated October 1, 2007; include minor changes but provide no additional work. In this final rule, we have changed paragraph (d) to refer to Revision 01 of the service bulletins, added new paragraph (e) to provide credit for the prior accomplishment of the original service bulletins, and re-identified subsequent paragraphs accordingly.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

**Request to Conditionally Allow Autopilot Re-Engagement**

SkyWest Airlines, Inc., requests that we revise the NPRM to allow autopilot re-engagement once pitch trim is recovered. According to the commenter, the inability to re-engage the autopilot for the remainder of the flight can place an unreasonable workload on a flightcrew during some of the most critical and demanding phases of flight.

We do not agree. We recognize that the inability to re-engage the autopilot could add to the flightcrew's workload during certain phases of flight, but we do not agree that continued flight would be safe with the autopilot re-engaged. When free pitch trim is restored after jamming, the appropriate approach is to continue the flight manually without the autopilot and report the issue to maintenance, rather than re-engaging the autopilot, so the cause of the jam can be evaluated and corrected before further use of the autopilot. We have not changed the AD regarding this issue.

**Request to Limit Conditions That Require Pitch Trim Check**

SkyWest requests that we require a pitch trim check only when a pitch trim jam is suspected. The commenter states that the existing criteria are too broad, as they would include extremes of descents in conditions of no ice, no moisture, and outside air temperature in excess of 25 degrees Celsius.

We disagree. Jamming of the trim system is not dependent on the environmental conditions. Internal friction of the trim actuators may gradually increase in normal use regardless whether the actuator is internally contaminated. We have not changed the AD regarding this issue.

**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

**Cost Impact**

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| AFM revisions | 1 | $80 | $0 | $80 | 103 | $8,240 |
| Placard installation | 2 | 80 | 182 | 342 | 103 | 35,226 |
| Actuator replacement | 7 | 80 | 16,670 | 17,230 | 103 | 1,774,690 |
| Cable replacement | 14 | 80 | 1,050 | 2,170 | 103 | 223,510 |

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Authority for This Rulemaking**

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

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

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2008–15–01 Empresa Brasileira De Aeronautica S.A. (EMBRAER):** Amendment 39–15613. Docket 2003–NM–33–AD.

*Applicability:* All Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent pitch trim upsets if the pitch trim actuators jam or freeze, which could result in reduced controllability of the airplane, accomplish the following:

**Revision of Airplane Flight Manual (AFM): AFM–120/794**

(a) Within 100 flight hours after the effective date of this AD, revise the FAA-approved AFM, EMBRAER AFM–120/794, as specified in paragraphs (a)(1) and (a)(2) of this AD. These actions may be accomplished by inserting a copy of this AD into the AFM.

(1) Revise the FLIGHT CONTROLS FAILURES paragraph of the Abnormal Procedures section by replacing the existing ELEVATOR TRIM JAMMING procedure with the following:

''ELEVATOR TRIM JAMMING

| | |
|---|---|
| Control Wheel ..... | Hold Firmly |
| Autopilot ..... | Disengage |
| Airspeed ..... | Reduce |

**Note:** Minimum airspeed with flap 0°—160 KIAS

| | |
|---|---|
| Pitch trim command | Check all switches and elevator trim wheel |

If pitch trim is recovered:

Re-trim the airplane and continue the flight with the autopilot disengaged, not exceeding the airspeed when the trim was recovered.

If pitch trim is not recovered:

Land at the nearest suitable airport.

Approach and landing configuration:

| | |
|---|---|
| Landing gear ..... | Down |
| Flaps ..... | 25 |
| Airspeed ..... | Vref25 |

*CAUTION:* DO NOT TRY TO RE-ENGAGE THE AUTOPILOT.''

(2) Revise the Normal Procedures section of the AFM, after the current checklist item for activating the FASTEN BELTS switch, by inserting the following:

''PITCH TRIM SYSTEM CHECK

| | |
|---|---|
| Control Wheel ..... | Hold firmly |
| Autopilot ..... | Disengage |
| Power Levers ..... | As required |
| Elevator Trim Wheels. | As required |

*CAUTION:* MANUALLY SET THE ELEVATOR TRIM WHEELS TO THE REQUIRED DESCENT ATTITUDE.

If any trim system binding (if trim wheel rotates more than one trim wheel index mark after being released), or abnormal trim operation is observed:

| | |
|---|---|
| Elevator Trim Jamming Procedure. | Perform |

*CAUTION:* DO NOT TRY TO RE-ENGAGE THE AUTOPILOT.

If no abnormal trim operation is observed:

| | |
|---|---|
| Flight Director Vertical Mode. | As required |
| Autopilot ..... | Reengage'' |

AFM Revision: Collins APS–65B Autopilot AFM Supplement

(b) Concurrently with the AFM revisions required by paragraph (a) of this AD, revise the Limitations section of the Collins APS–65B Autopilot System Supplement to include the following (this may be accomplished by inserting a copy of this AD into the AFM Supplement):

''1) The autopilot must not be used during descent unless a trim check has been performed successfully prior to descent, as follows:

PITCH TRIM SYSTEM CHECK

| | |
|---|---|
| Control Wheel ..... | Hold firmly |
| Autopilot ..... | Disengage |
| Power Levers ..... | As required |
| Elevator Trim Wheels. | As required |

*CAUTION:* MANUALLY SET THE ELEVATOR TRIM WHEELS TO THE REQUIRED DESCENT ATTITUDE.

If any trim system binding (if trim wheel rotates more than one trim wheel index mark after being released), or abnormal trim operation is observed:

| | |
|---|---|
| Elevator Trim Jamming Procedure. | Perform |

*CAUTION:* DO NOT TRY TO RE-ENGAGE THE AUTOPILOT.

If no abnormal trim operation is observed:

| | |
|---|---|
| Flight Director Vertical Mode. | As required |
| Autopilot ..... | Reengage |

2) If an elevator trim jamming is detected during flight and the pitch trim system resumes normal operation on ground, only a ferry flight using a special permit may be performed to return the aircraft to a maintenance base for replacement of the actuators. In this case, the use of autopilot is prohibited.''

**Placard Installation**

(c) Within 300 flight hours after the effective date of this AD, install two placards on the glareshield, advising the flight crew to check the pitch trim before initial descent, in accordance with Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–25–0262, Change 02, dated October 30, 2003.

**Elevator Trim System Modification**

(d) Within 36 months after the effective date of this AD, modify the elevator trim system, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 120–27–0095, Revision 01, dated October 30, 2007; and EMBRAER Service Bulletin 120–27–0096, Revision 01, dated October 1, 2007. Accomplishment of the modification terminates the requirements of paragraphs (a), (b), and (c) of this AD, and the corresponding AFM revisions and placards may be removed.

**Credit for Prior Accomplishment**

(e) A modification done before the effective date of this AD in accordance with EMBRAER Service Bulletins 120–27–0095 and 120–27–0096, both dated February 16, 2007, is acceptable for compliance with the requirements of paragraph (d) of this AD.

Parts Installation

(f) As of 36 months after the effective date of this AD, no person may install, on any airplane, an elevator trim tab actuator or control cable having a part number identified in Table 1 of this AD.

TABLE 1.—PROHIBITED PARTS

| Part | Part No. |
|---|---|
| Elevator trim tab actuator. | 120–19685–001; 120–19685–003; 120–19685–007; 120–38650–001; 120–39205–001; 5299; 5299–1. |
| Control cable .... | 120–27729–095; 120–27729–097; 120–31370–095; 120–31370–097. |

**Alternative Methods of Compliance**

(g)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

**Incorporation by Reference**

(h) You must use the service information contained in Table 2 of this AD to do the

actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

| Service Bulletin | Revision level | Date |
|---|---|---|
| EMBRAER Service Bulletin 120–25–0262 | Change 02 | October 30, 2003. |
| EMBRAER Service Bulletin 120–27–0095 | Revision 01 | October 30, 2007. |
| EMBRAER Service Bulletin 120–27–0096 | Revision 01 | October 1, 2007. |

**Note 1:** The subject of this AD is addressed in Brazilian airworthiness directive 2001–06–01R4, effective August 23, 2007.

**Effective Date**

(i) This amendment becomes effective on August 21, 2008.

Issued in Renton, Washington, on July 3, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–15969 Filed 7–16–08; 8:45 am]

BILLING CODE 4910–13–P

## SOCIAL SECURITY ADMINISTRATION

## 20 CFR Part 404

**[Docket No. SSA–2006–0086]**

**RIN 0960–AG43**

## Technical Changes to the Title II Regulations

**AGENCY:** Social Security Administration.

**ACTION:** Direct Final Rule with request for comments.

**SUMMARY:** We are issuing this direct final rule to make technical corrections to our title II regulations affecting the Federal Old-Age, Survivors and Disability Insurance programs. This rule amends our regulations by correcting a cross-reference affecting entitlement to mother's and father's benefits, to include alternatives to the 9-month duration of marriage requirement. We are deleting an out-of-date cross-reference to the definition of ''substantially all.'' In its place, we are restoring the regulatory definition for ''substantially all'' that had been inadvertently deleted to show if a grandchild or stepgrandchild is dependent based on our support requirements. Also, we are revising headings in six of our regulations to conform to plain language provisions of Executive Order (E.O.) 12866, as amended.

We are also amending one of our regulations for clarity and to correct a typographical error.

**DATES:** *Effective Date:* This direct final rule is effective September 15, 2008 unless adverse or critical comments are received by August 18, 2008. If the effective date is delayed, timely notice will be published in the **Federal Register** .

**COMMENT DATE:** To be sure your comments are considered, we must receive them by August 18, 2008.

**ADDRESSES:** You may submit comments by one of four methods—Internet, facsimile, regular mail, or hand-delivery. Commenters should not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA–2006–0086 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at *http://www.regulations.gov.* (This is the most expedient method for submitting your comments, and we strongly urge you to use it.) In the ''Comment or Submission'' section of the webpage, type ''SSA–2006–0086'', select ''Go'', and then click ''Send a Comment or Submission.'' The Federal eRulemaking portal issues you a tracking number when you submit a comment.

2. Telefax to (410) 966–2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703.

4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person named in this preamble.

*Caution:* All comments we receive from members of the public are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov.* Therefore, you should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

**FOR FURTHER INFORMATION CONTACT:** Mary Jayne Neubauer, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–7303. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

### Explanation of Changes

Correction of cross-reference in section 404.339(a)—Who is entitled to mother's or father's benefits.

Section 404.339 describes how a person becomes entitled to mother's or father's benefits. Section 404.339(a) currently requires that the person be the widow or widower of the insured ''and meet the conditions described in § 404.335(a)(1)'', which refers to a 9-month duration of marriage requirement for a widow or widower. This cross-reference is incorrect because it does not include the alternatives to the 9-month duration of marriage requirement, which are contained in § 404.335(a)(2), (a)(3) and (a)(4). Therefore, we are

correcting the cross-reference to refer to § 404.335(a).

Technical correction to section 404.340—Who is entitled to mother's or father's benefits as a surviving divorced spouse.

Currently, § 404.340 of the regulations explains that for you to be entitled to mother's or father's benefits as a surviving divorced spouse, you must be a surviving divorced wife or surviving divorced husband of someone who was fully or currently insured when he or she died. We are amending the introductory text in § 404.340 to add ''on the earnings record'' after ''husband'' for clarity and consistency with the introductory language of § 404.339 of our regulations.

We are also making a correction in the introductory text to correct a typographical error.

Technical corrections to sections 404.348—When a child living with you is ''in your care''—and section 404.762— Evidence of having a child in your care.

In 1979, we published final regulations reorganizing and restating in simpler language, the rules on requirements for entitlement to Social Security benefits and how we determine family relationships when benefits are requested as the insured's dependent or survivor. (44 FR 34479.) We have found that the wording of the introductory text in §§ 404.348 and 404.762 could be misinterpreted so that it would inaccurately reflect the Social Security Act (the Act) and the operating policies that we follow. Therefore, in this direct final regulation, we are making clarifying corrections to those sections by removing the language that could be misinterpreted.

Paragraphs (b)(1) and (c)(1) of section 202 of the Act explain that benefits are payable to a wife or husband of an individual entitled to Title II benefits. Paragraph (g)(1) of section 202 of the Act explains that benefits are also payable to a mother or father who is the widow or widower of a deceased insured individual (including a surviving divorced parent), if he or she has an entitled child of the insured in his or her care. Currently, our regulations at § 404.348 provide the conditions for child in care and define the beneficiaries who can be entitled based on having a child of the insured in care. However, they do not explain that benefits can be payable to husbands before they become 62 years old and surviving divorced mothers and surviving divorced fathers, if they have the insured's entitled child in-care. Section 404.348, unlike § 404.762, does not clearly state that benefits are payable to mothers and fathers as the widows or widowers of the insured. In addition, in discussing the evidentiary requirements for establishing that a child is in-care, § 404.762 does not explain that benefits are payable to husbands and surviving divorced fathers.

The inadvertent omission of husband's and surviving divorced mother's and surviving divorced father's benefits from the regulation defining child-in-care and the omission of husband's and surviving divorced father's benefits from the regulation describing the child in-care evidentiary requirements was an oversight when the regulations were amended in 1979 to remove gender-based distinctions.

We properly define the individuals who are entitled to benefits based on having a child of the insured in care in §§ 404.330, 404.339 and 404.340 of the regulations. We have determined that defining the categories of beneficiaries in §§ 404.348 and 404.762 is not relevant to the subject regulations—§§ 404.330, 404.339 and 404.340. Therefore, we are removing the first sentences in §§ 404.348 and 404.762 because they are incomplete and covered more fully in other sections.

Restoring definition of ''substantially all'' and amending language to eliminate gender-based distinctions in section 404.364—When a grandchild or stepgrandchild is dependent.

To be entitled to benefits as a grandchild or stepgrandchild of an insured person, the child must be dependent on the insured. Consistent with requirements in section 202(d)(9)(A) of the Act, § 404.364 explains when a grandchild or stepgrandchild applying for benefits is considered dependent. One of the dependency requirements is that a grandchild or stepgrandchild must have been both living with and receiving at least one-half support from the insured for the 1-year period before the insured died or became entitled to old-age or disability benefits. Under section 202(d)(9)(B) of the Act and § 404.364(b) of our regulations, if a grandchild or stepgrandchild was born during this 1-year period, the living-with and support requirements must be met for ''substantially all'' of the period beginning on the child's date of birth. Section 404.364(b) refers to § 404.362(b)(1)(iii) for a definition of ''substantially all.'' However, we inadvertently deleted § 404.362(b)(1)(iii) from the regulations in 1991. (56 FR 23999.) We are defining ''substantially all'' in a new paragraph (c) of § 404.364, using essentially the deleted language. Under this definition, the ''substantially all'' requirement is met if, at the applicable time, the insured was living with the child and providing at least one-half of the child's support and any period during which the grandparent or stepgrandparent was not living with the child and providing at least one-half support did not exceed the lesser of 3 months or one-half of the period beginning with the month of the child's birth.

We are also amending paragraph (b) of § 404.364 to insert ''or her'' after ''him'' to eliminate gender-based distinctions.

**Revision of Headings to Clarify These Regulations**

We are rewriting the headings for §§ 404.339, 404.340, 404.348, 404.349, 404.364 and 404.762 to comply with the provisions of Executive Order 12866, as amended, requiring that each agency write all rules in plain language.

**Regulatory Procedures**

Pursuant to sections 205(a), 702(a)(5), and 1631(d)(1) of the Act, 42 U.S.C. 405(a), 902(a)(5), 1383(d)(1), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of this rule, we believe that, under 5 U.S.C. 553(b)(B), good cause exists for issuing these regulatory changes as a direct final rule, without prior public comment. As we explained above, in this rule, we are merely clarifying and making minor technical changes to some of our regulations. The clarifications and changes do not involve substantial exercise of our discretion, but merely correct typographical errors and incorrect cross references, make our regulations internally consistent, and restore language that had been inadvertently deleted from the regulations. Therefore, we have determined that opportunity for prior public comment is unnecessary, and we are issuing these regulations as a direct final rule. However, we are inviting public comment on the changes made by this rule and will consider any responsive comments received within 30 days of the publication of this direct final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are revising our title II rules to correct minor technical

errors and to clarify the rules. Therefore, we find that it is in the public interest to make this rule effective upon publication.

*Executive Order 12866, as Amended*

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, it was not subject to OMB review. We have also determined that this rule meets the plain language requirement of Executive Order 12866, as amended.

*Regulatory Flexibility Act*

We certify that this direct final rule will not have a significant economic impact on a substantial number of small entities as it affects individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

This rule imposes no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance.)

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: July 10, 2008.

**Michael J. Astrue,**

*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we are amending part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

### Subpart D—[Amended]

■ 1. The authority citation for subpart D of part 404 continues to read as follows:

**Authority:** Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

■ 2. Amend § 404.339 by revising the heading and paragraph (a) to read as follows:

**§ 404.339 How do I become entitled to mother's or father's benefits as a surviving spouse?**

* * * * *

(a) You are the widow or widower of the insured and meet the conditions described in § 404.335(a);

* * * * *

■ 3. Amend § 404.340 by revising the heading and introductory text to read as follows:

**§ 404.340 How do I become entitled to mother's or father's benefits as a surviving divorced spouse?**

You may be entitled to mother's or father's benefits as the surviving divorced wife or the surviving divorced husband on the earnings record of someone who was fully or currently insured when she or he died. You are entitled to these benefits if—

* * * * *

■ 4. Amend § 404.348 by revising the heading and the introductory text to read as follows:

**§ 404.348 When is a child living with me in my care?**

A child who has been living with you for at least 30 days is *in your care* unless—

* * * * *

■ 5. Amend § 404.349 by revising the section heading to read as follows:

**§ 404.349 When is a child living apart from me in my care?**

* * * * *

■ 6. Amend § 404.364 by revising the heading and paragraph (b), and by adding paragraph (c) to read as follows:

**§ 404.364 When is a grandchild or stepgrandchild dependent?**

* * * * *

(b) You were living with the insured in the United States and receiving at least one-half of your support from him or her for the year before he or she became entitled to old-age or disability benefits or died; or if the insured had a period of disability that lasted until he or she became entitled to benefits or died, for the year immediately before the month in which the period of disability began. If you were born during the 1-year period, the insured must have lived with you and provided at least one-half of your support for *substantially all* of the period that begins on the date of your birth. Paragraph (c) of this section explains when the *substantially all* requirement is met.

(c) The ''substantially all'' requirement will be met if, at one of the times described in paragraph (b) of this section, the insured was living with you and providing at least one-half of your support, and any period during which he or she was not living with you and providing one-half of your support did not exceed the lesser of 3 months or one-half of the period beginning with the month of your birth.

### Subpart H—[Amended]

■ 7. The authority citation for subpart H of part 404 continues to read as follows:

**Authority:** Secs. 205(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a) and 902(a)(5)).

■ 8. Amend § 404.762 by revising the heading and the introductory text to read as follows:

**§ 404.762 What is acceptable evidence of having a child in my care?**

What evidence we will ask for depends upon whether the child is living with you or with someone else. You will be asked to give the following evidence:

* * * * *

[FR Doc. E8–16332 Filed 7–16–08; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 892

**[Docket No. FDA–2005–N–0346] (formerly Docket No. 2005N–0467)**

### Medical Devices; Radiology Devices; Reclassification of Bone Sonometers

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule to reclassify bone sonometer devices from class III into class II, subject to special controls. FDA is taking this action on its own initiative after reviewing recent scientific and technological studies regarding bone sonometer devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document entitled ''Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Bone Sonometers'' that will serve as the special control for these devices.

**DATES:** This final rule is effective August 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Phillips, Center for Devices

and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3666.

**SUPPLEMENTARY INFORMATION:**

## I. Regulatory Authority

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act (SMDA) (Public Law 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250), the Medical Devices Technical Corrections Act (MDTCA) (Public Law 108–214), and the Food and Drug Administration Amendments Act (FDAAA), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device type; and (3) published a final regulation classifying the device type. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA), until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Section 513(f)(3) of the act allows FDA to initiate reclassification of a postamendment device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device to petition the Secretary of the Department of Health and Human Services for the issuance of an order classifying the device in class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. To change the classification of the device, it is necessary that the proposed new classification have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

## II. Regulatory Background of the Device

In the **Federal Register** of February 15, 2006 (71 FR 7894), FDA published a proposed rule to reclassify bone sonometers from class III (premarket approval) into class II (special controls) after reviewing current technological and scientific developments. Specifically, the Center for Devices and Radiological Health (CDRH) reviewed recent studies addressing performance characteristics of bone sonometers manufactured by different companies and determined that, when combined with mitigation measures to offset the risks of use associated with these devices, special controls would be adequate to assure the safety and effectiveness of bone sonometers. Interested persons were invited to comment on the proposed rule by May 16, 2006. FDA also identified the draft guidance document entitled ''Draft Guidance for Industry and FDA Staff; Class II Special Controls Draft Guidance Document; Bone Sonometers'' as the proposed special control capable of providing reasonable assurance of safety and effectiveness for these devices (71 FR 7976).

## III. Analysis of Comments and FDA's Response

FDA received a number of comments on the proposed rule and draft guidance document. Each of the comments supported the reclassification of bone sonometers from class III into class II, but made specific suggestions with regard to the general scope and clinical testing sections of the guidance. FDA agreed with the following suggested changes to the special controls guidance and revised the document accordingly: (1) Determining device-specific T-score thresholds; (2) removing recommendations regarding monitoring; (3) increasing the number of women recommended for reproducibility studies; (4) recommending intermediate-term precision studies in addition to short-term precision studies; (5) deleting the recommendation that separate T-score thresholds be determined for reference databases based on non-Caucasian females or males of any ethnicity; (6) recommending justification for exclusion criteria regarding recent use of bone-active drugs; (7) recommending stratification of patients by bone mineral density rather than age for reproducibility testing; (8) recommending inclusion of axial dual energy x-ray absorptiometry data in order to determine level of discordance with bone sonometer; and (9) recommending testing to assess temperature dependence of measurements.

The agency disagreed with the suggestion to require that bone sonometers express measurements in terms of fracture risk instead of T-scores. FDA recognizes the diagnostic significance of fracture risk and the limitations of T-scores. Previously-approved bone sonometers, however, express measurements in terms of T-scores because they were developed and approved prior to recent publications reporting limitations of T-scores. Because currently approved bone sonometers express measurements in terms of T-scores, firms wishing to demonstrate substantial equivalence of new bone sonometers with similar indications and technology may choose to express diagnostic measurements in terms of T-scores. The agency distinguishes this goal from that of demonstrating the safety and effectiveness of bone sonometers using new technology, or, with new indications for use, such as fracture risk measurement. As yet, a standardized measure of fracture risk has not been introduced into clinical practice, although FDA is aware that such efforts are currently underway. The agency encourages these efforts. If and when a standard method to predict fracture risk becomes available, FDA may revise the bone sonometers guidance.

## IV. FDA's Conclusions

Based on the information discussed in the preamble to the proposed rule (71 FR 7894), and revisions to the guidance as discussed previously in this document, FDA concludes that special controls, in conjunction with general controls, will provide reasonable assurance of the safety and effectiveness of bone sonometers. The agency is, therefore, reclassifying bone sonometers from class III (premarket approval) into class II (special controls) when intended for determining the possible presence of osteoporosis and/or assessing non-age-related bone loss. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document entitled ''Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document; Bone Sonometers'' as the special control capable of providing reasonable assurance of safety and effectiveness for these devices. Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a bone sonometer intended for determining the possible presence of osteoporosis and/or assessing non-age-related bone loss will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

FDA is now codifying the classification for bone sonometers by adding new § 892.1180. For the convenience of the reader, 21 CFR 892.1 has been amended to inform the reader where to find guidance documents referenced in 21 CFR part 892.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, this type of device is not exempt from premarket notification requirements. Persons intending to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the bone sonometer(s) intended for marketing.

## V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity). The agency certifies that this final rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of bone sonometers from class III to class II relieves manufacturers of this device type of the costs of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device type, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''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 $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

## VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

## VIII. Paperwork Reduction Act of 1995

This final rule contains no new collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

This final rule also designates a guidance document as a special control. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of that guidance document entitled ''Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Bone Sonometers,'' which contains a Paperwork Reduction Act analysis for that guidance.

## List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 892 is amended as follows:

## PART 892—RADIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 892 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 892.1(e) to read as follows:

### § 892.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh/guidance.html*.

■ 3. Add § 892.1180 to subpart B to read as follows:

### § 892.1180 Bone sonometer.

(a) *Identification.* A bone sonometer is a device that transmits ultrasound energy into the human body to measure acoustic properties of bone that indicate overall bone health and fracture risk. The primary components of the device are a voltage generator, a transmitting transducer, a receiving transducer, and hardware and software for reception and

processing of the received ultrasonic signal.

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Bone Sonometers.'' See § 892.1(e) for the availability of this guidance document.

Dated: July 2, 2008.

**Daniel G. Schultz,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. E8–16354 Filed 7–16–08; 8:45 am]

**BILLING CODE 4160–01–S**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2007–1000; FRL–8691–6]**

## Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to the Control of Volatile Organic Compound Emissions From Portable Fuel Containers

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires the control of emissions of volatile organic compounds (VOCs) portable fuel containers. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on August 18, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–1000. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Gobeail McKinley, (215) 814–2033, or by e-mail at *mckinley.gobeail@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 3, 2007 (72 FR 67878), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of the control of VOC emissions from portable fuel containers. The formal SIP revision was submitted by the Maryland Department of the Environment (MDE) on June 18, 2007.

### II. Summary of SIP Revision

Maryland's amendments to the portable fuel containers rule incorporate the changes to the 2007 Ozone Transport Commission (OTC) Model Rule for portable fuel containers that was based on the changes adopted by California Air Resources Board (CARB) in July 2006. The amendments address the fact that the original rule did not apply to kerosene containers which were offered for sale in place of compliant portable fuel containers. Other amended incorporations include: Modifying the existing spout regulations in order to improve spillage control; elimination of the fuel flow rate and fill level performance standards; elimination of the automatic shutoff performance standard; new containers must be certified for use and sale by the manufacturer through CARB; and, new portable fuel container testing procedures to streamline testing. The amendments, which includes a one-year sell-through period, apply to any person who sells, supplies, advertises or offers for sale, or manufactures for sale portable fuel containers and/or spouts. Owners of portable fuel containers and/or spouts purchased prior to the July 1, 2007 implementation date are not required to purchase or replace the containers and/or spouts with newer, compliant fuel containers. There are no manufacturers of portable fuel containers in Maryland.

The rationale for EPA's proposed action are explained in the NPR and will not be restated here. On December 6, 2007, EPA received a comment on its December 3, 2007 NPR. A summary of the comment submitted and EPA's response is provided in section III of this document.

### III. Summary of Public Comments and EPA Response

*Comment:* The commenter expressed a concern that in New Jersey, the container designs are not easy to use, especially for those who use these containers only occasionally, and some people might defeat the designs thereby eliminating any air quality benefits. The commenter asks if EPA would investigate whether the containers will really bring a significant clean air benefit.

*Response:* These amendments, submitted by the State of Maryland concerning the control of VOCs from portable fuel containers, are being considered by EPA, on the basis that they strengthen the existing Maryland SIP. There is no comparable Federal rule to reduce VOC emissions from portable fuel containers. The State of Maryland has estimated that these amendments will result in an emission reduction potential of 1.6 tons per day of VOC in the Baltimore nonattainment area, and 6 tons per day of VOC statewide beginning in 2009.[1] The commenter does not dispute that the Maryland portable fuel container rule will reduce VOC emissions, but rather speculates that the emissions reduction features of the fuel containers might be defeated by end-users and asks EPA to investigate whether the rule will achieve ''significant clean air benefits.'' For purposes of approving this regulation as a SIP-strengthening measure, EPA does not have to determine if the emissions reductions from this regulation are or are not ''significant.'' EPA merely needs to determine if the rule will generate some additional reductions that would not be achieved by the current Maryland SIP. The commenter does not challenge that at least some amount of reductions will occur due to the implementation of the fuel container rule.

Section 110 of the CAA provides the statutory framework for approval/disapproval of SIP revisions. Under the CAA, EPA establishes NAAQS for certain pollutants. The CAA establishes a joint Federal and State program to control air pollution and protect the public health. States are required to prepare SIPs for each designated ''air quality region'' within their borders. The SIP must specify emission limits

[1] Maryland is not at this time requesting EPA to approve a quantified amount of VOC emission reduction from the enactment of its regulation. Rather, this regulation has been submitted by Maryland, and is being considered by EPA, on the basis that it strengthens the existing Maryland SIP. EPA will only review and approve a specific amount of emissions reductions after receiving a proper request to do so from the State of Maryland.

and other measures necessary for that area to meet and maintain the required NAAQS. Each SIP must be submitted to the EPA for its review and approval. EPA will review and must approve the SIP revision if it is found to meet the minimum requirements of the CAA. *See* section 110(k)(3) of the CAA, 42 U.S.C. 7410(k)(3); *see also, Union Elec. Co.* v. *EPA*, 427 U.S. 246, 265, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976).

EPA has concluded that Maryland's amendments concerning the control of VOCs from portable fuel containers meet the minimum criteria for approvability. Furthermore, to the extent that the fuel containers achieve any emissions reductions at all, even reductions that are not ''significant,'' this SIP revision will be more stringent than the current Maryland SIP.

## III. Final Action

EPA is approving the control of VOC emissions from portable fuel containers (COMAR 26.11.13.07) as a revision to the Maryland SIP which was submitted on June 18, 2007. This regulation will result in the reduction of VOC emissions from the affected sources.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

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

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

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

### *B. Submission to Congress and the Comptroller General*

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

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 15, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Maryland's amendments to the portable fuel containers rule may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

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

Dated: July 1, 2008.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entries for COMAR 26.11.13 [title] and 26.11.13.07 to read as follows:

**§ 52.1070 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

| Code of Maryland administrative regulations (COMAR) citation | Title/subject | State effective date | EPA approval date | Additional explanation/citation at 40 CFR 52.1100 |
|---|---|---|---|---|
| * | * | * | * | * |
| COMAR 26.11.13 ..... | Control of Gasoline and Volatile Organic Compound Storage and Handling | | | |

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

| Code of Maryland administrative regulations (COMAR) citation | Title/subject | State effective date | EPA approval date | Additional explanation/citation at 40 CFR 52.1100 |
|---|---|---|---|---|
| * | * | * | * | * |
| 26.11.13.07 ..... | Control of VOC Emissions from Portable Fuel Containers. | 6/18/07 | 7/17/08 [Insert page number where the document begins]. | |
| * | * | * | * | * |

* * * * *

[FR Doc. E8–16021 Filed 7–16–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2006–1029; FRL–8689–7]**

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution from Volatile Organic Compounds

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Texas. This revision, adopted by Texas on November 15, 2006, and submitted to EPA on December 13, 2006, extends requirements to reduce volatile organic compound (VOC) emissions in the Dallas-Fort Worth (DFW) area. Specifically, this revision extends requirements for control of VOC emissions to the five counties that were added to the DFW nonattainment area under the 1997 8-hour ozone standard designation: Ellis, Johnson, Kaufman, Parker, and Rockwall, and the affected VOC sources will be subject to the same emission limitation, control, monitoring, testing, recordkeeping, and recording requirements already in effect in Collin, Dallas, Denton, and Tarrant counties. As a result of this action, these new VOC control requirements will be consistent for all nine counties in the DFW ozone nonattainment area. This revision meets statutory and regulatory requirements, and is consistent with EPA's guidance. EPA is approving this revision pursuant to section 110, 116 and part D of the Federal Clean Air Act (CAA).

**DATES:** This direct final rule will be effective September 15, 2008 without further notice, unless EPA receives relevant adverse comments by August 18, 2008. If EPA receives such comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R06–OAR–2006–1029, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *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–2006–1029. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in 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 or Mr. Bill Deese at 214–665–7253 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.

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:**

Ellen Belk, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2164; fax number 214–665–7263; e-mail address *belk.ellen@epa.gov.*

**SUPPLEMENTARY INFORMATION**

## I. General Information

Throughout this document, whenever ''we'', ''us'' or ''our'' is used, we mean the EPA.

## II. Rulemaking Information

This section is organized as follows:

A. What Action Is EPA Taking?
B. What Are the Requirements of Texas' New Regulation?
C. Why Is EPA Approving Texas' Regulation?
D. What Is the Process for EPA to Approve This SIP Revision?

### *A. What Action Is EPA Taking?*

EPA is approving Texas' Chapter 115 ''Control of Air Pollution from Volatile Organic Compounds'' amendments to §§ 115.10, 115.119, 115.129, 115.139, 115.149, 115.219, 115.239, 115.319, 115.359, 115.419, 115.439, 115.449, 115.519, and 115.539 which subject VOC-emitting sources located in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to the same emission limitation, control, monitoring, testing, recordkeeping, and recording requirements in effect in Collin, Dallas, Denton, and Tarrant Counties, the other four counties in the DFW 8-hour ozone nonattainment area. The revisions were adopted by Texas on November 15, 2006, and submitted to EPA on December 13, 2006.

### *B. What Are the Requirements of Texas' New Regulation?*

The DFW area is classified as a moderate nonattainment area for the 1997 8-hour ozone standard. This rule will affect VOC-emitting facilities in five counties of the DFW 8-hour ozone nonattainment area. Table 1 lists the affected Texas Counties:

TABLE 1.—COUNTIES AFFECTED BY THIS RULEMAKING

| Counties in DFW 8-hour ozone nonattainment area affected by this rulemaking |
|---|
| Ellis |
| Johnson |
| Kaufman |
| Parker |
| Rockwall |

Texas' Chapter 115 regulations control VOC emissions for many categories of sources. In particular, this rulemaking affects the TAC Subchapters and Divisions listed in Table 2:

TABLE 2.—TEXAS ADMINISTRATIVE CODE (TAC) CHAPTER 115 SUBCHAPTERS AFFECTED BY THIS RULEMAKING

| Chapter 115 subchapter | Section |
|---|---|
| A Definitions | 115.10 |
| B General VOC Sources | |
| Division 1 Storage of VOCs | 115.119 |
| Division 2 Vent Gas Control | 115.129 |
| Division 3 Water Separation | 115.139 |
| Division 4 Industrial Wastewater | 115.149 |
| C VOC Transfer Operations | |
| Division 1 Loading and Unloading of VOCs | 115.219 |
| Division 3 Control of VOC Leaks from Transport Vessels | 115.239 |
| D Petroleum Refining, Natural Gas Processing, and Petrochemical Processes | |
| Division 1 Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries | 115.319 |
| Division 3 Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas | 115.359 |
| E Solvent-Using Processes | |
| Division 1 Degreasing Processes | 115.419 |
| Division 3 Flexographic and Rotogravure Printing | 115.439 |
| Division 4 Offset Lithographic Printing | 115.449 |
| F Miscellaneous Industrial Sources | |
| Division 1 Cutback Asphalt | 115.519 |
| Division 2 Pharmaceutical Manufacturing Facilities | 115.539 |

To determine whether a specific facility in one of the above counties will be affected by one or more of the above revisions, see Texas' associated rule revisions included in the docket.

This rule requires compliance with the specified VOC control requirements by March 1, 2009.

### *C. Why Is EPA Approving Texas' Revisions?*

On May 23, 2007, the Texas Commission on Environmental Quality (TCEQ or Texas) approved revisions to the SIP for the DFW 8-hour ozone nonattainment area. The SIP revisions were submitted to EPA on May 30, 2007. Extending requirements for control of VOC emissions to the additional counties will help to attain and maintain the 8-hour ozone standard in the DFW area. Our approval of the revised Texas regulations will make them federally enforceable. EPA is evaluating Texas' analysis for Reasonable Available Control Technology (RACT) for $NO_X$ and VOC in actions which are separate from this one.

EPA has evaluated the Chapter 115 revisions and finds they enhance the SIP by extending existing VOC control requirements to additional counties. The specific requirements for the regulation and EPA's evaluation of these requirements are detailed in the Technical Support Document (TSD), which is available in the docket

supporting this action. Also, Texas' Chapter 115 revisions are included in the docket.

*D. What Is the Process for EPA to Approve This SIP Revision?*

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate documents that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective September 15, 2008 without further notice, unless EPA receives relevant adverse comments by August 18, 2008.

If EPA receives such comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 15, 2008 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Final Action

EPA is approving Texas' Chapter 115 Control of Air Pollution from Volatile Organic Compounds amendments to §§ 115.10, 115.119, 115.129, 115.139, 115.149, 115.219, 115.239, 115.319, 115.359, 115.419, 115.439, 115.449, 115.519, and 115.539 which extend requirements for control of VOC emissions to sources located in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, and incorporating this regulation into the Texas SIP.

## IV. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Because this rule merely proposes to approve a state rule implementing a Federal standard, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit September 15, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

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

Dated: July 1, 2008.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended under Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds by:

■ a. Revising the entries for Sections 115.10, 115.119, 115.129, 115.139, 115.149, 115.219, 115.239, 115.319, 115.359, 115.419, 115.439, 115.449, 115.519, and 115.539;

■ b. Revising the title of Division 3 under Subchapter B to read ''Division 3: Water Separation''.

■ The revisions read as follows:

**§ 52.2270 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

| State citation | Title/subject | State approval/submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * | * | * | * * | * |
| **Chapter 115 (Reg 5)—Control of Air Pollution From Volatile Organic Compounds** | | | | |
| **Subchapter A—Definitions** | | | | |
| Section 115.10 | Definitions | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| **Subchapter B—General Volatile Organic Compound Sources** | | | | |
| **Division 1: Storage of Volatile Organic Compounds** | | | | |
| * * | * | * | * * | * |
| Section 115.119 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| **Division 2: Vent Gas Control** | | | | |
| * * | * | * | * * | * |
| Section 115.129 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| **Division 3: Water Separation** | | | | |
| * * | * | * | * * | * |
| Section 115.139 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| **Division 4: Industrial Wastewater** | | | | |
| * * | * | * | * * | * |
| Section 115.149 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| * * | * | * | * * | * |
| **Subchapter C—Volatile Organic Compound Transfer Operations** | | | | |
| **Division 1: Loading and Unloading of Volatile Organic Compounds** | | | | |
| * * | * | * | * * | * |
| Section 115.219 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| * * | * | * | * * | * |
| **Division 3: Control of Volatile Organic Compound Leaks From Transport Vessels** | | | | |

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

| State citation | Title/subject | State approval/submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * | * | * | * * | * |
| Section 115.239 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| * * | * | * | * * | * |
| **Subchapter D—Petroleum Refining, Natural Gas Processing, and Petrochemical Processes** | | | | |
| **Division 1: Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries** | | | | |
| * * | * | * | * * | * |
| Section 115.319 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| * * | * | * | * * | * |
| **Division 3: Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas** | | | | |
| * * | * | * | * * | * |
| Section 115.359 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| **Subchapter E—Solvent-Using Processes** | | | | |
| **Division 1: Degreasing Processes** | | | | |
| * * | * | * | * * | * |
| Section 115.419 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| * * | * | * | * * | * |
| **Division 3: Flexographic and Rotogravure Printing** | | | | |
| * * | * | * | * * | * |
| Section 115.439 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| **Division 4: Offset Lithographic Printing** | | | | |
| * * | * | * | * * | * |
| Section 115.449 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| **Subchapter F—Miscellaneous Industrial Sources** | | | | |
| **Division 1: Cutback Asphalt** | | | | |
| * * | * | * | * * | * |
| Section 115.519 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| **Division 2: Pharmaceutical Manufacturing Facilities** | | | | |

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

| State citation | Title/subject | State approval/submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * | * | * | * * | * |
| Section 115.539 | Counties and Compliance Schedules. | 11/15/06 | 07/17/08 [Insert FR page number where document begins]. | |
| * * | * | * | * * | * |

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[FR Doc. E8–15729 Filed 7–16–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[EPA–HQ–OAR–2003–0138; FRL–8693–9]**

**RIN 2060–AO99**

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

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

**ACTION:** Final rule; partial withdrawal of direct final rule; amendments.

**SUMMARY:** EPA published proposed and direct final rule amendments on April 23, 2008, of the national emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline), which EPA promulgated on February 3, 2004, and amended on July 28, 2006. Because adverse comments were received on two of the April 23, 2008, proposed and direct final rule amendments, EPA is withdrawing the two corresponding regulatory amendments in the direct final rule before they become effective on July 22, 2008. The other regulatory amendments discussed in the direct final rule, for which we did not receive any adverse comments, will become effective on July 22, 2008, as we stated in that notice. In addition, in this action EPA is promulgating final rule amendments regarding the provisions that were commented upon and withdrawn, and responds to the adverse comments we received. Additionally we are correcting typographical errors that we have identified in other sections of the rule text that were not addressed in the April 23, 2008, notices.

**DATES:** As of July 17, 2008, EPA withdraws the direct final rule revision for 40 CFR 63.2358(b)(1) and (c)(1), and Table 10 to Subpart EEEE of Part 63 entries 4. and 6., published on April 23, 2008 (79 FR 21825). The final rule amendments in this action are effective on July 17, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0138. 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 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 and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:**

*General and Technical Information:* Mr. Stephen Shedd, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), EPA, Research Triangle Park, NC 27711, *telephone:* (919) 541–5397, *facsimile number:* (919) 685–3195, *e-mail address: shedd.steve@epa.gov.*

*Compliance Information:* Ms. Marcia Mia, Office of Compliance, Air Compliance Branch (2223A), EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *telephone:* (202) 564–7042, *facsimile number:* (202) 564–0050, *e-mail address: mia.marcia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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

I. General Information
II. Background
III. What action is EPA taking?
IV. Withdrawal of Two Direct Final Rule Amendments
V. Rationale for These Final Rule Amendments
A. Storage Tank Compliance Date
B. Monitoring of Storage Tank Pressure Relief Devices
C. Typographical Errors
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

## I. General Information

### *A. Does this action apply to me?*

Categories and entities potentially regulated by this action include:

| Category | NAICS* code | Examples of regulated entities |
|---|---|---|
| Industry | 325211, 325192, 325188, 32411, 49311, 49319, 48611, 42269, 42271 | Operations at major sources that transfer organic liquids into or out of the plant site, including: liquid storage terminals, crude oil pipeline stations, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with collocated OLD operations. |

| Category | NAICS* code | Examples of regulated entities |
|---|---|---|
| Federal Government ..... | ..... | Federal agency facilities that operate any of the types of entities listed under the ''industry'' category in this table. |

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

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

*B. Where can I get a copy of this document?*

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

*C. Judicial Review*

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 15, 2008. Under section 307(b)(2) of the CAA, the requirements established by this final rule 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 that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an 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 outcome of the rule.'' Any person seeking to make such a demonstration to us 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 persons(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

## II. Background

On February 3, 2004 (69 FR 5063), EPA promulgated the National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) (OLD NESHAP) (40 CFR part 63, subpart EEEE) pursuant to section 112 of the CAA. In response to several petitions for administrative reconsideration of the OLD NESHAP and several petitions for judicial review filed with the United States Court of Appeals for the District of Columbia Circuit, and pursuant to a settlement agreement between some of the parties to the litigation, EPA proposed amendments to subpart EEEE on November 14, 2005 (70 FR 69210). On July 28, 2006 (71 FR 42898), EPA promulgated amendments to subpart EEEE based on consideration of the comments received on the proposed amendments.

On April 23, 2008 (79 FR 21825 and 21889, respectively), we published a direct final rule and parallel proposed amendments to clarify combustion control device compliance requirements, certain storage tank control compliance dates, and vapor balance system monitoring requirements. In addition, we corrected several rule text format, grammatical, and typographical errors.

## III. What action is EPA taking?

In summary, under this action, we are withdrawing two of the amendments we proposed through direct final action on April 23, 2008. Also, under this action, we are promulgating final amendments to respond to the adverse comments we received regarding the regulatory provisions addressed by those comments. Additionally, we are correcting typographical errors found in the rule text, which were not discussed in the April 23, 2008, direct final rule and proposed amendments but have subsequently been identified.

## IV. Withdrawal of Two Direct Final Rule Amendments

In the April 23, 2008, direct final rule we said that if we received adverse comments, we would publish a timely withdraw in the **Federal Register** informing the public that this rule, or the relevant section of this rule, will not take effect. We also stated that the provisions that are not withdrawn would become effective on July 22, 2008, notwithstanding adverse comment on any other provision, unless we determined that it would not be appropriate to promulgate those provisions due to their possibly being affected by the adverse comments (73 FR at 21825–26). We have determined that the comments we received affect only the specific regulatory amendments that were addressed by those comments, and not the other provisions in the direct final amendments. Accordingly, we are withdrawing only the amendments on which we received adverse comments.

Before the comment period for the April 23, 2008, direct final rule and parallel proposal ended on June 9, 2008, we received one comment letter from industry objecting to how we presented the amended rule text for compliance dates for storage tanks in § 63.2358(b)(1) and (c)(1), and the pressure relief device compliance provisions in items 4. and 6. of Table 10 to Subpart EEEE of Part 63—Continuous Compliance with Work Practice Standards. Therefore, we are withdrawing those amendments. However, the amendments to regulatory provisions in the direct final rule for which we did not receive adverse comment will become effective on July 22, 2008. Also, as discussed below we are addressing the adverse comments received on the direct final rule and amending the corresponding provisions that were reflected in the direct final rule; these amendments are effective as of today. As stated in the parallel proposal, we will not institute a second comment period on this action.

## V. Rationale for These Final Rule Amendments

### *A. Storage Tank Compliance Date*

As discussed in the April 23, 2008, direct final rule, we had intended that existing source storage tanks with floating roofs must comply with the rim seal requirements at the next degassing and cleaning activity or within 10 years after February 3, 2004 (by February 3, 2014), whichever occurs first, instead of requiring compliance within 3 years, as was required for other sources of emissions. However, the rule text of § 63.2358(c)(1) for work practice standards in Table 4 incorrectly provided that all existing source storage tanks (floating and fixed roof) must comply no later than 10 years after February 3, 2004. Therefore, in the April 23, 2008, direct final rule and parallel proposal, we would have amended the rule to implement our intent that the allowance for ''not later than 10 years after February 3, 2004'' apply to floating roof storage tanks only. Additionally, in the April 23, 2008, direct final rule and parallel proposal we would have given fixed roof tanks 3 years (by April 25, 2011) to comply with the work practice standards since they need time to plan and install control equipment.

We received a comment in which the commenter agreed with EPA's intent to clarify the initial compliance date for existing source storage tanks; however, the commenter said that the proposed language in § 63.2358(b)(1) and (c)(1) does not clearly capture those requirements. The commenter also provided suggested rule text changes.

We have considered the commenter's suggested revisions and agree with the commenter that the revision to § 63.2358(b)(1) in the April 23, 2008, direct final rule did not adequately accomplish our intent in revising the rule. Therefore, with some modifications, we have incorporated the commenter's approach for clarifying the initial compliance demonstration dates. We also agree with the suggestion to clarify the rule by providing separate paragraphs (i) and (ii) under § 63.2358(c)(1) to address floating roof storage tanks separately from storage tanks without floating roofs.

In addition, we have decided that the requirements would be more clearly stated if we split the initial compliance dates for emission limits in Table 2, as specified in § 63.2358(b)(1), into two separate paragraphs. The commenter thought that the existing rule text was correct instead of the proposed text, but we believe neither the proposed nor existing rule text is correct. As currently worded, section (b)(1) requires the initial compliance demonstration for storage tanks and transfer racks at existing affected sources complying with the emission limitations listed in Table 2 to be conducted within 180 days after February 5, 2007. We do not wish to change this initial compliance demonstration date for transfer racks or for storage tanks that are complying with the 95 percent emission reduction requirement of Table 2, item a.i. However, we are changing the initial compliance demonstration date for storage tanks that are complying with the other requirements of Table 2 that are cross-referenced to the work practice standards in Table 4. We are adding paragraph (b)(1)(i) to clearly specify that storage tanks with an existing internal or external floating roof, complying with the rim seal requirements (item 1.a.ii. in Table 2 and item 1.a. in Table 4) must conduct the initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than February 3, 2014. We are adding paragraph (b)(1)(ii) to specify that storage tanks complying with the other work practice standards (item 1.a.ii. or 6.a.ii in Table 2 and items 1.b., 1.c., or 2. in Table 4) must comply within 180 days after April 25, 2011.

### *B. Monitoring of Storage Tank Pressure Relief Devices*

In the April 23, 2008, direct final rule and parallel proposal, we intended to clarify how to monitor pressure relief devices for transfer racks and storage tanks under the vapor balancing and equipment leak provisions (§ 63.2346(a)(4)(v) and in Table 10 to Subpart EEEE of Part 63—Continuous Compliance with Work Practice Standards, respectively). We received a comment stating that in the April 23, 2008, amendments the revised Table 10, item 4.b.i. incorrectly specifies that transfer rack vapor balance systems use the pressure relief device specification in § 63.2346(a)(4)(v). The commenter stated that this quarterly pressure relief device specification only applies to pressure relief devices associated with storage tanks using the vapor balancing option and that adding this clarification for transfer racks to item 4.b.i. creates another requirement that was not initially specified.

As discussed in the preamble to the April 23, 2008, direct final rule, our intent in revising Table 10 was to respond to questions concerning the relationship between the vapor balance system monitoring requirements for pressure relief devices in the rule text (§ 63.2346(a)(4)(v)) and those in Table 10 (item 6.b.i.). Given that both Table 10 and the rule text of § 63.2346 contained requirements for the monitoring of vapor balance systems, we made parallel clarifications to the storage tank and loading rack provisions. The commenter correctly points out, however, that the pressure relief requirements of § 63.2346(a)(4)(v) apply only to storage tanks and not to transfer racks. Upon review of the existing cross-referenced requirement for transfer racks, we found that Table 10 (item 4.b.i.) already requires that the owner or operator implement monitoring requirements under either 40 CFR 63 subparts TT, UU, or H, similar to those already in this rule for storage tanks. Given the similar requirements, there is no need to add the transfer rack vapor balance provisions for pressure relief devices. Thus, in this final action we are not including amendments for monitoring pressure relief devices for transfer racks in item 4 of Table 10.

The commenter also pointed out that the last sentence added to the monitoring requirements for storage tank vapor balance systems (item 6.b.i. of Table 10) incorrectly includes requirements for loading of a transport vehicle and filling of a container, instead of a storage tank. We agree and have now reworded the sentence only to include storage tanks as follows: ''If no loading of a storage tank occurs during a quarter, then monitoring of the vapor balancing system is not required.'' Thus, with that modification, we are finalizing the amendments to pressure relief devices and monitoring of vapor balance systems for storage tanks (item 6.b.i. in Table 10) discussed in the direct final rule.

### *C. Typographical Errors*

When analyzing the two adverse comments, we found a typographical error in § 63.2346(a)(4)(v) that incorrectly refers to § 63.2346(a)(4)(iv)(A) through (C), instead of § 63.2346(a)(4)(v)(A) through (C). Additionally, a state agency representative pointed out a second typographical error in § 63.2390(e)(2), (3), and (3)(ii) that incorrectly refers to § 63.2348(a)(4)(v), (a)(4)(vi)(B), and (a)(4)(vi)(B), respectively, instead of § 63.2346(a)(4)(v), (a)(4)(vi)(B), and (a)(4)(vi)(B). All the typographical errors were found in existing rule text that was not addressed in the notices published on April 23, 2008. We are making those corrections in this final rule.

These corrections to typographical errors do not affect the substance of the rule, nor do they change the rights or obligations of any party. Rather, this action merely corrects certain technical errors in the references in the rule. Thus, it is proper to issue these

corrections to the rule without notice and comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial, and do not substantively change the agency actions taken in today's final rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

## VI. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

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

### *B. Paperwork Reduction Act*

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

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA 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 rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. These final rule amendments will not impose any new requirements on small entities, since we are clarifying rule text.

### *D. Unfunded Mandates Reform Act*

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

This final 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. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. These final rule amendments clarify certain provisions and correct typographical errors in the rule text, thus, should not affect small governments.

### *E. Executive Order 13132: Federalism*

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

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 Executive Order 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 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by

tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. The amendments will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

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

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

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

*I. National Technology Transfer and Advancement Act*

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

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

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

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

EPA has determined that 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 the final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). These final rule amendments will be effective on July 17, 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 10, 2008.

**Stephen L. Johnson,**

*Administrator.*

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

## PART 63—[AMENDED]

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

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

## Subpart EEEE—[Amended]

■ 2. The amendments to § 63.2358(b)(1) and (c)(1), and to entries 4. and 6. of TABLE 10 TO SUBPART EEEE OF PART 63–CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS published on April 23, 2008 (79 FR 21825) are withdrawn as of July 17, 2008.

### § 63.2346 [Amended]

■ 3. Section 63.2346 is amended in paragraph (a)(4)(v) introductory text by removing the citation ''(a)(4)(iv)(A) through (C)'' and adding in its place the citation ''(a)(4)(v)(A) through (C)''.

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

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

* * * * *

(b)(1) For storage tanks and transfer racks at existing affected sources complying with the emission limitations listed in Table 2 to this subpart, you must demonstrate initial compliance with the emission limitations within 180 days after February 5, 2007, except as provided in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) For storage tanks with an existing internal or external floating roof, complying with item 1.a.ii. in Table 2 to this subpart and item 1.a. in Table 4 to this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than February 3, 2014.

(ii) For storage tanks complying with item 1.a.ii. or 6.a.ii in Table 2 of this subpart and item 1.b., 1.c., or 2. in Table 4 of this subpart, you must comply within 180 days after April 25, 2011.

* * * * *

(c)(1) For storage tanks at existing affected sources complying with the work practice standard in Table 4 to this subpart, you must conduct your initial compliance demonstration as specified

in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) For storage tanks with an existing internal or external floating roof, complying with item 1.a. in Table 4 of this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than February 3, 2014.

(ii) For other storage tanks not specified in paragraph (c)(1)(i) of this section, you must comply within 180 days after April 25, 2011.

* * * * *

**§ 63.2390 [Amended]**

■ 5. Section 63.2390 is amended as follows:

■ a. In paragraph (e)(2) by removing the citation ''§ 63.2348(a)(4)(v)'' and adding in its place the citation ''§ 63.2346(a)(4)(v)''.

■ b. In paragraph (e)(3) by removing the citation ''§ 63.2348(a)(4)(vi)(B)'' and adding in its place the citation ''§ 63.2346(a)(4)(vi)(B)''.

■ c. In paragraph (e)(3)(ii) by removing the citation ''§ 63.2348(a)(4)(vi)(B)'' and adding in its place the citation ''§ 63.2346(a)(4)(vi)(B)''.

■ 6. Table 10 to Subpart EEEE of Part 63 is amended by revising entry 6. to read as follows:

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

* * * * * * *

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

[FR Doc. E8–16320 Filed 7–16–08; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### 42 CFR Part 1008

### Office of Inspector General; Medicare and State Health Care Programs: Fraud and Abuse; Issuance of Advisory Opinions by the OIG

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Final rule.

**SUMMARY:** OIG is adopting in final form, without change, an interim final rule published on March 26, 2008 (73 FR 15937). We received no comments to the interim final rule. The interim final rule revised the process for advisory opinion requestors to submit payments for advisory opinion costs.

**DATES:** *Effective Date:* This final rule is effective as of July 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** Meredith Melmed, Office of Counsel to the Inspector General, (202) 619–0335.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–101, specifically required the Department of Health and Human Services (Department) to provide a formal guidance process to requesting individuals and entities regarding the application of the anti-kickback statute, the safe harbor provisions, and other OIG health care fraud and abuse sanctions. OIG published an interim final rule (62 FR 7350; February 19, 1997) establishing a new part 1008 in 42 CFR chapter V addressing various procedural issues and aspects of the advisory opinion process. In response to public comments received on the interim final regulations, we published a final rule (63 FR 38311; July 16, 1998) revising and clarifying various aspects of the earlier rulemaking. The rulemaking established procedures for requesting an advisory opinion. Specifically, the rule provided information to the public regarding costs associated with preparing an opinion and procedures for submitting an initial deposit and final payment to OIG for such costs.

### II. Interim Final Rule With Comment Period and Final Rule

On March 26, 2008, OIG published an interim final rule amending 42 CFR chapter V, subchapter B (73 FR 15937). The comment period ended on April 25, 2008 and no comments were received. Accordingly, OIG is adopting the interim final rule as a final rule with no modifications.

The interim final rule modified the procedures for submitting an advisory opinion request by deleting the requirements at § 1008.31(b) and 1008.36(b)(6) for an initial payment of $250 for each advisory opinion request, and amending § 1008.31(b) to require that payment for an advisory opinion be made directly to the Treasury of the United States, as directed by OIG. In addition, we amended § 1008.43(d) to state that an advisory opinion will be issued following receipt by OIG of confirmation that payment in full has been remitted by the requesting party to the Department of Treasury, as directed by OIG. We also notified the public that, as of the effective date of the interim final rule, we no longer would accept checks or money orders from requesting parties and payments must be made directly to the United States Treasury through wire or other electronic funds transfer. We provided additional instructions to the public on our Web site (*www.oig.hhs.gov*) for paying fees owed for advisory opinions via wire or other electronic funds transfer.

## III. Regulatory Impact Statement

### *A. Administrative Procedure Act*

The advisory opinion process is an established OIG program. This final rule is limited to modifying the processing of payments received for advisory opinion requests. It does not modify eligibility of a party to request an advisory opinion, nor does it modify the standards under which OIG will accept and/or analyze a request. OIG expects that this final rule will further the public's interest with minimal burden by confirming the interim final rule, which deleted the requirement for an initial payment of a deposit to be credited toward the final advisory opinion processing costs, and by requiring the use of electronic transfers of funds. This final rule will also provide greater efficiency in processing payments from requestors and will save staff time.

### *B. Regulatory Analysis*

We have examined the impact of this final rule as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) of 1980, the Unfunded Mandates Reform Act of 1995, and Executive Order 13132.

#### Executive Order 12866 and Regulatory Flexibility Act

As discussed above, these regulations were published as an interim final rule on March 26, 2008. Because no notice of proposed rulemaking was required, the provisions of the RFA do not apply. Further, this document does not meet the criteria for a significant regulatory action as specified in Executive Order 12866.

#### Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). We believe that this final rule will not impose any mandates on State, local, or tribal governments or the private sector that would result in an expenditure of $100 million or more (adjusted for inflation) in any given year, and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

#### Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. In reviewing this final rule under the threshold criteria of Executive Order 13132, Federalism, we have determined that this final rule would not significantly limit the rights, roles, and responsibilities of State or local governments. We have determined, therefore, that a full analysis under Executive Order 13132 is not necessary.

### *C. Paperwork Reduction Act*

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are required to solicit public comments, and receive final OMB approval, on any information collection requirements set forth in rulemaking. This final rule will not impose any information collection burden or affect information currently collected by OIG.

Accordingly, the interim final rule amending 42 CFR chapter V, subchapter B, which was published in the **Federal Register** at 73 FR 15937 on March 26, 2008, is adopted as a final rule without change.

Dated: July 3, 2008.

**Daniel R. Levinson,**

*Inspector General.*

Approved: July 3, 2008.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. E8–15777 Filed 7–16–08; 8:45 am]

BILLING CODE 4152–01–M

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 23**

**[FWS-R9-IA-2008-0003] [96000-1671-0000-P5]**

**RIN 1018-AV70**

# Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Import and Export of Sturgeon Caviar

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Direct final rule.

**SUMMARY:** We, the Fish and Wildlife Service (FWS), are amending certain provisions related to international trade in sturgeon caviar in the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). We are reducing the quantity of caviar that may be imported or exported under the CITES personal effects exemption and amending the requirements for import of caviar from shared stocks subject to quotas. These changes are not controversial and will bring U.S. regulations in line with revisions adopted by consensus at the most recent meeting of the Conference of the Parties to CITES (June 2007). The revised regulations will help us more effectively promote species conservation, help us continue to fulfill our responsibilities under the Treaty, and help those affected by CITES to understand how to conduct lawful international trade in sturgeon caviar.

**DATES:** This rule is effective September 15, 2008 without further action, unless adverse comment is received or postmarked on or before August 18, 2008. If we receive adverse comment, then we will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** You may submit comments by one of the following methods:

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

• *U.S. mail or hand-delivery*: Public Comments Processing, Attn: RIN 1018-AV70; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the

**Public Comments** section at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments).

**FOR FURTHER INFORMATION CONTACT:** Robert R. Gabel, Chief, Division of Management Authority; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203 (telephone, (703) 358-2093; fax, (703) 358-2280).

**SUPPLEMENTARY INFORMATION:**

## Background

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it entered into force on July 1, 1975, after the required 10 countries had ratified it. Currently 172 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

Section 8A of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the Fish and Wildlife Service. The original U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first meeting of the Conference of the Parties (CoP) was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Treaty and on amendments to the listing of species in the CITES Appendices. The current U.S. CITES regulations took effect on September 24, 2007, and incorporate provisions from applicable resolutions and decisions adopted at meetings of the Conference of the Parties up to and including the thirteenth meeting (CoP13), which took place in 2004.

Article VII(3) of the Treaty provides for the import, export, or re-export of specimens that are personal or household effects (see the definitions in 50 CFR 23.5) without CITES documents under specific circumstances. For some species, including sturgeon and paddlefish (Acipenseriformes), the Parties have established limits on the quantity of certain specimens that may be transported as personal and household effects. At CoP14, in June 2007, the Parties agreed to reduce the quantity of sturgeon or paddlefish caviar that may be imported or exported under the personal effects exemption from 250 grams to 125 grams (see Resolution Conf. 12.7 (Rev. CoP14) and Resolution Conf. 13.7 (Rev. CoP14)). This change was originally recommended by the International Sturgeon Enforcement Workshop to Combat Illegal Trade in Caviar (Brussels, 2006) and was endorsed by the United States and adopted by consensus at CoP14. We are amending 50 CFR 23.15(c)(3)(i) to incorporate this change.

The Parties also agreed to a new quota-setting process for caviar from shared stocks, including a change in the quota year so that it will coincide with the harvest season rather than the calendar year. Previously, under Resolution Conf. 12.7 (Rev. CoP13), ''Conservation of and trade in sturgeons and paddlefish,'' caviar from shared stocks subject to quotas (i.e., the Black Sea, Caspian Sea, and Amur River basins) had to be exported by the end of the calendar year in which it was harvested and processed. At CoP14, the Parties agreed that, from 2008 onward, the quota year will begin on the first of March and end on the last day of February of the following year. Exports of caviar from shared stocks subject to quotas must take place during the quota year in which the caviar is harvested and processed.

In addition, the sturgeon resolution was amended to specifically state that quotas must not be detrimental to the survival of the species in the wild and to remove the requirement that the Secretariat must confirm that the quotas have been agreed to by all relevant countries (see Resolution Conf. 12.7 (Rev. CoP14)). These changes were adopted by consensus at CoP14. We are amending 50 CFR 23.71(d) to reflect the relevant changes to the quota-setting process for caviar from shared stocks.

We are publishing this rule without a prior proposal because this is a non-controversial action that, in the best interest of the regulated public, should be undertaken in as timely a manner as possible. The Parties agreed by consensus that these changes are appropriate for the conservation of the species and implementation of the Treaty. As a Party to CITES, the United States has the responsibility under Article II(4) to ensure that all trade is consistent with the Treaty, which includes aligning import, export, and re-export provisions in a timely manner as agreed by the Parties. Thus, we have good cause to find that standard notice and pubic comment procedures would be unnecessary and contrary to the public interest. The rule will be effective, as published in this document, on the effective date specified in the DATES section of this document, unless we receive significant adverse comments on or before the comment due date specified in the DATES section of this document. Significant adverse comments are comments that provide strong justifications as to why the rule should not be adopted or why it should be changed.

If we receive significant adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. In the event that we do receive significant adverse comments, we will engage in the normal rulemaking process to promulgate these changes to 50 CFR part 23. Therefore, elsewhere in today's issue of the **Federal Register**, we have published a proposed rule regarding these regulatory changes. We will give the same consideration to comments submitted in response to either the direct final rule or the proposed rule; you do not need to submit separate comments for both documents.

## Required Determinations

*Regulatory Planning and Review*: This is not a significant regulatory action under Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget (OMB).

a. This rule will not have an annual economic effect of $100 million or more or adversely affect a part of the economy, productivity, jobs, the environment, or other units of government. This rule reduces the quantity of sturgeon or paddlefish caviar that an individual may import or export under the personal effects exemption (i.e., without a CITES document) from 250 grams to 125 grams. The personal effects exemption applies only to specimens for personal use that are hand-carried or checked as personal baggage on the same boat, plane, etc., as the traveler. This rule also informs the public of a change in the quota-setting process and timeframe for export of caviar from shared stocks (i.e., the Black Sea, Caspian Sea, and Amur River basins). Publication of this rule will assist U.S. businesses in complying with CITES requirements when engaging in international trade in sturgeon and paddlefish caviar.

We do not expect that this rule will have a significant effect on the volume or dollar value of sturgeon or paddlefish caviar imported, exported, or re-exported to and from the United States. There is no indication that this rule would result in statistically significant higher or lower levels of trade, permit applications, or permit issuance or denial. An economic analysis is not necessary for this rule as it will not have an economic impact on large or small entities.

b. This rule will not create inconsistencies with other agencies' actions. As the lead agency for implementing CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This rule will not raise novel legal or policy issues. As a Party to CITES, the United States is committed to fully and effectively implementing the Convention. All sturgeon and paddlefish (Acipenseriformes) are listed under CITES. This rule informs individuals and businesses of provisions adopted at the most recent CoP for international trade in sturgeon and paddlefish caviar.

*Regulatory Flexibility Act*: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or 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 government jurisdictions) (5 U.S.C. 601 *et seq.*). However, 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. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). 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 U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. We expect that the majority of the entities involved with international caviar trade would be considered small as defined by the SBA. The declared value for U.S. international trade in sturgeon and paddlefish caviar was $13.4 million in 2005 and $13.7 million in 2006.

These new regulations create no substantial fee or paperwork changes in the permitting process. The regulatory changes are not major in scope and would create only a modest financial or paperwork burden on the affected members of the general public.

This rule benefits businesses engaged in international caviar trade by providing updated regulations for the international trade of CITES specimens. We do not expect these benefits to be significant under the Regulatory Flexibility Act. The authority to enforce CITES requirements already exists under the Endangered Species Act and is carried out by regulations contained in 50 CFR part 23. The requirements that must be met to import, export, and re-export CITES species are based on the text of CITES, which has been in effect in the United States since 1975.

We therefore certify 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.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

*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. This rule provides the importing and exporting community in the United States with updated regulations implementing CITES. This rule will not have a negative effect on this part of the economy. This rule will affect all caviar importers, exporters, and re-exporters equally, and the benefits of having updated guidance on complying with CITES requirements will be evenly spread among all businesses, whether large or small. There is not a disproportionate share of benefits for small or large businesses.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This rule may result in a small increase in the number of applications for import/export of caviar for personal use. A CITES document is now required for any amount of caviar over 125g (a reduction from the 250g previously allowed without a permit).

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule will assist U.S. businesses and individuals traveling abroad in ensuring that they are meeting all current CITES requirements, thereby decreasing the possibility that shipments may be delayed or even seized in another country that has implemented CITES resolutions not yet incorporated into U.S. regulations.

*Unfunded Mandates Reform Act*: Under 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. As the lead agency for implementing CITES in the United States, we are responsible for monitoring import and export of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES. The structure of the program imposes no unfunded mandates. Therefore, this rule has no effect on small governments' responsibilities.

b. This rule will not produce a Federal requirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

*Takings*: Under Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule is not considered to have takings implications because it does not further restrict the import, export, or re-export of CITES specimens. Import, export, and re-export of caviar in amounts greater than 125 grams will still be allowed with the appropriate CITES documents. The rule updates the regulations for the import, export, and re-export of CITES specimens, which will assist the importing and exporting community in conducting international trade in CITES specimens.

*Federalism*: These revisions to part 23 do not contain significant Federalism implications. A Federalism Assessment under Executive Order 13132 is not required.

*Civil Justice Reform*: Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*: This rule does not contain any new information collections or recordkeeping requirements for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We 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.

*National Environmental Policy Act (NEPA)*: The FWS has determined that this direct final rule is categorically excluded from further NEPA review as provided by 516 DM 2, Appendix 1.9, of the Department of the Interior National Environmental Policy Act Revised Implementing Procedures (69 FR 10866, March 8, 2004). No further documentation will be made.

*Government-to-Government Relationship with Tribes*: Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Individual tribal members must meet the same regulatory requirements as other individuals who trade internationally in CITES species.

*Energy Supply, Distribution or Use*: On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. This rule revises the current regulations in 50 CFR part 23 that implement CITES. The regulations provide procedures to assist individuals and businesses that import, export, and re-export CITES wildlife and plants, and their parts, products, and derivatives, to meet international requirements. This rule will not significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

*Clarity of this regulation*: We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Public Comments**

We are seeking comments on whether the provisions in this direct final rule allow the affected public to effectively comply with CITES. You may submit your comments and materials concerning this rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in your written comments you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this direct final rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service; Division of Management Authority; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203; telephone, (703) 358–2093.

**List of Subjects in 50 CFR Part 23**

Animals, Endangered and threatened species, Exports, Fish, Foreign officials, Foreign trade, Imports, Reporting and recordkeeping requirements, Transportation, Treaties, Wildlife.

**Regulation Promulgation**

For the reasons given in the preamble, we amend title 50, chapter I, subchapter B of the CFR as follows:

## PART 23—[AMENDED]

■ 1. The authority citation for part 23 continues to read as follows:

**Authority:** Convention on International Trade in Endangered Species of Wild Fauna and Flora (March 3, 1973), 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

**§ 23.15 [Amended]**

■ 2. Amend § 23.15(c)(3)(i), the first entry in the table, by removing the words ''250 gm'' in the Quantity column and by adding in their place the words ''125 gm.''

■ 3. Amend § 23.71(d) by removing paragraph (d)(4) and revising paragraphs (d)(1), (d)(2), and (d)(3) to read as follows:

**§ 23.71 How can I trade internationally in sturgeon caviar?**

* * * * *

(d) * * *

(1) The relevant countries have established annual export quotas for the shared stocks that were derived from catch quotas agreed among the countries. The quotas are based on an appropriate regional conservation strategy and monitoring regime and are not detrimental to the survival of the species in the wild.

(2) The quotas have been communicated to the CITES Secretariat and the Secretariat has communicated the annual export quotas to CITES Parties.

(3) The caviar is exported during the quota year (March 1 – last day of February) in which it was harvested and processed.

* * * * *

Dated: June 5, 2008

**David M. Verhey**

*Acting Assistant Secretary for Fish and Wildlife and Parks*

[FR Doc. E8–16195 Filed 7–16–08; 8:45 am]

BILLING CODE 4310–55–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 070717340–8451–02]**

**RIN 0648–XJ06**

## Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Trimester II Fishery for *Loligo* Squid

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the directed fishery for *Loligo* squid in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, July 17, 2008. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1,134 kg) of *Loligo* squid per trip for the remainder of the trimester (through August 31, 2008). This action is necessary to prevent the fishery from exceeding its Trimester II quota and to allow for effective management of this stock.

**DATES:** Effective 0001 hours, July 17, 2008, through 2400 hours, August 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fishery Management Specialist, 978–281–9221, Fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2008 specification of DAH for *Loligo* squid was set at 16,977 mt (73 FR 18443, April 4, 2008). This amount is allocated by trimester, as shown below.

TABLE 1. *Loligo* SQUID TRIMESTER ALLOCATIONS.

| Quarter | Percent | Metric Tons [1] | Research Set-aside (mt) |
|---|---|---|---|
| I (Jan–Apr) | 43 | 7,300 | N/A |
| II (May–Aug) | 17 | 2,886 | N/A |
| III (Sep–Dec) | 40. | 6,791 | N/A |
| Total | 100 | 16,997 | 23 |

[1] Trimester allocations after 23–mt research set-aside deduction.

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 90 percent of the trimester allocation is harvested in Trimesters I and II, and when 95 percent of the total annual DAH has been harvested in Trimester III. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hR before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 90 percent of the DAH for *Loligo* squid in Trimester II will be harvested. Therefore, effective 0001 hours, July 17, 2008, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1,134 kg) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, September 1, 2008, when the Trimester III quota becomes available.

## Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: July 11, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 08–1440 Filed 7–14–08; 2:00 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 73, No. 138
Thursday, July 17, 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.

## FEDERAL TRADE COMMISSION

### 16 CFR Part 305

**[RIN 3084–AB03]**

### Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Advance notice of proposed rulemaking and public meeting announcement.

**SUMMARY:** Section 321 of the Energy Independence and Security Act of 2007 requires the Commission to conduct a rulemaking to consider the effectiveness of current energy labeling for lamps (commonly referred to as ''light bulbs'') and to consider alternative labeling approaches. In response to that directive, the Commission seeks comments on the effectiveness of current labeling requirements for lamp packages and possible alternatives to those requirements. As part of this effort, the Commission will hold a public roundtable meeting on September 15, 2008, from 9:00 a.m. to 1:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, (202) 326-2889, and Lemuel Dowdy, (202) 326-2981, Division of Enforcement, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20001.

**DATES:** Comments must be received by September 29, 2008.

**ADDRESSES:** Comments should refer to ''Lamp Labeling, Project No. P084206'' to facilitate organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex N), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1]

Comments filed in electronic form should be submitted by clicking on: (*https://secure.commentworks.com/ftc-lamplabeling*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the (*https://secure.commentworks.com/ftc-lamplabeling*) weblink. You may also visit *http://www.regulations.gov* to read this advance notice of proposed rulemaking, and file an electronic comment through that Website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive comments received by the Commission, whether filed in paper or in electronic form, will be considered by the Commission, and will be available to the public on the FTC Website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/privacy.htm.*

**ROUNDTABLE TIME AND LOCATION:** The public roundtable meeting will be held on September 15, 2008, from 9:00 a.m. to 1:00 p.m. at the FTC's Satellite Building Conference Center, located at 601 New Jersey Avenue, NW, Washington, DC.

**ROUNDTABLE INFORMATION:** The public roundtable will include participation by selected panelists. Other attendees also will have an opportunity to comment and ask questions. There is no fee for attendance. A stenographer will record the proceedings, and the Commission will place the transcription on the public record. The FTC also plans to make this workshop available live via webcast (*see (http://www.ftc.gov/bcp/workshops/lamp/index.shtml)).* For admittance to the Conference Center, all attendees must show a valid photo identification such as a driver's license. The FTC will accept pre-registration for this workshop. Pre-registration is not necessary to attend, but is encouraged. To pre-register, please email your name and affiliation to lampmeeting@ftc.gov. When you pre-register, we will collect your name, affiliation, and your email address. The Commission will use this information to estimate how many people will attend. We may use your email address to contact you with information about the workshop.

Under the Freedom of Information Act (FOIA) or other laws, we may be required to disclose to outside organizations the information you provide. For additional information, including routine uses permitted by the Privacy Act, see the Commission's Privacy Policy at (*www.ftc.gov/ftc/privacy.shtm.*) The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, (202) 326-2889, and Lemuel Dowdy, (202) 326-2981, Division of Enforcement, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20001.

**SUPPLEMENTARY INFORMATION:**

## I. Lamp Labeling

The lighting market is changing. Over the next several years, new energy standards mandated by Congress will eliminate low efficiency light bulbs (*i.e.*, lamps) from store shelves in favor of more energy efficient products. Such products include high-efficiency incandescent lamps, and compact fluorescent lamps (*i.e.*, compact fluorescent light bulbs or CFLs) that are widely available now, as well as even more energy efficient products, such as

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The Commission's General Counsel will grant or deny the request, consistent with applicable law and the public interest. *See* 16 CFR 4.9(c).

solid-state lighting (*e.g.*, light-emitting diode (LED) products).

Given these changes, Congress has asked the FTC to consider the effectiveness of current lamp labeling and alternative labeling disclosures to help consumers understand new high-efficiency lamp products. As a first step toward fulfilling this mandate, the Commission is publishing this Notice which provides background about current labeling rules for lamps, the recent Congressional mandate, the purpose of the FTC labeling requirements, and various labeling considerations. This Notice also contains a series of questions related to the effectiveness of current labeling and potential labeling alternatives to aid comment and discussion at the September 15, 2008 meeting.

*A. Background on Current FTC Labeling:* Current FTC regulations require that most incandescent and compact fluorescent lamp packages display energy information.[2] In particular, the packages must display the product's light output (in lumens), energy use (in watts), and lamp life (in hours).[3] The package disclosures must also provide the following statement: ''To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.'' Additionally, catalog retailers (including websites) must disclose the required label information for the covered lamp products they sell.[4] The current rules do not impose a uniform disclosure format. Instead, the labeling requirements provide manufacturers flexibility regarding the size, font, and style in which the information is presented.[5]

The Rule also requires manufacturers to ''possess and rely upon a reasonable basis consisting of competent and reliable scientific tests'' to substantiate the information on their labels. For lamp life and light output representations, the Rule states that the Commission will accept as a reasonable basis, competent and reliable scientific tests conducted according to applicable IES (Illuminating Engineering Society) test protocols that substantiate the representations.[6] The Rule, however, does not require manufacturers to use these protocols.

*B. Congressional Mandate - Efficiency Standards and Labeling:* The Energy Independence and Security Act of 2007 (EISA) directs the Department of Energy (DOE) to issue stringent energy efficiency standards for lighting products that will have the effect of phasing out traditional, low-efficiency incandescent lamps from the U.S. market over the next several years. Higher efficiency lamps, such as certain incandescent lamp types, CFLs, and LEDs, that meet the new standards, will take their place.[7]

To address these changes, Congress directed the FTC to consider the effectiveness of current lamp disclosures and to consider whether alternative labeling disclosures would be more effective in helping consumers make purchasing decisions.[8] In particular, the law directs the Commission to consider labeling disclosures that address consumer needs for information about lighting level, light quality, lamp lifetime, and total lifecycle cost.[9] The Commission must complete this effort by June of 2010.[10]

The EISA amendments also provide the Commission with discretion to require labeling for any consumer product not specified in the current labeling statute, if the Commission determines such labeling is likely to assist consumers in making purchasing decisions.[11] Accordingly, the Commission now has the authority to require energy disclosures for consumer products that use lighting technologies not currently specified in the law (*e.g.*, solid-state lighting such as LED products).[12]

Finally, we note that EISA (section 321(c)) directs the Secretary of Energy to conduct an annual assessment of the lighting market ''to identify trends'' and to ''better understand the degree to which consumer decisionmaking is based on'' the type of information currently appearing on FTC-required labels. EISA requires DOE to provide the results of the assessment to the FTC. The law also requires DOE, in cooperation with the FTC and other agencies, to conduct a ''proactive national program of consumer awareness, information, and education'' to help consumers understand the lamp labels and make energy-efficient lighting choices that meet their needs.

*C. Purpose of FTC Labeling:* EPCA (*see* 42 U.S.C. 6294(D)) tasks the FTC with issuing labeling requirements for lighting products that ''enable consumers to select the most energy efficient lamps which meet their needs.'' The recent EISA amendments add to EPCA's mandate by directing the FTC to consider alternative approaches that will help consumers understand new lighting products and to allow them to choose products that meet their various needs such as light output, light quality (*e.g.*, color temperature) and lamp lifetime (*see* 42 U.S.C. 6294(D)(iii)).

To meet these and other related directives under EPCA, the FTC creates labeling programs that help ensure consumers receive truthful, objective information and enable them to choose energy-efficient products that meet their needs.[13] At the same time, the task of promoting energy efficient products falls primarily to other agencies. Most notably, the Environmental Protection Agency and DOE provide the U.S. Government's imprimatur for high-

[2] The FTC issued the current lighting disclosure requirements in 1994 (*see* 16 CFR §§ 305.15(a),(b), & (c)). *See* 59 FR 25176 (May 13, 1994).

[3] *See* 16 CFR 305.15. A sample of the current label is attached to this Notice.

[4] 16 CFR 305.20.

[5] In addition to the requirements for common household lamps, the Rule directs manufacturers of fluorescent lamp ballasts and luminaires, metal halide lamp fixtures, and certain tube-type (''general service'') fluorescent lamps to mark their products with an encircled ''E,'' a symbol signifying compliance with DOE minimum efficiency standards. *See* 16 CFR 305.15. Packages for incandescent reflector lamps must also display the encircled ''E'' and information on light output, energy use, and watts.

[6] *See* 16 CFR § 305.5. For fluorescent lamp ballasts, the Rule requires manufacturers to derive energy consumption information using specific DOE test procedures (10 CFR Part 430, subpart B, § 430.23(q)). There were no DOE test procedures available for other lighting products when the FTC first published the lamp labeling rules in 1994.

[7] The U.S. Department of Energy (DOE) is currently supporting domestic research and development for new solid-state lighting technologies. (*See http://www.netl.doe.gov/ssl/strategy.html.*)

[8] *See* section 321(b) of the Energy Independence and Security Act of 2007 (Pub. L. 110-140,324(a)). That provision amends section 324(a)(2)(C) of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6294(a)(2)(C)). Additional amendments in EISA redesignate 6294(a)(2)(C) as 6294(a)(2)(D) (*see* section 324(d) of EISA).

[9] The law does not specifically authorize the Commission to require disclosures related to the hazardous content of lamps.

[10] Section 321(b) of EISA (42 U.S.C. 6294(a)(2)(D)) also gives the Commission the discretion to ''consider reopening the rulemaking not later than 180 days before the [statutorily mandated] effective dates of the standards for general service incandescent lamps established under section 325(i)(1)(A) [and implemented by DOE], if the Commission determines that further labeling changes are needed to help consumers understand lamp alternatives.''

[11] The law defines ''consumer product'' as any article (other than an automobile) which ''in operation consumes, or is designed to consume energy'' and ''which, to any significant extent is distributed in commerce for personal use or consumption by an individual.'' 42 U.S.C. § 6291(1).

[12] *See* section 325 of EISA (*see* 42 U.S.C. 6294(a)(6)). The EISA amendments to EPCA (the energy standards and labeling law) included definitions for solid-state lighting products (*e.g.*, LED), but did not alter the scope of lighting products for which labeling is required. Therefore, the current law does not specifically direct the FTC to require labeling for solid-state lighting products. (*See* 42 U.S.C. 6291(30)(BB-DD) and 42 U.S.C. 6294(a)(1)(B-D)).

[13] *See, e.g.*, 72 FR 6836, 6841 (Feb. 13, 2007).

efficiency products through the successful ENERGY STAR program.[14] The FTC's labels and the ENERGY STAR program work in tandem to provide a robust source of energy efficiency information to consumers.

*D. Labeling Considerations:* Consumers are accustomed to using watts as a means to gauge the expected light output of lamps because the wattage (*i.e.*, energy use) of incandescent lamps provides a consistent proxy for brightness (*i.e.*, light output). For example, a consumer may seek a ''100-watt'' incandescent bulb because it provides the light output they desire for a reading lamp fixture. Conversely, a consumer may choose a ''40-watt'' incandescent bulb for a hallway or utility room where high light output may not be as important.

This approach worked well in a market largely populated by standard incandescent lamps, but the emergence of new, more energy efficient technologies has changed matters. CFLs and solid-state lighting products can provide the same light output as traditional incandescent lamps, but at a fraction of the energy use. A traditional, standard incandescent bulb typically uses 100 watts to provide 1,600 lumens of light output. A CFL, on the other hand, can provide the same light output using only 25 watts, while a solid-state lamp (likely to be widely available in the future) may use even less energy to produce the same brightness. Accordingly, energy use (watts) no longer serves as a reliable proxy for light output.

Light output expressed in ''lumens'' is a more accurate way for consumers to determine the brightness of lamps because it conveys the brightness of lighting products regardless of energy use or the technology upon which the lamp is based (*e.g.*, incandescent, CFL, or solid-state). Nonetheless, anecdotal evidence suggests that consumers continue to look for watts (instead of lumens) as a means to gauge light output when purchasing lamps. Therefore, CFL packages routinely contain conspicuous comparisons to incandescent lamps (*e.g.*, ''this bulb is a '100-watt' equivalent''). With these considerations in mind, as part of this rulemaking, the Commission will consider new labeling approaches that communicate light output in a way that is understandable and useful to consumers. For example, consistent with EISA's directive, the Commission will consider inclusion of additional lighting characteristics such as light quality (*e.g.*, color rendering or temperature) to help consumers choose the kind of lighting they prefer.

Along with light output and quality, the Commission also will look at new ways of communicating energy use. For example, packages could convey energy use information in terms of operating cost, such as dollars per year or dollars per light output (*e.g.*, megalumens-hour), a lifecycle cost,[15] or an efficacy factor (*i.e.*, lumens-per-watt). Packages also could disclose relative energy use through a comparison range, similar to that used on the yellow EnergyGuide labels which the FTC requires on most household appliances.

Furthermore, as the Commission weighs possible label changes, there are a variety of alternative formats and disclosures to consider. For example, the FTC could consider requiring a uniform label format rather than the flexible labeling disclosures currently required. The FTC also could consider changing the prominence of certain information on the existing label, such as light output (lumens). In addition, the Commission could consider establishing categories for lamp brightness (*e.g.*, 1600 lumens = Category A; 1,100 lumens = Category B) to help consumers identify the light output they need.

## III. Request for Comment

The Commission seeks written comments on a series of questions related to lamp labeling issues. These issues include the overall effectiveness of existing disclosures on lamp labels, alternative labeling disclosures, and the labeling of lamp types not currently covered by the Rule. The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the FTC's labeling requirements. The Commission encourages commenters to respond to the specific questions. However, commenters do not need to respond to all questions. Please provide explanations for your answers and supporting evidence where appropriate. After examining the comments, the Commission will determine whether to propose any specific amendments.

### *A. Current Lamp Labeling*

To facilitate the Commission's efforts to examine the effectiveness of the existing labeling program, we request that commenters consider the following questions:

1. *Efficacy of Current Labels*

a. How should the Commission measure the effectiveness of current lamp labeling requirements (including required catalog disclosures) in assisting consumer purchasing decisions? For example, should the Commission measure effectiveness by evaluating consumer comprehension of specific label elements, consumer preference for different labels, the impact of labels on consumer product choice, or by other means?

b. Are the current labeling requirements effective in providing consumers with useful, accurate information about the energy consumption and energy efficiency of covered products? If so, how?

c. Do the current lamp label requirements aid in improving energy efficiency? If so, how?

d. Do the current lamp label requirements aid consumers in choosing products that meet their lighting needs other than energy efficiency (*e.g.*, brightness, color temperature, etc.)? If so, how? If not, why not?

e. Should the Commission continue to require manufacturers to have a ''reasonable basis'' for their energy representations on current labels? Or, should the Commission require a specific test procedure, such as existing DOE test procedures (10 CFR Part 430, Subpart B, Appendix R), for measuring the energy characteristics represented on labels?

2. *Reports, Studies, or Research on Current Labels*

a. Do any recent reports, studies, or research provide data relevant to estimating the effectiveness of current energy disclosures on consumer lighting products in the United States?[16] In particular, have any such reports, studies, or research examined the effectiveness of current disclosures compared to alternative formats and approaches?

b. Are there any recent reports, studies, or research from other countries that the Commission should consider?

3. *Costs and Benefits of Current Labels*

a. What are the benefits to consumers, if any, of the current lamp labels?

b. What costs, if any, have the current lamp labels imposed on consumers?

c. What benefits, if any, have the current lamp labels provided to businesses, and in particular to small businesses?

d. What costs, including compliance costs, have the current lamp labels had on businesses, and in particular on small businesses?

[14] *See http://www.energystar.gov.*

[15] Information about impacts beyond consumers' operating costs such as costs related to manufacture or disposal.

[16] When statistical or scientific data is presented, the Commission requests enough detail about data, study design, statistical analysis, and findings to enable it to understand the methodology that was used to conduct the analysis.

*B. Possible Alternatives to Current Labels*

To aid the Commission in considering possible changes to current lamp labeling requirements, we request that commenters consider the following questions:

1. *Possible Alternative Information on Labels*

a. What changes, if any, should the Commission make to the information on current lighting labels?

b. Should the Commission consider requiring descriptors other than those already required (*i.e.*, lumens, watts, and hours)? For example, should the Commission consider operating costs (*e.g.*, dollars per year or dollars per megalumen-hour), light quality (*e.g.*, color temperature and color rendering index), lifecycle costs, an efficacy factor, or some other metric of energy use? If so, why?

i. Should the Commission consider labels including the operating cost or lifetime cost of a lamp? If so, how should those figures be calculated? What assumptions regarding discount rates are made with this calculation?

ii. Should the Commission consider labels that address light quality? If so, what attributes should they convey (*e.g.*, color temperature and color rendering index)? Which of these attributes are most important for consumers?

iii. Should the Commission consider labels including a range or scale comparing the energy use of similar products?

c. If the Commission should require alternative descriptors on labels, for each proposed descriptor:

i. How should the descriptor be presented to consumers?

ii. Is use of the descriptor applicable to all lighting technologies?

iii. Are there existing test procedures or other ways to measure or substantiate the descriptor (*e.g.*, usage patterns for calculating annual operating costs)?

d. Do recent or impending changes in technology affect whether and how the Rule should be modified? If so, which technologies would affect modification and how?

e. What other information (other than that required by the Rule), if any, are manufacturers currently providing to consumers through packaging disclosures and other advertising to convey characteristics of light bulbs, such as energy use, lighting level, light quality, lamp lifetime, and total lifecycle cost?

f. What modifications, if any, should be made to current ''encircled E'' labeling requirements for lighting products covered by the Rule such as general service fluorescent lamps (and ballasts) and metal halide lamp fixtures?

2. *Possible Alternative Formats for Labels*

a. What changes, if any, should the Commission make to the requirements for the format of lighting disclosures (size, format, color, graphical presentation, etc.)? If appropriate, please provide examples of recommended label designs.

b. Should the Commission require a uniform label with specific text styles, sizes, etc. (*e.g.*, an ''EnergyGuide'' label for lighting packages)?

3. *Costs and Benefits of Possible Alternative Labels*

a. What are the benefits to consumers, if any, of any recommended label alternatives?

b. What are the costs to consumers, if any, of any recommended label alternatives?

c. What are the benefits to businesses, and in particular to small businesses, if any, of any recommended label alternatives?

d. What are the costs, including compliance costs, to businesses, and in particular to small businesses, of any recommended label alternatives?

4. *Consumer Research Concerning Possible Alternative Labels*

a. If the Commission were to conduct consumer research on alternative label designs, what questions should be explored?

b. Should the Commission explore the effect of various label designs on consumers' ability to rank products by energy use, efficiency, and operating cost? If so, how?

c. Should the Commission explore the impact of different label designs on consumer product choice, product use, and consumer willingness to pay more for more energy efficient products? If so, how?

5. *Other Considerations*

a. Are there international laws, regulations, or standards with respect to lamp labeling that the Commission should consider as it explores labeling alternatives? If so, what are they and how do they affect the Commission's rulemaking?

b. ENERGY STAR is a voluntary labeling program covering high efficiency products and administered by the Environmental Protection Agency (EPA) and DOE.[17] What issues, if any, does the ENERGY STAR program raise with regard to the Commission's consideration of labeling alternatives? Are there any potential conflicts between ENERGY STAR requirements and possible changes to Commission label requirements?

c. Should the Commission continue to require catalog sellers (paper catalogs and websites) to provide consumers with the information required for package labels? If so, why? If not, why not?

*C. Coverage of New Lighting Products*

The current required disclosures for lumens, watts, and hours apply to compact fluorescent lamps and general service incandescent lamps as those terms are defined in 16 CFR section 305.3.[18] The Rule also requires an encircled ''E'' for fluorescent ballasts, luminaires, metal halide lamp fixtures, and general service fluorescent lamps. To aid the Commission in considering possible Rule changes to cover additional product types, we request that commenters consider the following questions:

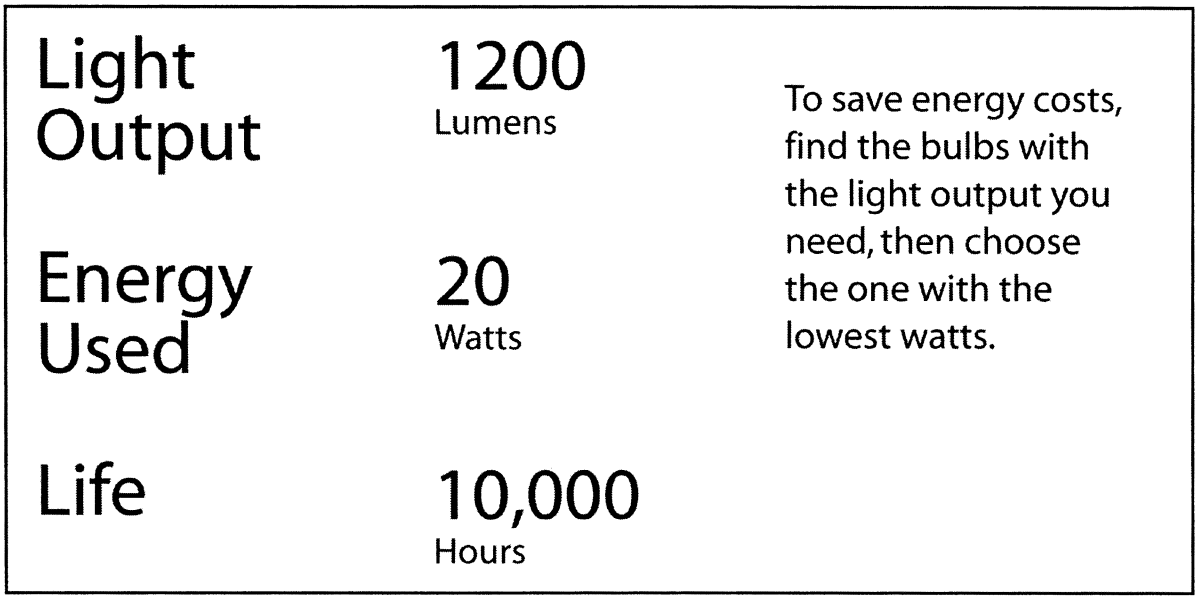
1. Should the Commission consider issuing labeling requirements for consumer lighting products other than those currently covered by the Rule? If so, which lamp types should be included?

2. If the Commission should consider labeling requirements for other lamp types, are there adequate test procedures in place to measure light output, energy use, life, and any other characteristics of these products that may be relevant to FTC labeling requirements? If so, what are they?

3. If the Commission should consider labeling requirements for other lamp types, are there any issues that would affect labeling for those products? If so, what are those issues and how should the Commission address them?

[17] *See http://www.energystar.gov.*

[18] As part of this rulemaking, the Commission will need to consider changes to existing definitions in the Rule. For example, section 321(a) of EISA revises the statutory definition of general service incandescent lamps to, among other things, add a lumen range to the definition and to add several categories of lamp types to the list of exclusions. *See* 42 U.S.C. 6291(30).




**Example of Current Lamp Label**

**List of Subjects in 16 CFR Part 305**

Advertising, Consumer Protection, Energy Conservation, Household appliances, Labeling, Lamp Products, Penalties, Reporting and recordkeeping requirements.

By direction of the Commission.

**Donald S. Clark**

*Secretary*

[FR Doc. E8–16283 Filed 7–16–08; 8:45 am]

**BILLING CODE 6750–01–S**

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## INTERNATIONAL TRADE COMMISSION

## 19 CFR Part 207

## Revised Procedures and Requests for Information During Adequacy Phase of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States International Trade Commission (''the Commission'') proposes to amend its Rules of Practice and Procedure to require that responses to notices of institution of five-year reviews be filed within 30 days of publication of the notice, as opposed to the 50-day response period specified in its current rules. It additionally seeks public comment on proposals, which would not require changes in its rules, to seek additional information from interested parties at the institution of five-year reviews, and to seek information from purchasers during the adequacy phase of five-year reviews in certain circumstances.

**DATES:** To be assured of consideration, written comments must be received by September 15, 2008.

**ADDRESSES:** You may submit comments, identified by docket number MISC–024, by any of the following methods:

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

—*Agency Web Site: http://www.usitc.gov.* Follow the instructions for submitting comments on the Web site at *http://www.usitc.gov/secretary/edis.htm.*

—*Mail: For paper submission.* U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

—*Hand Delivery/Courier:* U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, from the hours of 8:45 a.m. to 5:15 p.m.

*Instructions:* All submissions received must include the agency name and docket number (MISC–024) for this rulemaking. All comments received will be posted without change to *http://www.usitc.gov,* including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Marilyn R. Abbott, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.usitc.gov* and/or the U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. The pertinent docket number is MISC–024.

**FOR FURTHER INFORMATION CONTACT:** Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3087, or Robert G. Carpenter, Office of Investigations, U.S. International Trade Commission, telephone 202–205–3160. Hearing-impaired individuals can obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by visiting its Web site at *www.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** The preamble below is designed to assist readers in understanding these proposed changes to Commission procedures during the adequacy phase of five-year reviews. This preamble provides background information, a regulatory analysis of the proposed amendment to the Commission's Rules of Practice and Procedure, an explanation of the procedural changes proposed, and a description of the proposed amendment to the rules. The Commission encourages members of the public to comment, in addition to any other comments they wish to make on the proposed amendment, on whether

the proposed amendment is in language that is sufficiently clear for users to understand.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the proposed rule revision concerning the period for responding to notices of institution will be published in the **Federal Register** and will be codified in 19 CFR part 207.

**Background**

The Tariff Act of 1930, as amended, directs the Commission to conduct five-year reviews of antidumping and countervailing duty orders and suspension agreements. 19 U.S.C. 1675(c). Subpart F of Chapter 207 of Title 19 of the Code of Federal Regulations contains regulations concerning procedures the Commission uses in five-year reviews.

Under section 207.60(d) of the Commission's Rules of Practice and Procedure, 19 CFR 207.60(d), the Commission publishes a notice of institution when it institutes five-year review proceedings pursuant to 19 U.S.C. 1675(c). In the notice of institution, the Commission directs interested parties to provide certain information. Neither the statute nor the Commission's regulations specify the information the Commission requests in the notice of institution. The Commission's Rules of Practice and Procedure, however, require that any response to the notice of institution be filed within 50 days after publication of the notice in the **Federal Register**. 19 CFR 207.61(a).

In this notice, the Commission seeks comments on two sets of proposed modifications to its procedures in five-year reviews. The first, which does not require a change to the Commission's regulations, would modify the information the Commission requests in the notice of institution. The second proposes to amend section 207.61(a) of the Commission's Rules of Practice and Procedure to require that responses to the notice of institution be filed within 30 days after its publication.

**Regulatory Analysis of Proposed Amendment to the Commission's Rules**

The Commission has determined that the proposed rule does not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus does not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of proposed rulemaking, the proposed regulation falls within the exemption from the notice requirements imposed by 5 U.S.C. 553(b) for ''agency rules of procedure and practice.''

The proposed rule does not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the proposed 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 will not significantly or uniquely affect small governments.

The proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, it is exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because it is a rule of organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

The proposed rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), because it does not contain any new information collection requirement. The information collection requirements that are discussed in this notice are the subject of a generic survey clearance proceeding currently pending before the Office of Management and Budget. See 72 FR 68896 (Dec. 6, 2007).

The Commission, as an independent regulatory agency as defined in Executive Order 12866 of Sept. 30, 1993, is exempt from the memorandum dated May 9, 2008, Issuance of Agency Regulations at the End of the Administration.

**Explanation of Proposed Changes in Commission Data Collection**

The Commission has modified the information it requests interested parties to provide in response to its notice of institution in only minor respects since it began instituting five-year reviews in 1998.[1] The Commission now seeks to make more substantial changes to its information requests. Based on its decade of experience in conducting five-year reviews, the Commission believes that requesting additional information in its notice of institution will aid it both in deciding whether to expedite a review pursuant to 19 U.S.C. 1675(c)(3)(B) and 19 CFR 207.62 and in conducting expedited reviews.

*The Commission is proposing to modify its notice of institution. As illustrated in Appendix A, the revised model notice contains the following additional information requests:*

- All interested parties will be requested to provide a listing of the three to five leading purchasers of the domestic like product and the subject merchandise in the U.S. market.
- All interested parties will be requested to provide sources of information concerning prices for the domestic like product and the subject merchandise in the U.S. market and other world markets.
- Both producers of the domestic like product and producers of subject merchandise will be requested to provide capacity information for the most recent calendar year.
- Domestic producers will be requested to provide financial information on their operations producing the domestic like product for the most recent fiscal year, including the value of net sales; cost of goods sold; gross profit; selling, general, and administrative expenses; and operating income.

The Commission has two principal objectives in requesting additional information in its notice of institution. First, the Commission believes that the additional information it seeks will better enable it to ascertain whether to expedite a review pursuant to section 207.62 of the Commission's Rules of Practice and Procedure. As explained further below, the Commission believes that asking interested parties to identify three to five leading purchasers will enable it, in certain circumstances, to direct information requests to purchasers for use in the adequacy phase of the review. Second, the Commission seeks to have additional information in those reviews that it does expedite. The Commission believes that requesting additional information concerning capacity, financial performance, and pricing will enable it to achieve this objective. It further believes that the additional data requests it is proposing will not unduly burden interested parties.

In those reviews where the Commission does not receive responses to the notice of institution from both

[1] The Commission first published a sample notice of institution in the June 5, 1998, **Federal Register**. 63 FR 30599, 30609–10 (June 5, 1998). Since that time, the only material change the Commission has made to the notice is to request that producers of the domestic like product provide quantity and value data on internal consumption and company transfers.

domestic interested parties and respondent interested parties, the Commission will transmit brief questionnaires to purchasers shortly after it receives responses to the notice of institution.[2] A sample of this questionnaire appears as Appendix B to this Notice. These questionnaires will ask purchasers to identify significant changes, if any, in supply or demand conditions or the business cycle that have occurred in the United States for the domestic like product, or in world markets for the subject merchandise, since the date the order or suspension agreement under review became effective.

When there is inadequate response to the notice of institution from an interested party group, the Commission has the authority to conduct an expedited review. The Commission has found, however, that conducting an expedited review is not always appropriate when an interested party group response is inadequate. For example, if there have been major changes in the conditions of competition since the time of the original investigation pertaining to the domestic like product or the subject merchandise in the U.S. market, the subject countries, or worldwide, the Commission may find conducting a full review to be appropriate notwithstanding the inadequate response. The Commission believes that seeking information from purchasers concerning current conditions of competition, and asking purchasers to compare current conditions to those prevailing at the time the order or suspension agreement under review was imposed, will enable it better to ascertain whether it should conduct a full review notwithstanding inadequate response from an interested party group.

**Explanation of Proposed Change to Commission Rule 207.61(a)**

The changes proposed above, if implemented, will require the Commission staff to devote additional time during the adequacy phase of five-year reviews to analyze the additional information requested in the notice of institution, to circulate the brief adequacy phase questionnaires to purchasers in appropriate circumstances, and to analyze the responses to the purchaser questionnaires. To permit the Commission staff the additional time it needs to engage in such additional information collection and analysis, the Commission proposes amending section 207.61(a) of the Commission's Rules of Practice and Procedure to require that responses to the notice of institution be submitted within 30 days after publication of the notice, as opposed to the current 50 days. The Commission believes that the 30-day period will provide interested parties sufficient time to respond to the notice. Moreover, there will continue to be no need for respondent interested parties to file a response to the Commission's notice of institution in reviews where no domestic interested party has responded to the notice of initiation issued by the Department of Commerce (''Commerce''), which results in Commerce terminating the review (and revoking any pertinent orders under review) pursuant to 19 CFR 351.218(d)(1)(iii). Responses to the Commission's notice will not be due until 10 days after Commerce would notify the Commission pursuant to 19 CFR 351.218(d)(1)(iii)(B)(2) that no domestic interested party has responded to Commerce's notice of initiation.

**Request for Comment**

The Commission solicits comments from interested parties and practitioners concerning these proposals. All comments should be filed in writing no later than 60 days after publication of this notice in the **Federal Register**.

With respect to the proposed changes in information collection, the Commission is particularly interested in comments concerning whether the additional information it intends to collect: (1) Will satisfy the objective of augmenting the record before the Commission when it determines whether to conduct an expedited or full review; (2) will satisfy the objective of augmenting the record before the Commission in expedited reviews; and (3) will satisfy the objective of not unduly burdening interested parties and purchasers requested to provide the information. The Commission also seeks comment concerning whether requesting additional or alternative types of information will better enable the Commission to achieve these objectives. With respect to the proposed amendment to Commission rule 207.61(a), the Commission seeks comment concerning whether a 30-day response period will impair interested parties' ability to respond fully to the notice of institution.

**List of Subjects in 19 CFR Part 207**

Administrative practice and procedure, Investigations.

For the reasons stated in the preamble, the Commission proposes to amend 19 CFR part 207 as follows:

## PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

1. The authority citation for part 207 continues to read as follows:

**Authority:** 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

2. Amend § 207.61 by revising paragraph (a) as follows:

**§ 207.61 Responses to notice of institution.**

(a) *When information must be filed.* Responses to the notice of institution shall be submitted to the Commission no later than 30 days after its publication in the **Federal Register**.

* * * * *

**Note:** The following appendices would not appear in the Code of Federal Regulations.

**Appendix A**

**Revisions to Notice of Institution**

**Note:** The portions of the revised notice of institution that seek information from interested parties are reproduced below. The Commission does not contemplate modifying the introductory portions of the notice. Proposed new information requests are indicated by {bold text surrounded by curved brackets}. These are requests 7, 8, 9b, 9e, and 11b.

*Background.*—On DATE, the Department of Commerce issued a countervailing duty order/an antidumping duty order/suspended a countervailing duty/antidumping duty investigation on imports of PRODUCT from COUNTRY (xx FR xxxxx). The Commission is conducting a review to determine whether revocation of the order/termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is COUNTRY.

[2] When the Commission receives responses to the Notice of Institution from both domestic and respondent interested parties, it typicaly does not require further information to determine whether to conduct a full or expedited review. It such circumstances, it would not normally contemplate circulating the brief questionnaire to purchasers.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as INSERT DEFINITION. (Add the following if applicable). One Commissioner/Certain Commissioners defined the *Domestic Like Product* differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of INSERT DEFINITION. (Add the following if applicable). One Commissioner/Certain Commissioners defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the countervailing duty order under review became effective/antidumping duty order under review became effective/investigation was suspended. In this review, the *Order Date* is DATE.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official recently has advised that a five-year review is no longer considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are no longer required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is DATE. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is DATE. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information To Be Provided In Response To This Notice of Institution:* (Add the following material if more than one like product is involved.) Please provide the requested information separately for each *Domestic Like Product*, as defined by the Commission in its original determinations, and for each of the products identified by Commerce as *Subject Merchandise*. (Add the following material if more than one country is involved.) If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty order/revocation of the antidumping duty order/termination of the suspended investigation on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

{**(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).**}

{**(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.**}

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year PRECEDING YEAR, {**except as noted**} (report quantity data in MEASUREMENT UNIT and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

{**(b) Capacity (quantity) of your firm to produce the *Domestic Like Product (i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix)**};

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

{**(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).**}

(10) If you are a U.S. importer or a trade/ business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year PRECEDING YEAR (report quantity data in MEASUREMENT UNIT and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/ company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year PRECEDING YEAR (report quantity data in MEASUREMENT UNIT and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

{**(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country (i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and**}

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

## Appendix B

## Adequacy Phase Purchaser Questionnaire

*Definitions.*—The following definitions apply to this request:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is COUNTRY.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as INSERT DEFINITION.

(4) The *Order Date* is the date that the countervailing duty order under review became effective/antidumping duty order under review became effective/investigation was suspended. In this review, the *Order Date* is DATE.

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In your responses to the following questions, please identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time.

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1a. Have any changes occurred in technology; production methods; or development efforts that affected the availability of the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*? __No __Yes.

If your answer is yes, discuss any significant changes, noting the time period and market in which they occurred.

1b. Do you anticipate any changes in terms of technology; production methods; or development efforts that will affect the availability of the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* within a reasonably foreseeable time? __No __Yes

If your answer is yes, please describe any significant changes and identify the time period and market.

2a. Have any changes occurred in the ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production) that affected the availability of the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*? __No __Yes

If your answer is yes, discuss any significant changes, noting the time period and market in which they occurred.

2b. Do you anticipate any changes in terms of the ability to increase production

(including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production) that will affect the availability of the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* within a reasonably foreseeable time? __No __Yes

If your answer is yes, please describe any significant changes and identify the time period and market.

3a. Have any changes occurred in factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad) that affected the availability of the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*? __No __Yes

If your answer is yes, discuss any significant changes, noting the time period and market in which they occurred.

3b. Do you anticipate any changes in terms of factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad) that will affect the availability of the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* within a reasonably foreseeable time? __No __Yes

If your answer is yes, please describe any significant changes and identify the time period and market.

4a. Have there been any changes in the end uses and applications of the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*? __No __Yes

If your answer is yes, dscuss any significant changes, noting the time period and market in which they occurred.

4b. Do you anticipate any changes in terms of the end uses and applications of the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* within a reasonably foreseeable time? __No __Yes

If your answer is yes, please describe any significant changes and identify the time period and market.

5a. Have there been any changes in the existence and availability of substitute products for the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*? __No __Yes

If your answer is yes, discuss any significant changes, noting the time period and market in which they occurred.

5b. Do you anticipate any changes in terms of the existence and availability of substitute products for the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* within a reasonably foreseeable time? __No __Yes

If your answer is yes, please describe any significant changes and identify the time period and market.

6a. Have there been any changes in the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*? __No __Yes

If your answer is yes, discuss any significant changes, noting the time period and market in which they occurred.

6b. Do you anticipate any changes in terms of the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* within a reasonably foreseeable time? __No __Yes

If your answer is yes, please describe any significant changes and identify the time period and market.

7a. Have there been any changes in the business cycle for the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*? __No __Yes

If your answer is yes, discuss any significant changes, noting the time period and market in which they occurred.

7b. Do you anticipate any changes in terms of the business cycle for the *Domestic Like Product* in the U.S. market or in the market for the *Subject Merchandise* in the *Subject Country* within a reasonably foreseeable time? __No __Yes

If your answer is yes, please describe any significant changes and identify the time period and market.

By order of the Commission.

Issued: July 11, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–16282 Filed 7–16–08; 8:45 am]

BILLING CODE 7020–02–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

**[Docket No. SSA–2007–0093]**

**RIN 0960–AG02**

## Technical Revisions to Overpayment Rules

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** These proposed rules would amend our title II regulations to explicitly provide that we apply an underpayment due an individual to reduce an overpayment to that individual in certain cases. Our title XVI regulations already state this policy. Additionally, these proposed rules reflect our procedures for collecting overpayments when a payment of more than the correct amount is made to a representative payee on behalf of a beneficiary after the beneficiary's death. These proposed rules would clarify that we would collect overpayments in this situation from only the representative payee or his estate but would not collect these overpayments from the representative payee's spouse or from the spouse's estate.

**DATES:** To be sure that your comments are considered, we must receive them no later than September 15, 2008.

**ADDRESSES:** You may submit comments by any one of four methods—Internet, facsimile, regular mail, or hand-delivery. Commenters should not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA–2007–0093 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at *http://www.regulations.gov.* (This is the most expedient method for submitting your comments, and we strongly urge you to use it.) In the ''Comment or Submission'' section of the Web page, type ''SSA–2007–0093'', select ''Go,'' and then click ''Send a Comment or Submission.'' The Federal eRulemaking portal issues you a tracking number when you submit a comment.

2. Telefax to (410) 966–2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703.

4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

*Caution:* All comments we receive from members of the public are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov.* Therefore, you should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

**FOR FURTHER INFORMATION CONTACT:** Joshua Silverman, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 594–2128, for information about these rules. For information on eligibility or filing for benefits, call our national toll-free

number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

## Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

## Explanation of Changes

## Reducing Overpayments

We can apply underpayments to reduce overpayments. 42 U.S.C. 404(a)(1)(A) and 1383(b)(1)(A). Our current title XVI regulations explicitly provide that we ''apply any underpayment due an individual to reduce any overpayment to that individual that we determine to exist * * * for a different period, unless we have waived recovery of the overpayment * * *.'' 20 CFR 416.543. However, there is no parallel section in our current title II regulations. We propose to modify our regulations to reflect our current process of applying underpayments to reduce overpayments under title II.

We propose to amend 20 CFR 404.503 to state that we will apply any underpayment due an individual to reduce any overpayment owed by that individual that we determine to exist for a different period, unless we waive recovery. In cases when the underpaid individual has died, we will make the adjustment before distributing any underpayment according to the priority list in 20 CFR 404.503(b).

## Overpayments Made to Representative Payees

Under title II, we currently collect overpayments from an overpaid beneficiary, from any other beneficiary entitled to benefits based an overpaid beneficiary's earnings, or from the estate of a deceased overpaid individual. 20 CFR 404.502. Under title XVI, we may collect overpayments from the overpaid recipient, his eligible spouse, or the recipient's or eligible spouse's estate if one of them dies before we finish collecting the overpayment. 20 CFR 416.570.

When a representative payee receives benefits on behalf of a beneficiary, we generally collect any overpayment using these same procedures. However, when a representative payee receives benefits intended for a beneficiary after the beneficiary has died, the representative payee is liable for repaying the overpayment. 42 U.S.C. §§ 404(a)(2) and 1383(b)(2). While these amendments became effective on December 14, 2000, we are now proposing to update our regulations to reflect these statutory changes.

These proposed rules would clarify that we collect these overpayments solely from the representative payee's benefits and his estate. We do not collect from the benefits of the representative payee's spouse, the estate of the spouse, the auxiliaries of the overpaid representative payee, or the deceased beneficiary's estate. We would continue to use all other means for collecting such overpayments allowed by federal law, including cross-program recovery, administrative offset, tax refund offset, administrative wage garnishment, and federal salary offset. See 20 CFR 404.520, 404.527, 404.530, 416.572, 416.580, 416.590, 422.310, and 422.403.

For title II, we propose to add a new paragraph, 404.502(a)(3), which would state that we apply the procedures found in paragraph 404.502(a)(1) to recover an overpayment made to a representative payee after the death of a beneficiary. In this situation, we will not recover these overpayments from any other individual entitled to benefits based on the beneficiary's earnings because only the representative payee or his estate is liable for repayment. We also propose to add paragraph 404.502(b)(5) to state that, if an overpaid representative payee dies before we recover the full amount of the overpayment, we would collect the overpayment from the representative payee's estate, but we would not adjust the benefits based on the representative payee's record owed to the representative payee's spouse or children.

For title XVI, we propose to redesignate the existing language in 416.570 as paragraph (a) and to add a new paragraph (b). This new paragraph would provide that some of the procedures in paragraph (a) would apply to recover overpayments from a representative payee or his estate. We would clarify that we would not adjust benefits owed to the representative payee's eligible spouse or the eligible spouse's estate because only the representative payee is liable.

## Regulatory Procedures

*Clarity of These Proposed Rules*

Executive Order (E.O.) 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these final rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

## Regulatory Procedures

*Executive Order 12866, as Amended*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, they were not subject to OMB review.

*Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

This rule will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

## List of Subjects

*20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

*20 CFR Part 416*

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 10, 2008.

**Michael J. Astrue,**

*Commissioner of Social Security.*

For the reasons set forth in the preamble, we are proposing to amend subpart F of part 404 and subpart E of Part 416 of chapter III of title 20 of the

Code of Federal Regulations as set forth below:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

### Subpart F—[Amended]

1. The authority citation for subpart F of part 404 continues to read as follows:

**Authority:** Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b–17); 31 U.S.C. 3720A.

2. Amend § 404.502 by adding paragraphs (a)(3) and (b)(5) to read as follows:

**§ 404.502 Overpayments.**

* * * * *

(a) * * *

(3) If a representative payee receives a payment on behalf of a beneficiary after that beneficiary dies, the representative payee or his estate is solely liable for repaying the overpayment. If the representative payee is entitled to a monthly benefit or a lump sum under title II of the Act at the time we determine that an overpayment exists or at any time thereafter, except as provided in paragraphs (c) and (d) of this section, we will not pay the monthly benefits or the lump sum to the representative payee until the amount of the overpayment has been repaid. We will make such adjustments against any monthly benefit or lump sum under title II of the Act to which the representative payee is entitled whether payable on the basis of such representative payee's earnings or the earnings of another individual.

(b) * * *

(5) The methods in paragraphs (b)(1) and (b)(2) of this section for overpayments owed by a representative payee for payments made after the beneficiary's death. We will not recover such overpayments from any person other than the individual who was representative payee or his estate, but may be recovered from such other person under § 404.503(b).

* * * * *

3. Amend § 404.503 by adding a second sentence to paragraph (a) and revising paragraph (b) to read as follows:

**§ 404.503 Underpayments.**

* * * * *

(a) *Individual underpaid is living.* * * * However, if we determine that the individual to whom an underpayment is due also received an overpayment as defined in § 404.501(a) for a different period, we will apply any underpayment due the individual to reduce that overpayment, unless we have waived recovery of the overpayment under the provisions of §§ 404.506 through 404.512.

(b) *Individual dies before adjustment of underpayment.* If an individual who has been underpaid dies before receiving payment or negotiating a check or checks representing such payment, we first apply any amounts due the deceased individual against any overpayments as defined in § 404.501(a) owed by the deceased individual, unless we have waived recovery of such overpayment under the provisions of §§ 404.506 through 404.512. We then will distribute any remaining underpayment to the living person (or persons) in the highest order of priority as follows:

* * * * *

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart E—[Amended]

4. The authority citation for subpart E of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

5. Amend § 416.570 by revising the section heading, redesignating the existing text as paragraph (a), adding a heading to redesignated paragraph (a), and adding new paragraph (b) to read as follows:

**§ 416.570 Adjustment.**

(a) *General.* * * *

(b) *Overpayment made to representative payee after the beneficiary's death.* A representative payee or his estate is solely liable for repaying an overpayment made to the representative payee on behalf of a recipient after the recipient's death. In such case, we will recover the overpayment according to paragraph (a) of this section, except that:

(1) We will not adjust any other payment due to the eligible spouse of the overpaid representative payee to recover the overpayment, and

(2) If the overpaid representative payee dies before we complete adjustment, we will not seek to recover the overpayment from the eligible spouse or his estate.

[FR Doc. E8–16330 Filed 7–16–08; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–103146–08]**

**RIN 1545–BH69**

## Information Reporting Requirements Under Internal Revenue Code Section 6039

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the return and information statement requirements under section 6039 of the Internal Revenue Code (Code). These regulations reflect changes to section 6039 made by section 403 of the Tax Relief and Health Care Act of 2006. These proposed regulations affect corporations that issue statutory stock options and provide guidance to assist corporations in complying with the return and information statement requirements under section 6039.

**DATES:** Written or electronic comments and requests for a public hearing must be received by October 15, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–103146–08), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–103146–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–103146–08).

**FOR FURTHER INFORMATION CONTACT:** Concerning these proposed regulations, Thomas Scholz at (202) 622–6030 (not a toll-free number); concerning submissions of comments and/or to request a hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov.*

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and

Budget, *Attn:* Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by September 15, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in § 1.6039–1 and § 1.6039–2. Section 6039 requires corporations to file an information return with the IRS and furnish a written statement to each employee, in a manner prescribed by the Secretary in regulations, regarding: (i) The corporation's transfer of stock pursuant to the employee's exercise of an incentive stock option described in section 422(b); and (ii) the transfer of stock by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). The information on the statements required to be provided by the corporation will be used by employees to complete their income tax returns in the year of the disposition of the stock acquired pursuant to the statutory stock option. The likely respondents are for-profit corporations.

*Estimated total annual reporting burden:* 25,000 hours.

*Estimated average annual burden hours per respondent:* 30 minutes.

*Estimated number of respondents:* 50,000.

*Estimated annual frequency of responses:* annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

Section 403 of the Tax Relief and Health Care Act of 2006 (Act) amended the information reporting requirements of section 6039. Prior to its amendment, section 6039 required corporations to furnish a written statement to each employee, in a manner prescribed by the Secretary in regulations, regarding: (i) The corporation's transfer of stock pursuant to the employee's exercise of an incentive stock option described in section 422(b); and (ii) the transfer of stock by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). Corporations must furnish employees with the information statements required by section 6039 on or before January 31 of the year following the year for which the statement is required. Prior to the amendment of section 6039 made by the Act, the regulations under section 6039 were last updated in 2004. See TD 9144 (69 FR 46401).

As amended by the Act, section 6039 requires corporations to file an information return with the IRS, in addition to providing employees with an information statement, following a stock transfer. The time and manner for filing a return with the IRS, as well as the information to be contained in the return and furnished to employees, is addressed in these proposed regulations. Section 6039, as amended by the Act, applies to stock transfers occurring on or after January 1, 2007. However, in Notice 2008–8, 2008–3 IRB 276 (December 19, 2007) (see § 601.601(d)(2)(ii)(*b*)), the IRS waived the obligation to file an information return for 2007 stock transfers governed by section 6039.

**Explanation of Provisions**

These proposed regulations describe the information that would be required in the return filed with the IRS and the information statement furnished to employees pursuant to section 6039. There are two sections under these proposed regulations: § 1.6039–1, Returns required in connection with certain options; and § 1.6039–2, Statements to persons with respect to whom information is reported. In crafting these proposed regulations, one principal objective was to require corporations to furnish employees with sufficient information to enable them to calculate their tax obligations upon disposition of the shares acquired by the exercise of a statutory option. Under these proposed regulations, essentially the same information would be reported with respect to the transfer of stock pursuant to the exercise of an incentive stock option and the transfer of stock acquired pursuant to an employee stock purchase plan.

With respect to a transfer of stock upon the exercise of an incentive stock option, the information required to be furnished to employees pursuant to the existing regulations under § 1.6039–1 is sufficient to enable the employee to calculate his or her tax obligations upon disposition of the shares. Therefore, the information that would be required in the information return and the statement furnished to employees under these proposed regulations is generally the same information that is included in the statement furnished to employees pursuant to the existing regulations under § 1.6039–1. With respect to an employee's transfer of stock acquired under an employee stock purchase plan, the information required to be furnished to employees pursuant to the existing regulations under § 1.6039–1 is not sufficient to enable the employee to calculate his or her tax obligations upon disposition of the shares. Accordingly, these proposed regulations would require that additional information be included in the information return and the statement furnished to employees.

As discussed further in the preamble, the IRS will issue two forms with instructions that corporations must use to satisfy the return and information statement requirements under section 6039.

*1. Returns Required With Respect to Incentive Stock Options*

Section 1.6039–1(a) of these proposed regulations would require every corporation that transfers stock pursuant to an employee's exercise of an incentive stock option described in section 422(b) to file a return with respect to each transfer made during a particular year. This return would include the following information:

(i) The name, address, and employer identification number of the corporation transferring the stock;

(ii) If other than the corporation identified in (i), the name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The name, address, and identifying number of the person to

whom the share or shares of stock were transferred pursuant to the exercise of the option;

(iv) The date the option was granted to the person;

(v) The exercise price per share;

(vi) The date the option was exercised by the person;

(vii) The fair market value of a share of stock on the date the option was exercised by the person; and

(viii) The number of shares of stock transferred to the person pursuant to the exercise of the option.

The information required to be included on the information return pursuant to these proposed regulations is generally the same information that is required to be furnished to employees pursuant to the existing regulations. However, while the existing regulations require that the corporation report the total cost of all shares acquired, these proposed regulations would require instead that the corporation report the exercise price per share. The exercise price per share, rather than the total cost of all shares acquired, is more readily useable by the employee in calculating the tax obligation when the employee later disposes of some or all of the shares.

Returns required by § 1.6039–1(a) must be filed on or before January 31 of the year following the calendar year for which the return is made. Such returns must be made on Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and filed in the manner provided in the instructions thereto. The IRS expects to release Form 3921 later this year.

*2. Returns Required With Respect to Stock Purchased Under an Employee Stock Purchase Plan*

Section 1.6039–1(b) of these proposed regulations would require every corporation which records a transfer of the legal title of a share of stock acquired by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c) to file a return with respect to each transfer made during a particular year. This return would include the following information:

(i) The name, address, and identifying number of the transferor;

(ii) The name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The date the option was granted to the transferor;

(iv) The fair market value of the stock on the date the option was granted;

(v) The exercise price per share;

(vi) The date the option was exercised by the transferor;

(vii) The fair market value of the stock on the date the option was exercised by the transferor;

(viii) The date the legal title of the shares was transferred by the transferor; and

(ix) The number of shares to which legal title was transferred by the transferor.

These proposed regulations would require that all of the information required pursuant to the existing regulations be included on the information statement furnished to employees. However, the information required to be furnished to employees pursuant to the existing regulations is not sufficient to enable the employee to calculate his or her tax obligations upon disposition of the shares. Accordingly, items (iii), (iv), (v), (vi) and (vii) in the list in the preceding paragraph would request new information that is not required to be reported under the existing regulations. This additional information, along with the information required under the existing regulations, will enable the employee to determine his or her tax obligations upon the disposition of shares.

Returns required by § 1.6039–1(b) must be filed on or before January 31 of the year following the calendar year for which the return is made. Such returns must be made on Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) (or its designated successor) and filed in the manner provided in the instructions thereto. The IRS expects to release Form 3922 later this year.

*3. Information Statements Required With Respect to Incentive Stock Options*

Section 1.6039–2(a) of these proposed regulations would require every corporation filing a return under § 1.6039–1(a) to furnish to each employee named in such return a written statement with respect to the transfer or transfers made to such employee during such year. Each information statement required by § 1.6039–2(a) must be furnished to the employee on or before January 31 of the year following the calendar year for which the return under § 1.6039–1(a) is made. Such information statements must be furnished to employees on Form 3921 (or its designated successor) and be delivered in the manner provided in the instructions thereto. Rules regarding electronic furnishing of the information statements and furnishing the information statement by mail (items addressed under § 1.6039–1(d) and (f) of the existing regulations) will be set forth in the instructions to Form 3921 (or its designated successor).

*4. Information Statements Required With Respect to Stock Purchased Under an Employee Stock Purchase Plan*

Section 1.6039–2(b) of these proposed regulations would require every corporation filing a return under § 1.6039–1(b) to furnish to each employee named in such return a written statement with respect to the transfer or transfers made by the employee during such year. Each information statement required by § 1.6039–2(b) must be furnished to the employee on or before January 31 of the year following the calendar year for which the return under § 1.6039–1(b) is made. Such information statements must be furnished to employees on Form 3922 (or its designated successor) and be delivered in the manner provided in the instructions thereto. Rules regarding electronic furnishing of the information statements and furnishing the information statement by mail (items addressed under § 1.6039–1(d) and (f) of the existing regulations) will be set forth in the instructions to Form 3922 (or its designated successor).

**Proposed Effective Date**

These regulations under section 6039 are proposed to apply to any stock transfer occurring on or after January 1, 2007. However, corporations are not required to comply with the return requirements of § 1.6039–1(a) and (b) for stock transfers that occur during the 2007 and 2008 calendar years. Notwithstanding the waiver of the return requirements for 2007 and 2008 stock transfers, corporations must furnish information statements to employees for such 2007 and 2008 stock transfers. For purposes of furnishing information statements for 2007 and 2008 stock transfers, corporations may rely on § 1.6039–1 of the 2004 final regulations (TD 9144) or § 1.6039–2 of these proposed regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the filing of a return with the IRS and the provision of employee statements required under these proposed regulations will impose a minimal administrative burden on small

entities. It is estimated that it will take approximately 30 minutes to prepare and provide the information required by these regulations. Further, the information to be provided is readily available. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Comments and Request for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Thomas Scholz, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

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

**Par. 2.** Section 1.6039–1 is revised to read as follows:

### § 1.6039–1 Returns required in connection with certain options.

(a) *Requirement of return with respect to incentive stock options under section 6039(a)(1).* (1) Every corporation which in any calendar year transfers to any person a share of stock pursuant to such person's exercise of an incentive stock option shall, for such calendar year, file a return with respect each transfer made during such year. This return must include the following information—

(i) The name, address, and employer identification number of the corporation transferring the stock;

(ii) If other than the corporation identified in paragraph (a)(1)(i) of this section, the name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The name, address, and identifying number of the person to whom the share or shares of stock were transferred pursuant to the exercise of the option;

(iv) The date the option was granted to the person;

(v) The exercise price per share;

(vi) The date the option was exercised by the person;

(vii) The fair market value of a share of stock on the date the option was exercised by the person; and

(viii) The number of shares of stock transferred to the person pursuant to the exercise of the option.

(2) Each return required by this paragraph (a) shall be made on Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and shall be filed in such manner as provided in the instructions thereto.

(b) *Requirement of return with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation which in any calendar year records, or has by its agent recorded, a transfer of the legal title of a share of stock acquired by the transferor pursuant to the transferor's exercise of an option granted under an employee stock purchase plan and described in section 423(c) (relating to the special rule where the option price is between 85 percent and 100 percent of value of the stock), shall, for such calendar year, file a return with respect each transfer made during such year. This return must include the following information—

(i) The name, address, and identifying number of the transferor;

(ii) The name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The date the option was granted to the transferor;

(iv) The fair market value of the stock on the date the option was granted;

(v) The exercise price per share;

(vi) The date the option was exercised by the transferor;

(vii) The fair market value of the stock on the date the option was exercised by the transferor;

(viii) The date the legal title of the shares was transferred by the transferor; and

(ix) The number of shares to which legal title was transferred by the transferor.

(2) Each return required by this paragraph (b) shall be made on Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) (or its designated successor) and shall be filed in such manner as provided in the instructions thereto.

(3) A return is required by reason of a transfer described in section 6039(a)(2) of a share only with respect to the first transfer of such share by the person who exercised the option. Thus, for example, if the owner has record title to a share or shares of stock transferred to a recognized broker or financial institution and the stock is subsequently sold by such broker or institution (on behalf of the owner), the corporation is only required to file a return relating to the transfer of record title to the broker or financial institution. Similarly, a return is required when a share of stock is transferred by the optionee to himself and another person (or persons) as joint tenants, tenants by the entirety or tenants in common. However, when stock is originally issued to the optionee and another person (or persons) as joint tenants, or as tenants by the entirety, the return required by this paragraph shall be filed with respect to the first transfer of the title to such stock by the optionee.

(4) Every corporation which transfers any share of stock pursuant to the exercise of an option described in this paragraph shall identify such stock in a manner sufficient to enable the accurate reporting of the transfer of record title to such shares. Such identification may be accomplished by assigning to the certificates of stock issued pursuant to the exercise of such options a special serial number or color.

(c) *Time for filing returns*—(1) *In general.* Each return required by this section for a calendar year must be filed on or before January 31 of the year following the year for which the return is required.

(2) *Extension of time.* An extension of time to file returns required by this section may be granted in accordance with the guidelines and procedures set forth in the instructions to Form 3921 and Form 3922.

(d) *Penalty.* For provisions relating to the penalty provided for failure to file a return under this section, see section 6721.

(e) *Effective/applicability date*—(1) *In general.* Upon the date of publication of the Treasury decision adopting the rules of this section as a final regulation in the **Federal Register**, these rules will apply as of January 1, 2007.

(2) *Transition period.* Taxpayers are not required to comply with the return requirements of paragraphs (a) and (b) of this section for stock transfers that occur during the 2007 and 2008 calendar years.

**Par. 3.** A new § 1.6039–2 is added to read as follows:

**§ 1.6039–2 Statements to persons with respect to whom information is reported.**

(a) *Requirement of statement with respect to incentive stock options under section 6039(b).* (1) Every corporation filing a return under § 1.6039–1(a) shall furnish to each person whose name is set forth in such return a written statement with respect to the transfer or transfers made to such person during such year. This statement must include the information described in § 1.6039–1(a)(1).

(2) Each statement required by this paragraph (a) to be furnished to any person must be furnished to such person on Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and be delivered at such time and in such manner as provided in the instructions thereto.

(b) *Requirement of statement with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation filing a return under § 1.6039–1(b) shall furnish to each person whose name is set forth in such return a written statement with respect to the transfer or transfers made by such person during such year. This statement must include the information described in § 1.6039–1(b)(1).

(2) Each statement required by this paragraph (b) to be furnished to any person must be furnished to such person on Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) (or its designated successor) and be delivered at such time and in such manner as provided in the instructions thereto.

(3) If the statement required by this paragraph is made by the authorized transfer agent of the corporation, it is deemed to have been made by the corporation. The term *transfer agent*, as used in this section, means any designee authorized to keep the stock ownership records of a corporation and to record a transfer of title of the stock of such corporation on behalf of such corporation.

(c) *Time for furnishing statements*—(1) *In general.* Each statement required by this section to be furnished to any person for a calendar year must be furnished to such person on or before January 31 of the year following the year for which the statement is required.

(2) *Extension of time.* An extension of time to furnish statements required by this section may be granted in accordance with the guidelines and procedures set forth in the instructions to Form 3921 and Form 3922.

(d) *Penalty.* For provisions relating to the penalty provided for failure to furnish a statement under this section, see section 6722.

(e) *Effective/applicability date*—(1) *In general.* Upon the date of publication of the Treasury decision adopting the rules of this section as a final regulation in the **Federal Register**, these rules will apply as of January 1, 2007.

(2) *Reliance and transition period.* For stock transfers that are subject to the return requirements under § 1.6039–1(a) and (b), and occur during the 2007 and 2008 calendar years, taxpayers may comply with § 1.6039–1 of the 2004 final regulations (69 FR 46401) or this section.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8–16177 Filed 7–16–08; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF AGRICULTURE

## Forest Service

## 36 CFR Part 262

**RIN 0596–AB61**

## Law Enforcement Support Activities

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule, request for comment.

**SUMMARY:** The Forest Service is proposing to revise regulations at 36 CFR part 262, Subparts A and B, regarding removal of obstructions, impoundment of personal property, payment of rewards, and payment for information or evidence in furtherance of an investigation. The proposed revisions to subpart A would clarify and concisely state the Agency's authority for setting reward amounts and would streamline the rules regarding payment for information and evidence. The proposed revisions to Subpart B would shorten the timeframe for impoundment procedures, change the posting requirement, and allow the Forest Service to retain unclaimed personal property for administrative use.

**DATES:** Comments on this proposed rule must be received in writing by September 15, 2008.

**ADDRESSES:** Send written comments to Forest Service, U.S. Department of Agriculture, *Attention:* Director, Law Enforcement and Investigations Staff, 1400 Independence Avenue, SW., Washington, DC 20250–1103 or by facsimile to (703) 605–5112. Comments also may be submitted via the world wide web/Internet at *http://www.regulations.gov.* It is not necessary to send by regular mail comments that are sent by electronic mail or by facsimile. Comments should be confined to issues pertinent to the proposed rule. Where possible, reference should be made to the specific section being addressed, and an explanation should be given for any suggested changes.

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. Comments may be inspected in the Office of the Director, Law Enforcement and Investigations Staff, Room 1015, 1621 North Kent Street, Arlington, Virginia, between 8:30 a.m. and 4:30 p.m., Monday through Friday. Visitors are encouraged to call (703) 605–4690 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** John Carpenter, Law Enforcement and Investigations Staff, (703) 605–4731. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service at (800) 877–8339 between 8 a.m. and 8 p.m., Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

### 1. Background

On February 16, 1994, the Forest Service published a proposed rule amending 36 CFR parts 261 and 262 (59 FR 7880). The Agency considered comments received on the 1994 proposed rule in developing this proposed rule to amend 36 CFR part 262. At this time, the Agency is not proposing revisions to 36 CFR part 261.

Forest Service regulations at 36 CFR part 262, in effect since 1977, govern payment of rewards, payment for information or evidence in furtherance of an investigation, impoundment of property, and removal of obstructions from National Forest System lands. Most of the comments received on the 1994 proposal to amend part 262

involved the meaning of terms used and proposed revisions that would permit the Agency to remove objects that are an impediment or a safety hazard to users of National Forest System lands.

The Forest Service also reviewed 36 CFR part 262 to determine its applicability in view of changing laws, resource conditions, and other factors affecting management of National Forest System lands. For example, the structure of the Forest Service's Law Enforcement and Investigations staff changed in 1994 to provide for the Director of the Law Enforcement and Investigations staff to report directly to the Chief, rather than to the Deputy Chief for Administration. Accordingly, this proposed rule would vest the authority to make or approve payment of rewards at 36 CFR 262.2 and payment for information or evidence in furtherance of an investigation at 36 CFR 262.3 with the Director of the Law Enforcement and Investigations staff. The proposed rule also would revise limits on maximum amounts and approval authority for payment of rewards.

**2. Section-by-Section Analysis**

*36 CFR Part 262, Subpart A*

*Section 262.1 Definitions.* This section would contain definitions of terms pertaining to the law enforcement support activities in 36 CFR part 262, including ''camping equipment,'' ''damaging,'' ''forest officer,'' ''law enforcement personnel,'' ''unauthorized livestock,'' and ''vehicle.'' This section would replace the current § 262.1, which would be redesignated as § 262.2.

*Section 262.2 Rewards in connection with fire or property prosecutions.* The Forest Service proposes to redesignate § 262.1, ''Rewards in connection with fire or property prosecution,'' as § 262.2. Paragraphs (a)(1) and (a)(2) of current § 262.1 set reward amounts for information leading to the arrest and conviction of any person for setting on fire or causing to be set on fire any timber, underbrush, or grass on National Forest System or nearby lands. The reward amounts vary depending on whether the fire was willfully set. Paragraph (a)(3) of current § 262.1 sets a reward amount for information leading to the arrest and conviction of any person charged with destroying or stealing any property of the United States. The proposed revisions to paragraphs (a)(1) through (a)(3) would establish new reward payment limitations.

Paragraph (a)(4) of current § 262.1 authorizes payment of a reward for information or evidence in furtherance of an investigation of damage to or theft of all or part of a Pacific Yew tree. This provision was added in 1991 (56 FR 29182, June 26, 1991) to address an increase in theft of and damage to the Pacific Yew. At the time, the Pacific Yew was the only known source of the chemical taxol, which is used to treat cancer. Since taxol is now synthetically produced, the demand for the Pacific Yew no longer exists, and the tree is no longer being damaged or stolen. Consequently, the Forest Service is proposing to remove paragraph (a)(4) from current § 262.1.

The Agency is proposing to revise paragraph (b) of current § 262.1 to contain a cross-reference to 36 CFR 296.17, which, pursuant to Section 8 of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. 470gg), authorizes payment of a reward from a criminal or civil penalty collected under Section 6 or 7 of ARPA (16 U.S.C. 470ee or 470ff) for information or evidence leading to the criminal conviction or civil liability of the person who paid the penalty.

Paragraph (e) of current § 262.1 states: ''Applications for reward should be forwarded to the Regional Forester, Research Director, or Area Director who has responsibility for the land or property involved in the trespass.'' The proposed rule would amend paragraph (e) to read: ''Applications for a reward should be forwarded to the special agent in charge who has responsibility for investigation of the violation of law.'' The Agency is proposing to replace ''trespass'' with ''violation of law'' because ''trespass'' does not encompass the violations of law enumerated in that section.

*Section 262.3 Payment for information or evidence in furtherance of investigations.* For simplicity and clarity, the Forest Service is proposing to combine § 262.2, ''Purchase of information in furtherance of investigations,'' and § 262.3, ''Purchase of evidence in furtherance of investigations'' into § 262.3, and rename it ''Payment for information or evidence in furtherance of investigations.'' Proposed new paragraph (a), ''Approval of payment,'' would establish new dollar limits and delegations of authority to the Chief of the Forest Service for approval of payment for information or evidence in furtherance of an investigation.

*36 CFR Part 262, Subpart B*

The current heading for this subpart is ''Impoundments and Removals.'' The Agency is proposing to revise the heading for Subpart B to read ''Administrative Impoundment and Removal.'' This proposed revision would clarify that impoundment and removal under 36 CFR part 262, Subpart B, of animals or personal property on National Forest System lands are administrative remedies governed by Agency regulations, as opposed to impoundment and seizure of property pursuant to arrests and searches, which are governed by the Federal Rules of Criminal Procedure for the United States District Courts.

*Section 262.12 Impoundment of personal property.* The current regulation sets out the procedure for impounding property that is on National Forest System lands without permission or in violation of law. Paragraph (b) of this section states:

> In the event the local Forest officer does not know the name and address of the owner, impoundment may be effected at any time 15 days after the date a notice of intention to impound the property in trespass is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. A copy of this notice shall also be posted in at least one place on the property or in proximity thereto.

The Forest Service is proposing to revise paragraph (b) to allow impoundment 72 hours after a trespass is discovered and to eliminate the posting requirements in the local newspaper, at the county courthouse, and at local post offices. This revision would make the Forest Service's regulations consistent with the regulations of other Federal land management agencies and would allow timely removal of property in trespass, thereby protecting National Forest System lands and resources.

Paragraph (d) of this section states, ''If the personal property is not redeemed on or before the date fixed for its disposition, it shall be sold by the Forest Service at public sale to the highest bidder.'' The Forest Service is proposing to revise paragraph (d) to give the Agency the option to retain unclaimed personal property for official use, as provided under the Federal Property and Administrative Services Act (40 U.S.C. 484(m)), rather than having to offer the property for sale. In many cases, the cost of selling the property exceeds its value, and retention of unclaimed personal property for administrative use by the Forest Service could result in substantial savings to the public. The Agency also is proposing to revise paragraph (d) to state, per existing authority, that the Federal Government will bill the property owner for costs associated with impoundment, removal, and storage.

*Section 262.13 Removal of obstructions.* This section currently

provides for removal of vehicles or other objects that create an ''impediment or hazard to the safety, convenience, or comfort of other users of the National Forest System.'' Current § 262.13 allows a forest officer to remove or have removed to a more suitable place a vehicle or other object that is an impediment or hazard to the safety, convenience, or comfort of other National Forest users. The proposed revision to § 262.13 would add the authority to remove vehicles or other objects that are abandoned or vandalized. This proposed revision would address the increasing number of automobiles and other large objects being left on National Forest System lands. These abandoned objects need to be removed because they invite vandalism and are unsightly.

**3. Regulatory Certifications**

*Environmental Impact*

This proposed rule would revise law enforcement regulations governing certain activities on National Forest System lands. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions. The Agency's assessment is that this proposed rule falls within this category of actions, and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

*Regulatory Impact*

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review, as amended by E.O. 13422. It has been determined that this is not a significant rule. This rule would not have an annual effect of $100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health or safety, or state or local governments. This proposed rule would not interfere with an action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this proposed rule would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, this proposed rule is not subject to review by the Office of Management and Budget under E.O. 12866. Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The proposed rule would amend Forest Service law enforcement regulations governing removal of obstructions, impoundment of personal property, and payment of rewards and payments for information and evidence in furtherance of an investigation and would not impose any requirements on the public. Accordingly, it has been determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by that Act because the proposed rule would not impose record-keeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market.

*Federalism and Consultation and Coordination With Indian Tribal Governments*

The Forest Service has considered this proposed rule under the requirements of E.O. 13132 on federalism. The Agency has determined that the proposed rule conforms with the federalism principles set out in this E.O.; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further determination of federalism implications is necessary at this time. Moreover, this proposed rule would not have tribal implications per E.O. 131175, Consultation and Coordination with Indian Tribal Governments; therefore, advance consultation with tribes is not required in connection with this proposed rule.

*No Takings Implications*

This proposed rule has been analyzed in accordance with the principles and criteria in E.O. 12630. It has been determined that this proposed rule does not pose the risk of a taking of private property.

*Civil Justice Reform*

This proposed rule has been reviewed under E.O. 12988 on civil justice reform. After adoption of this proposed rule, (1) all State and local laws and regulations that conflict with this proposed rule or that impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

**Unfunded Mandates**

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

**Energy Effects**

This proposed rule has been reviewed under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply. The Agency has determined that this proposed rule does not constitute a significant energy action as defined in the E.O.

**Controlling Paperwork Burdens on the Public**

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

**List of Subjects in 36 CFR Part 262**

Investigations, Law enforcement, National forests, Seizures and forfeitures.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend part 262 of Title 36 of the Code of Federal Regulations as follows:

## PART 262—LAW ENFORCEMENT SUPPORT ACTIVITIES

1. Revise the authority citation to part 262 to read as follows:

**Authority:** 7 U.S.C. 1011(f); 16 U.S.C. 470ee, 470ff, 470gg, 472, 551, 559a; 40 U.S.C. 484(m).

2. Revise subpart A to read as follows:

### Subpart A—Rewards and Payments

Sec.
262.1 Definitions.
262.2 Rewards in connection with fire or property prosecutions.
262.3 Payment for information or evidence in furtherance of investigations.

262.4 Audit of expenditures.
262.5 Disposal of purchased property.

## Subpart A—Rewards and Payments

### § 262.1 Definitions.

The following definitions apply to Subparts A and B:

*Camping equipment.* Personal property used in or suitable for camping, including any vehicle used for transportation and all equipment in possession of a person camping, other than food and beverages.

*Damage.* To injure, mutilate, deface, destroy, cut, chop, girdle, dig, excavate, kill, or in any way harm or disturb.

*Forest officer.* An employee of the Forest Service.

*Law enforcement personnel.* An employee of the Forest Service who is a special agent, law enforcement officer, or reserve law enforcement officer.

*National Forest System.* As defined in the Forest Rangeland Renewable Resources Planning Act, the ''National Forest System'' includes all National Forest lands reserved or withdrawn from the public domain of the United States, all National Forest lands acquired through purchase, exchange, donation, or other means, the National Grasslands and land utilization projects administered under Title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525, 7 U.S.C. 1010–1012), and other lands, waters or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system.

*Unauthorized livestock.* Any cattle, sheep, goat, hog, or equine that is not authorized by permit to be on National Forest System lands, other than a wild, free-roaming horse or burro as defined in 36 CFR 222.20(b)(13); pack and saddle stock used for noncommercial recreation, travel, or occasional trips; and livestock hauled on an authorized road or trail without an overnight stop on National Forest System lands.

*Vehicle.* Any device in, upon, or by which any person or property may be transported, including any frame, chassis, or body of any motor vehicle, except devices used exclusively upon stationary rails or tracks.

### § 262.2 Rewards in connection with fire or property prosecutions.

(a) Law enforcement personnel may pay up to $50,000 as a reward for information or evidence leading to the conviction of any person for:

(1) Willfully or maliciously setting on fire or causing to be set on fire any timber, underbrush, or grass on National Forest System lands, or on non-National Forest System lands if the fire endangers or injures National Forest System lands or users;

(2) Kindling or causing to be kindled a fire on National Forest System lands or on non-National Forest System lands if the fire endangers or injures National Forest System lands or users; or

(3) Destroying, damaging, or stealing any property of the United States.

(b) See 36 CFR 296.17 for direction on payment of a reward from a criminal or civil penalty collected under Section 6 or 7 of the Archaeological Resources Protection Act (16 U.S.C. 470ee or 470ff) for information or evidence leading to the criminal conviction or civil liability of the person who paid the penalty.

(c) Officers and employees of the United States Department of Agriculture may not receive rewards under this section.

(d) Submit applications for a reward to the special agent in charge who has responsibility for the investigation involved in the violation of law no later than 3 months after the date of conviction of an offender. Applications submitted after that date shall not be considered. To allow all claimants to present their claims within the prescribed limit, the special agent in charge shall not take action with respect to rewards regarding an investigation until 3 months after the date of conviction of an offender.

(e) The special agent in charge reserves the right to refuse payment of a reward when it is determined that collusion or improper methods were used to secure the conviction involved.

(f) The special agent in charge reserves the right to pay only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, but may, depending on the circumstances, determine that payment of a reward for each conviction is justified.

### § 262.3 Payment for information or evidence in furtherance of investigations.

(a) Law enforcement personnel may pay for information or evidence in furtherance of investigations of felonies and misdemeanors related to Forest Service administration.

(1) Criminal investigators in the GS–1811 series and other law enforcement personnel designated by the Chief of the Forest Service, Director of the Law Enforcement and Investigations staff, or special agent in charge, may, without prior approval, pay up to $1,000 for information or evidence under this section.

(2) Payments over $1,000 and up to $5,000 require prior written approval from the special agent in charge.

(3) Payments over $5,000 and up to $10,000 require prior written approval from the Director of the Law Enforcement and Investigations staff.

(4) Payments over $10,000 require prior written approval from the Chief of the Forest Service.

(b) *Limitations.* Purchase of information or evidence under this section is restricted to furthering investigations of felony and misdemeanor violations. Payments for information or evidence in furtherance of investigations of infractions are not authorized under this section. Employees of the United States Department of Agriculture may not receive payments under this section.

* * * * *

3. Revise the heading to Subpart B to read as follows:

## Subpart B—Administrative Impoundment and Removal

* * * * *

4. Revise the heading to § 262.11 to read as follows:

### § 262.11 Impoundment of dogs.

* * * * *

5. In § 262.12 revise the heading and paragraphs (b) and (d) to read as follows:

### § 262.12 Impoundment of personal property.

* * * * *

(b) If the local forest officer does not know the name and address of the owner of property in trespass, impoundment may be effected at any time 72 hours after a notice of intention to impound the property in trespass is posted in at least one place in the vicinity of the property.

* * * * *

(d) The owner of impounded property may redeem it by the date set for its disposition, but shall remain liable for all costs associated with its impoundment, removal, transportation, and storage. Impounded property that is not redeemed by the date set for its disposition shall become the property of the United States and may be retained by the Forest Service for official use, sold at public sale to the highest bidder, or otherwise disposed of. When impounded property is sold, the forest officer conducting the sale shall furnish the purchaser with a bill of sale or other written instrument evidencing the sale. The original owner shall remain liable for all costs associated with impoundment, removal, transportation, and storage of the property, minus any

amount received from the sale of the property.

* * * * *

6. Revise § 262.13 to read as follows:

**§ 262.13 Removal of obstructions.**

A forest officer may remove or have removed a vehicle or other object on National Forest System lands that is abandoned or vandalized or that poses an impediment or hazard to the safety, convenience, or comfort of National Forest visitors.

Dated: May 30, 2008.

**Abigail R. Kimball,**

*Chief.*

[FR Doc. E8–16129 Filed 7–16–08; 8:45 am]

BILLING CODE 3410–11–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2006–1029; FRL–8689–8]**

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Texas. This revision, adopted by Texas on November 15, 2006, and submitted to EPA on December 13, 2006, extends requirements to reduce volatile organic compound (VOC) emissions in the Dallas-Fort Worth (DFW) area. Specifically, this revision extends requirements for control of VOC emissions to the five counties that were added to the DFW nonattainment area under the 1997 8-hour ozone standard designation: Ellis, Johnson, Kaufman, Parker, and Rockwall, and the affected VOC sources will be subject to the same emission limitation, control, monitoring, testing, recordkeeping, and recording requirements in effect in Collin, Dallas, Denton, and Tarrant counties. As a result of this action, these new VOC control requirements will be consistent for all nine counties in the DFW ozone nonattainment area. This revision meets statutory and regulatory requirements, and is consistent with EPA's guidance. EPA is approving this revision pursuant to section 110, 116 and part D of the Federal Clean Air Act (CAA).

**DATES:** Written comments must be received on or before August 18, 2008.

**ADDRESSES:** Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Ellen Belk, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–2164; fax number 214–665–7263; e-mail address *belk.ellen@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: July 1, 2008.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. E8–15728 Filed 7–16–08; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[FWS–R8–ES–2008–0081; 92220–1113–0000–C5]**

### Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Delist Astragalus magdalenae var. peirsonii (Peirson's milk-vetch)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to remove *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch) from the Federal List of Threatened and Endangered Plants under the Endangered Species Act. After reviewing the best scientific and commercial information available, we find that the petitioned action is not warranted. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the species. This information will help us monitor and encourage the conservation of this species.

**DATES:** The finding announced in this document was made on July 17, 2008.

**ADDRESSES:** This finding is available on the Internet at *http://www.regulations.gov*, *http://www.fws.gov/endangered*, and *http://www.fws.gov/Carlsbad*. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901. Please submit any new information, materials, comments, or questions concerning this finding to the above street address or via electronic mail (e-mail) at *FW8cfwocomments@fws.gov*.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et*

*seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial information to indicate the petitioned action may be warranted. Section 4(b)(3)(B) of the Act requires that within 12 months after receiving a petition to revise the Lists of Threatened and Endangered Wildlife and Plants (Lists) that contains substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings: (a) The petitioned action is not warranted, (b) the petitioned action is warranted, or (c) the petitioned action is warranted but precluded by pending proposals to determining whether any species is an endangered or threatened species and expeditious progress is being made to add qualified species to, and remove species from, the Lists. Such 12-month findings are to be published promptly in the **Federal Register**.

*Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch) was listed as threatened on October 6, 1998 (63 FR 53596). At the time of listing, the primary threat to *A. magdalenae* var. *peirsonii* was the destruction of individuals and dune habitat from off-highway vehicle (OHV) use and associated recreational development. On October 25, 2001, we received a petition to delist *A. magdalenae* var. *peirsonii* dated October 24, 2001, from David P. Hubbard, Ted J. Griswold, and Philip J. Giacinti, Jr. of Procopio, Cory, Hargreaves & Savitch, LLP, that was prepared for the American Sand Association (ASA), the San Diego Off-Road Coalition, and the Off-Road Business Association (ASA 2001). On September 5, 2003, we announced a 90-day finding in the **Federal Register** that the petition presented substantial information to indicate the petitioned action may be warranted (68 FR 52784). In accordance with section 4(b)(3)(A) of the Act, we completed a status review of the best available scientific and commercial information on the species, and published our 12-month finding on June 4, 2004 (69 FR 31523). We determined that the petitioned action was not warranted at that time.

On July 8, 2005, we received an updated petition to delist *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch) that was prepared by David P. Hubbard for the American Sand Association, the Off-Road Business Association, the San Diego Off-Road Coalition, the California Off-Road Vehicle Association, and the American Motorcycle Association District 37 (ASA 2005). On November 30, 2005, we announced our 90-day finding that the updated petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted, and initiated a status review for *A. magdalenae* var. *peirsonii* (70 FR 71795). The updated petition claims to ''demonstrate, through four years of additional data collection, that the Peirson's milk-vetch is even more abundant than was reported in ASA, et al.'s original petition, and that the plant's population and reproductive capacity are so stable and strong as to warrant delisting'' (ASA 2005, p. 5).

Included again in the updated petition and its associated documents (ASA 2005) is the assertion made in the ASA 2001 petition that *Astragalus magdalenae* var. *peirsonii* was listed without the support of abundance data. That assertion was addressed in our June 4, 2004, 12-month finding (69 FR 31523) on their previous petition to delist *A. magdalenae* var. *peirsonii*, and the updated petition did not provide any additional information that would alter our previous analysis. All of the information in our prior (June 4, 2004) 12-month finding (69 FR 31523) applies to this action, and the status review provided in this document continues to validate that our original decision to list *A. magdalenae* var. *peirsonii* as a threatened species (63 FR 53596) was not made in error or without supporting data.

## Species Information

### Species Description

*Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch) is an erect to spreading, herbaceous, short-lived perennial in the Fabaceae (Pea family) (Barneby 1959, 1964). Plants may reach 8 to 27 inches (in) (20 to 70 centimeters (cm)) in height and develop taproots (Barneby 1964, pp. 862–863) that penetrate to the deeper, moister sand. According to Phillips and Kennedy (2003), plants largely die back to a root crown in the summer. The stems and leaves are covered with fine, silky appressed hairs. The leaflets, which may fall off in response to drought, are small and widely spaced, giving the plants a brushy appearance. This taxon is unusual in that the terminal leaflet (leaflet at the tip) is continuous with the rachis (the central axis of a compound leaf along which leaflets are attached) rather than articulated with it (Barneby 1959, p. 879; Spellenberg 1993, p. 598). Each flower stalk (classified as a raceme) arises from a point where a leaf joins the stem (axil), and supports 10 to 17 purple flowers (Barneby 1959, p. 879).

### Taxonomy

The taxonomic status of *Astragalus magdalenae* var. *peirsonii* was discussed in the final listing rule (63 FR 53596). Although originally described at the species rank, Peirson's milk-vetch is currently recognized at the varietal level as *A. magdalenae* var. *peirsonii* (Spellenberg 1993, p. 598). Although two other recognized varieties exist for *A. magdalenae*, these taxa are restricted to Mexico. However, recent genetic analysis suggests that Barneby's (1964, pp. 862–863) reduction of *A. peirsonii* to varietal status may be inappropriate and that *A. magdalenae* var. *peirsonii* should be recognized as a species [as originally described by Munz and McBurney (Munz 1932, p. 7)] (Porter and Prince 2006, p. 7; 2007, pp. 10–11).

Two other *Astragalus* taxa occur in the vicinity of the Algodones Dunes. They are *A. lentiginosus* var. *borreganus* (Spellenberg 1993, p. 597), easily distinguished by its conspicuously broad leaflets, and *A. insularis* var. *harwoodii* (Spellenberg 1993, p. 594), which is easily distinguished by its smaller stature and shorter banner petals.

### Range and Distribution

In the United States, *Astragalus magdalenae* var. *peirsonii* is restricted to specific habitat areas within about 53,000 acres (ac) (21,500 hectares (ha)) in a narrow band running 40 miles (64 kilometers) northwest to southeast along the western portion of the Algodones Dunes (= Imperial Sand Dunes) of eastern Imperial County, California, which is the largest sand dune field in North America. *Astragalus magdalenae* var. *peirsonii* has also been documented from the Gran Desierto of Sonora, Mexico (Felger 2000, p. 300), from an area south and southeast of the Sierra Pinacate lava field, but the Service has no additional information on the extent of area occupied, the size of the population, or its current condition (see 63 FR 53599). *Astragalus magdalenae* var. *peirsonii* was also noted from the Borrego Valley, California, by Barneby (1959, p. 879), but not verified, reproducing population exists (Porter *et al.* 2005, pp. 9–10). Other observations from Yuma, Arizona, and San Felipe, Baja California, Mexico, were based on misidentified specimens (see Porter *et al.* 2005, pp. 9–10, and Phillips *et al.* 2001, p. 7, for detailed accounts).

The Algodones Dunes are often referred to as the Imperial Sand Dunes. Nearly all of the lands in the Algodones Dunes are managed by the Bureau of Land Management (BLM) as the Imperial Sand Dunes Recreation Area

(ISDRA). However, the State of California and private individuals own small inholdings in the dune area. On August 4, 2004, approximately 21,836 ac (8,838 ha) of the 167,800-ac (67,900-ha) ISDRA were designated as critical habitat for *Astragalus magdalenae* var. *peirsonii* (69 FR 47330). In a September 25, 2006, court order, the District Court for the Northern District of California ordered the Service to submit a new final critical habitat rule to the **Federal Register** for publication no later than February 1, 2008 (*Center for Biological Diversity et al.* v. *Bureau of Land Management et al.*, Civ. No. C 03–2509 SI). On February 14, 2008, the Service designated revised critical habitat for *A. magdalenae* var. *peirsonii* (73 FR 8748). In total, approximately 12,105 ac (4,899 ha) in Imperial County, California, fall within the boundaries of the revised designation of critical habitat.

**Life History**

*Astragalus magdalenae* var. *peirsonii* has variously been considered an annual or perennial plant (Munz 1932, p. 7; 1974, p. 432; Barneby 1959, p. 879; 1964, p. 862; Spellenberg 1993, p. 598; Willoughby 2001, p. 21; Porter *et al.* 2005, p. 7). Willoughby (2001, p. 21) observed that *A. magdalenae* var. *peirsonii* is a short-lived perennial and, as such, its response to rainfall was predictable. Recent evidence confirms this observation (Phillips and Kennedy 2004, p. 5; Groom *et al.* 2007, p. 121) and that, depending upon conditions and germinating time, *A. magdalenae* var. *peirsonii* is capable of flowering before it is a year old (Barneby 1964, p. 862; Romspert and Burk 1979 p. 16; Phillips *et al.* 2001, p. 10; Phillips and Kennedy 2005, p. 22; Porter *et al.* 2005, p. 31).

Based on current understanding of the species' life history, sufficient rain in conjunction with cool fall temperatures appears to trigger germination events. Seedlings are often present in suitable habitat throughout the dunes, especially during above-normal precipitation years. In intervening dry years, plant numbers decrease as individuals die and are not replaced by new seedlings. Porter *et al.* (2005, p. 35) estimated that a total or near-total failure of seedling recruitment occurs 20 percent of the time (once every 5 years). This species likely depends on the production of seeds in the wetter years and the persistence of the seed bank from previous years to survive until appropriate conditions for germination occur again. However, individual plants that perennate (i.e., survive from year to year with a period of reduced activity) likely give ''continuity'' to the presence of *Astragalus magdalenae* var. *peirsonii* through years of low recruitment (Beatley 1970, p. 331).

If winter rains begin in early November, seeds germinating in early December may develop rapidly to produce flowering plants by February and set seed in March (Barneby 1964, p. 862; Romspert and Burk 1979, pp. 15–16). In wetter years, a second germination event may occur in late winter (Phillips *et al.* 2001, p. 10; Phillips and Kennedy 2005, p. 22), but these plants often fail to reproduce and die in large numbers at the onset of summer drought (Phillips *et al.* 2001, p. 10; Phillips and Kennedy 2003, p. 20). If winter rains do not occur until late January, sufficient soil moisture or time may not exist for young plants to develop the root structure needed to flower and set seeds before the onset of desiccating summer heat. Young plants often die during summer drought in significant numbers probably because such plants lack a sufficiently developed root system to tap water at lower horizons, i.e. deeper soil layers. Older plants also die during this period. However, some plants develop an adequate root system and perennate to live 2 to 3 years. Some perennial individuals will flower and produce seeds in years with no precipitation (Phillips and Kennedy 2006, pp. 5, 9; USFWS 2007, pp. 13, 15), thereby assuring the continuity of the seed bank. Years with optimal or prolonged precipitation may experience two or more germinations and increased seed production (Phillips and Kennedy 2005, p. 20).

Plants, regardless of age, may flower from as early as mid-November through May (Barneby 1964, p. 862; Phillips and Kennedy 2002, p. 2; Porter *et al.* 2005, p. 11). The onset of germination and flowering are expected to vary from year to year depending upon the timing of winter rains. As a result, the life stages are coincident with cooler temperatures and a likely hydrated dune substrate. Barneby (1964, p. 862), Phillips and Kennedy (2005, p. 22), and Porter *et al.* (2005, p. 34) recorded plants that germinate in November can produce fruit in as little as 3 months. Mature fruits are found on plants from the beginning of February to late June (Phillips and Kennedy 2005, p. 13; Porter *et al.* 2005, pp. 22–24; Romspert and Burk 1979, p. 16), with peak production occurring in March and April (USFWS 2007, Figure 6).

Not all plants, even those seemingly capable of flowering and even under favorable conditions, flower in a given year (Phillips and Kennedy 2003, p. 20; Willoughby 2005b, p. 11; USFWS 2007, p. 15). In 2005, the BLM surveys recorded that 75 percent of all plants counted flowered (Willoughby 2005b, p. 11), while the Service recorded 54 percent of plants flowered during the 2006 surveys (USFWS 2007, p. 15). Smaller first season specimens, if flowering, produce relatively few flowers and contribute little to the seed bank of *Astragalus magdalenae* var. *peirsonii* compared with larger, older individuals that have more flowers (Romspert and Burk 1979, p. 19; Phillips and Kennedy 2005, p. 20). In low rainfall years, the reproductive output of older plants may range from as few as one seed pod to hundreds of pods per plant (Phillips and Kennedy 2005, pp. 16–17; USFWS 2007, p. 15). Phillips and Kennedy (2002, p. 27) estimated that plants counted in the spring 2001 survey averaged five fruits per plant. From a small sample in winter 2001–2002, they calculated that plants about 6 months older had an average of 171 fruits per plant (Phillips and Kennedy 2002, p. 27). In the 2006 survey, the Service calculated the median number of pods per plant on plants more than 1 year old at 139 (USFWS 2007, p. 15).

**Pollination and Breeding System**

Porter *et al.* (2005, p. 32) identified a white-faced, medium-sized, solitary bee (*Habropoda pallida*) as the only effective pollinator of *Astragalus magdalenae* var. *peirsonii*. Otherwise, little is known about the pollination ecology of *A. magdalenae* var. *peirsonii*. Porter *et al.*'s (2005, p. 34) preliminary experiments in the field and under greenhouse conditions indicate that *A. magdalenae* var. *peirsonii* plants are not capable of self-pollination, and thus require pollinators for outcrossing. Moreover, Porter *et al.* (2005, p. 34) reported from microscopic examination of hand-pollinated flowers that pollen from the same flowers did not adhere to the stigmatic surface, while pollen from another plant did adhere. Unless pollen grains adhere, fertilization cannot occur. These results indicate that *A. magdalenae* var. *peirsonii* exhibits traits consistent with self-incompatibility (Porter and Prince 2007, pp. 10–11). Self-incompatibility (SI) is a genetic mechanism in plants that prevents self-fertilization, or fertilization by pollen from plants that share the same SI allele. This means that inbreeding depression is avoided because only pollen from plants that do not share SI alleles with the maternal plant will be able to successfully fertilize eggs (Frankham *et al.* 2002, pp. 37–38; Castric and Vekemans 2004, p. 2873). This observation is a significant

consideration for assessing the adequacy of population size, structure, and function. Large populations of standing individuals, with high SI allele diversity, are likely necessary to provide adequate numbers of individuals that can potentially fertilize the available eggs and ensure that seed is produced. In the Algodones Dunes, large SI allele diversity may be necessary spatially across the dunes, and temporally through periods of drought. Further research and modeling are necessary to better understand the dynamics of the *A. magdalenae* var. *peirsonii* breeding system and how the species may be responding to natural and man-made disturbances within its range.

**Seed Biology**

*Seed development.* The fruits or pods of *Astragalus magdalenae* var. *peirsonii* are 0.8 to 1.4 in (2 to 3.5 cm) long, single-chambered, hollow, and inflated. Developing pods contain 11 to 16 ovules (structures containing immature eggs, or seeds, prior to fertilization) (Barneby 1964, p. 862). The seeds, among the largest seeds of any *Astragalus* in North America (Barneby 1964, pp. 862–863), average less than 0.1 ounce (oz) (15 milligrams (mg)) each in weight and are up to 0.2 in (4.7 millimeters (mm)) in length (Bowers 1996, p. 69; McKinney *et al.* 2006, p. 85).

Only a portion of a pod's ovules develop into mature seeds. Some desiccate, while others are lost to insects (McKinney *et al.* 2006, p. 85). Seeds are either dispersed locally by falling from partly opened fruits (pods) retained on the parent plant or disperse over greater distances by their release from fruits (pods) blown across the sand after falling from the parent plant.

*Seed germination. Astragalus magdalenae* var. *peirsonii* seeds require no pre-treatment to induce germination, but germination success improved dramatically when the outer seed coat was scarified (e.g., scratched, chipped). Porter *et al.* (2005, p. 29) reported about 99.1 percent of scarified seeds germinated in laboratory trials, while only 5.3 percent of unscarified seeds germinated. However, in artificial dune experiments, Porter *et al.* (2005, p. 29) reported the germination rate dropped to 27 percent. In germination trials conducted by Romspert and Burk (1979, pp. 45–46), 92 percent or more seeds germinated within 29 days at temperatures of 77 °F (25 °C) or less, and no seeds germinated at temperatures of 86 °F (30 °C) or higher. This observation indicates that seeds on the dunes likely germinate in the cooler months of the year. Porter *et al.* (2005, p. 29) identified the primary dormancy mechanism in *A. magdalenae* var. *peirsonii* is the impermeability of the seed coat to water and demonstrated little loss of viability in seeds stored for 5 years. Impermeability of the seed coat to water as a dormancy mechanism is consistent with species having a seed bank (Given 1994, p. 67; Bowers 1996, p. 71). Dispersed seeds that do not germinate during the subsequent growing season become part of the soil seed bank (Given 1994, p. 67).

Annual or short-lived perennial plant populations can fluctuate between large numbers of plants to few or even no plants. Many species, and *Astragalus magdalenae* var. *peirsonii* may be one of them, rely on periodic ''rescue'' episodes from the seed bank where large numbers of plants germinate when conditions are suitable (Elzinga *et al.* 1998, p. 285; Pake and Venable 1996, pp. 1433–1434). Lincoln *et al.* (1993, p. 223) define the soil seed bank as ''the store of dormant seed buried in soil,'' the store of seeds that do not germinate when otherwise adequate conditions are present. The number of seeds in the seed bank changes, depending upon the balance between processes or factors that remove seeds from the seed bank and those that contribute seeds to it. Deposition to the *A. magdalenae* var. *peirsonii* seed bank depends upon standing plants that successfully produce seeds. This deposition is diminished to the extent that plants are precluded from adding seeds to the seed bank (Harper 1977, pp. 457–468; Louda and Potvin 1995, pp. 240–243). Other decreases to the seed bank can be attributed to loss of plants or reduced reproductive output due to herbivory (Louda 1982, pp. 47–49; Baron and Bros 2005, pp. 49–51), direct or indirect OHV damage (Pavlik 1979, pp. 73–85), or environmental conditions (e.g., summer or winter drought, wind blown sand damage, dune shifts, or deep burial) (Baskin and Baskin 2001, pp. 149–160). Increases in the available seed bank can be attributed to rescue episodes in years favorable for reproduction (Pake and Venable 1996, p. 1434).

Development of a seed bank and the associated dormancy allows plant species to grow, flower, and set seed in years with most favorable conditions (Given 1994, p. 67). When measuring seed bank dynamics, estimations of the rate of seed mortality and aging, the amount of seed lost to predators, and the variability in germination events are among the information considered necessary to determine the viability and productivity of a seed bank (Elzinga *et al.* 1998, p. 284).

**Abundance and Population Trend**

The updated petition (ASA 2005, pp. 11–12, 38–46) asserts that *Astragalus magdalenae* var. *peirsonii* is abundant and thriving, and therefore should not be listed, and also again asserts that the original listing (63 FR 53596) was made without the support of abundance data. In fact, for a species that fluctuates widely in numbers from year to year, an assessment of abundance may not be the most meaningful measure of the likelihood of persistence. Assessing the population trend, resilience, and long-term viability of *A. magdalenae* var. *peirsonii* is more relevant but is complex due to (1) the large fluctuations in numbers of above-ground plants from year to year (often the result of variations in rainfall or other climate conditions from year to year), and (2) the intricacies associated with studying and understanding seed banks and their dynamics. Although abundance data will not likely completely clarify the likelihood of persistence for *A. magdalenae* var. *peirsonii*, we review the available data below because it has been the subject of much discussion over recent years. The data presented in this section supports our original decision to list *A. magdalenae* var. *peirsonii* as threatened. In addition, we discuss the suitability of comparing available surveys. This is relevant because multiple years of survey data are needed to detect population trends, and using data from different surveys together to detect a trend can only be legitimately done if the survey methodologies are comparable. Finally, we discuss the available data on seed production and seed bank dynamics, which is also relevant to our analysis of the long-term persistence of *A. magdalenae* var. *peirsonii*.

*Overview of survey data.* A number of abundance surveys have been conducted for *Astragalus magdalenae* var. *peirsonii*. Early surveys incorporated a methodology whereby plants encountered along driving or walking transects covering the entire 167,000 ac (67,900 ha) ISDRA were qualitatively indexed to an abundance value (see WESTEC 1977, Table 2–3) and represented in quadrants measuring 0.45 mile on each side. Analysis of these coarse, dune-wide surveys conducted by WESTEC in 1977, and BLM (Willoughby) in 1998 through 2002, could only provide relative comparisons of mean abundance values between years. In comparing survey results for these years, the species was most abundant in 1998, the highest rainfall year, and least abundant in 2000, the lowest rainfall year (Willoughby 2001,

p. 21; 2004, p. 10). Mean abundance values for the years 1998 through 2002 were based upon total plant counts ranging from 86 plants in 2000 to 5,930 plants in 2001 (Willoughby 2004, p. 36). From this comparative analysis, Willoughby (2004, p. 26) determined that there was little change in *A. magdalenae* var. *peirsonii* abundance between 1977 and 2002.

In 2001, Dr. Arthur M. Phillips began a multi-year effort to monitor *Astragalus magdalenae* var. *peirsonii*. *Astragalus magdalenae* var. *peirsonii* abundance values were tabulated for 4 years: 2001, 2003, 2005, and 2006. In 2001, during an initial reconnaissance of the dunes, Phillips *et al.* (2001, p. 6) counted 71,926 *A. magdalenae* var. *peirsonii* from 127 specific locations covering an unspecified area of about 35,000 ac (14,165 ha) (Phillips and Kennedy 2002, p. 8, Appendix A), and they therefore calculated a density of about 2 plants/ac (5/ha). From the 127 locations, Phillips and Kennedy (2002, p. 10) selected 25 monitoring sites to use for the multi-year effort. The effective area (i.e., the total area represented by data) covered by the 25 sites was about 138 ac (56 ha) (Phillips and Kennedy 2005, p. 9). Phillips and Kennedy reported 30,771 plants in 2001 (Phillips and Kennedy 2002, Appendix A); 33,202 plants in 2003 (Phillips and Kennedy 2003, Appendix A); 77,922 plants in 2005 (Phillips and Kennedy 2005, p. 10); and 1,233 plants in 2006 (Phillips and Kennedy 2006, p. 6) for these 25 monitoring sites. Plant density ranged from 565 plants/ac (1,392/ha) in 2005, to 8.9 plants/ac (22/ha) in 2006. In addition, in 2005 and 2006, Phillips and Kennedy used the data from the 25 monitoring sites to estimate the population for 60 of their original sites at 173,328 and 2,035, respectively (Phillips and Kennedy 2005, p. 11; 2006, p. 6).

The BLM embarked on a new sampling methodology in 2004 that sampled a larger portion of the dunes in greater detail (Willoughby 2005a, pp. 1–5), and increased the number of sample transects from 135 in 2004 to 510 for the spring 2005 surveys (Willoughby 2005b, p. 2). Willoughby's (2005a and 2005b) analyses were based upon these sample transects, which were comprised of 37,169 25-by-25-meter sample cells in 2004 (USFWS 2006a, Table 1) and 123,488 sample cells in 2005 (USFWS 2006b, Table 1). Willoughby (2005a, Table 1–1) estimated the total population size at 286,374 plants in 2004, for an estimated density of 5.5 plants/ac (13.5/ha). Plants were most abundant in 2005 in what was an exceptional year with well-timed rainfall and cool temperatures from October 2004 through March 2005 (Willoughby 2005b, p. 6). In 2005, Willoughby (2005b, Table 4) estimated 1,831,076 plants were in the dunes, with an estimated density of 35 plants/ac (86.3/ha). A randomized sample of 2005-occupied cells during the very dry winter and spring of 2006 yielded an estimated population size of 83,451 plants, or 1.5 plants/ac (3.9/ha) (Willoughby 2006, p. 6). The effective area of these surveys covered about 53,000 ac (21,200 ha) and encompassed all BLM management areas containing *Astragalus magdalenae* var. *peirsonii*. In 2007, the BLM estimated the population size as 293,102 plants, or 14.2 plants/ac (35/ha), for portions of the Gecko, AMA and Ogilby management areas, with an effective area of 20,692 ac (8,374 ha) (Willoughby 2007, Table 5). However, the precision of the 2006 and 2007 population estimates was poor due to the low numbers of plants sampled and their spatial variability (Willoughby 2006, p. vi; 2007, p. 11).

The disparity among these three survey methods and the data collected make it difficult to assess the *Astragalus magdalenae* var. *peirsonii* population. As presented in Table 1 below, the 2005 survey conducted by BLM is the most extensive and precise effort to determine overall population abundance and distribution. The amount of data gathered in 2005 was the result of an exceptionally good rainfall year and an extraordinary monitoring effort, and represents the best estimate of the potential population and extent of habitat for *A. magdalenae* var. *peirsonii*. The year 2006 was exceptionally dry, with no reported *A. magdalenae* var. *peirsonii* germination and few surviving plants from 2005. The 2007 rainfall pattern was not evenly distributed throughout the dunes and contributed to the spatial variability that yielded poor precision for the population estimates of that year (Willoughby 2007, pp. 6–7 and Table 2).

TABLE 1.—ABUNDANCE VALUES SUBMITTED FOR *A. MAGDALENAE* VAR. *PEIRSONII* IN THE ALGODONES DUNES IN 14 UNPUBLISHED REPORTS

| Year | Surveyor | No. plants counted | Estimated population | $\bar{x}$ abundance class | No. samples | Effective area |
|---|---|---|---|---|---|---|
| 1977 | WESTEC | N/A | N/A | 4.3 | 1,611 | 167,800 ac (67,900 ha). |
| 1998 | BLM [1] | 5,064 | N/A | 6.3 | 542 | 167,800 ac (67,900 ha). |
| 1999 | BLM [1] | 942 | N/A | 2.8 | 542 | 167,800 ac (67,900 ha). |
| 2000 | BLM [1] | 86 | N/A | 1.1 | 542 | 167,800 ac (67,900 ha). |
| 2001 | BLM [1] | 5,930 | N/A | 4.7 | 542 | 167,800 ac (67,900 ha). |
| 2002 | BLM [1] | 2,297 | N/A | 3.3 | 542 | 167,800 ac (67,900 ha). |
| 2001 | Phillips [2] | [3] 71,926 | N/A | | 127 | 35,000 ac (14,165 ha). |
| 2001 | Phillips [2] | 30,771 | N/A | | 25 | 138 ac (56 ha). |
| 2003 | Phillips [2] | 33,202 | N/A | | 25 | 138 ac (56 ha). |
| 2005 | Phillips [2] | 77,922 | [4] 173,328 | | 25 | 138 ac (56 ha). |
| 2006 | Phillips [2] | 1,233 | [4] 2,035 | | 25 | 138 ac (56 ha). |
| 2004 | BLM [1] | 25,798 | 286,374 | | 135 | 53,000 ac (21,200 ha). |
| 2005 | BLM [1] | 739,805 | 1,831,076 | | 510 | 53,000 ac (21,200 ha). |
| 2006 | BLM [1] | 761 | 83,451 | | 775 | 53,000 ac (21,200 ha). |
| 2007 | BLM [1] | 1,435 | 293,102 | | 735 | 20,692 ac (8,374 ha). |

[1] BLM reports cited as Willoughby.
[2] Phillips reports cited as Phillips et al. or Phillips and Kennedy.
[3] Reconnaissance of unspecified area.
[4] Estimated population for 60 specific sample sites.

As illustrated in Table 1, two substantial issues are associated with the body of survey work for *Astragalus magdalenae* var. *peirsonii*. These two issues are (1) comparison of BLM data with WESTEC data and (2)

interpretation of abundance values. Each issue is discussed below.

*Comparison of BLM data with WESTEC data.* The first issue concerns the early surveys conducted between 1977 and 2002. Although mean abundance class values were calculated from sample transects across the entire dunes, class values were only comparable between years. It is not appropriate to compare these class values with more recent or finer scale data that is based on counts of plants (rather than abundance classes). Willoughby (2000, p. 7) recognized that the 1998 BLM data, and the data BLM collected through 2002, might not be directly comparable to the 1977 (WESTEC 1977) data (Willoughby 2000, p. 7). Therefore, he (Willoughby 2000, p. 34, and reiterated 2001, p. 28) addressed the limitations of the monitoring data to that point in time by recognizing that statistically significant sample values between 1977 and 1998 were not ''proof'' that *Astragalus magdalenae* var. *peirsonii* had increased significantly. Our assessment of the data indicates that the density classes of WESTEC (1977) and BLM (Willoughby 1998–2002) are qualitative and are not based on particular numbers of individual plants but rather on the apparent visual density of plants as a feature of the landscape. These reports (WESTEC 1977 and BLM 1998–2002) do not include quantitative measures of density, based upon counts of numbers of plants per unit area. We are not aware of any quantitative measures of density for *A. magdalenae* var. *peirsonii* for the years included in these reports.

Although Willoughby (2000, p. 7) noted the limitations of the WESTEC (1977) data, he converted the qualitative measures into quantitative measures for comparison with the BLM survey data in an attempt to assess abundance among years. The magnitude of non-sampling error (subjective errors arising from activities other than sampling or measuring) in the WESTEC (1977) study, however, makes comparison with the BLM data problematic (L. Ball USFWS *in litt.* 2003, p. 2, comment for ASA (2001) petition). In addition, peer reviewers also commented on the inappropriateness of comparisons between the BLM study results and those of WESTEC (1977). In his peer review comments for the ASA (2001) petition, Pavlik (*in litt.* 2003, p. 3, comment for ASA (2001) petition) stated that ''[a]ny attempt to establish population trends by comparison to the 1977 WESTEC study should be rejected because there is no objective way to replicate with certainty WESTEC's vague and highly subjective relative abundance codes'' (see WESTEC 1977, Table 2–3).

Climatic variability should also be considered when comparing the 1977 WESTEC study with more recent surveys. Pavlik (*in litt.* 2003, p. 4, comment for ASA (2001) petition) stated that rainfall during the October through March period, most critical for germination, was less in 1977 than in 1998, and, therefore, if more plants were present in 1998, it could have been due to increased rainfall rather than lack of OHV impacts. He noted that this was stated explicitly in Willoughby (2000, p. 34), but not in ASA (2001). In her peer review, Bowers (*in litt.* 2006) noted that the updated petition (ASA 2005, p. 36) stated that despite increasing OHV traffic, *Astragalus magdalenae* var. *peirsonii* rebounded after the 1977 survey made by WESTEC. Bowers (*in litt.* 2006, pp. 6–7) stated that:

> at the time of the 1977 surveys, when PMV [*A. magdalenae* var. *peirsonii*] was apparently at a low ebb, the southwestern United States had only recently emerged from a long and serious drought [see Swetnam and Betancourt 1998, p. 3131]. This suggests that under relatively light OHV use, PMV is sensitive to severe drought. The post-1977 increase in PMV occurred during the wettest two decades in the twentieth century. In fact, the period from 1976 to 1998 was among the wettest during the past one thousand years [see Swetnam and Betancourt 1998, pp. 3140–3141; Willoughby 2006, Figure 3]. This suggests that PMV thrived under increasing OHV pressure only because climate favored regeneration. I cannot emphasize too strongly that our belief in the resilience of this species is biased by unusually favorable conditions for reproduction in recent years.

Kalisz and McPeet (1993, p. 319) note that multiple years of poor conditions magnify this impact on population growth rates and the dormant seed bank.

Therefore, the information available to us indicates that using the WESTEC data, in comparison with other data, to assess abundance trends in *Astragalus magdalenae* var. *peirsonii* is inappropriate. This suggests that claims of trends of population increases based on comparisons of BLM surveys (Willoughby 2000, 2001, and 2004) and the WESTEC survey (1977) are not supportable, both because the surveys are not comparable due to differences in methodology and because of climatic variability between the years surveyed (i.e., any increases observed could be due to increases in rainfall in later years rather than to actual increases in numbers of plants). At the time of listing in 1998, the available data (WESTEC 1977) indicated that *A. magdalenae* var. *peirsonii* was not abundant within the Algodones Dunes, and an analysis of threats to the species, in light of the species' life history traits, indicated that listing the species as threatened was warranted.

*Interpretation of abundance values.* The second issue associated with the survey work for *Astragalus magdalenae* var. *peirsonii* concerns the abundance values reported from 2001 through 2006 by Phillips *et al.* (2001), Phillips and Kennedy (2003, 2005, and 2006), and Willoughby (2005a, 2005b, 2006, and 2007). The Phillips reports (Phillips *et al.* (2001), Phillips and Kennedy (2003, 2005, and 2006)) and the BLM reports (Willoughby (2005a, 2005b, 2006, and 2007)) used different sampling protocols and estimation procedures. Because the methodologies for these surveys differed from one another, caution should be used in comparing them. Phillips *et al.*'s (2001) reconnaissance covered an unspecified large area, but observations were reported from only 127 locations (Phillips *et al.* (2001, Appendix A). The 25 monitoring sites established by Phillips and Kennedy (2001, 2002) were subjectively selected for *A. magdalenae* var. *peirsonii* presence and not designed to estimate abundance beyond the extent of the 138–ac (56–ha) sampling area (Phillips and Kennedy 2002, p. 10). In contrast, the BLM surveys were designed to estimate the standing *A. magdalenae* var. *peirsonii* population (Willoughby 2005a, 2005b, 2006) throughout its entire range in the dunes. Data were compiled in 25-by-25-meter cells derived from transects totaling 577 mi (930 km) in 2004 (Willoughby 2005a, Table 1) and 1,922 mi (3,095 km) in 2005 (Willoughby 2005b, Table 1), covering the full length of the dunes and sampling all micro-habitats along each transect (Willoughby 2005b, pp. 1–3).

According to the updated petition, the survey method used by Phillips *et al.* (2001) ''eliminated the need for a sampling methodology and statistical extrapolations'' because they counted every plant encountered (ASA 2005, p. 41; Phillips *et al.* 2001, p. 3). At each sample site, ''relatively dense'' clusters that best fit the requirements of the sampling design were systematically sampled (Phillips and Kennedy 2002, p. 10). In assessing the Phillips survey efforts conducted to date, we focused on Phillips *et al.* (2001) because this study was the basis for all subsequent field studies conducted by Phillips and Kennedy. Monitoring sites which would be sampled repeatedly over several years (Phillips and Kennedy 2002 through 2006) were randomly chosen from 60 areas designated as sites in Phillips *et al.* (2001). Twenty-five sites (40 percent of designated sites) were selected.

As routinely cautioned against in standard sampling or monitoring protocols (e.g., Elzinga *et al.* 1998, p. 64; Thompson *et al.* 1998, p. 12; Morrison *et al.* 2002, pp. 62–63; Ott and Longnecker 2001, p. 21), or protocols for assessing demographics and censusing rare plants (e.g., Falk and Holsinger 1991, pp. 225–238; Pavlik and Barbour 1988, pp. 218–224; others as noted in Porter *in litt.* 2003, p. 1, comment for ASA (2001) petition), this sampling methodology is subject to introduced selection error. Kalisz (*in litt.* 2006, p. 6), Converse (*in litt.* 2006, pp. 2–4), and Porter (*in litt.* 2003, pp. 1–5, comment for ASA (2001) petition) commented in their peer reviews on the inappropriate methodology used by Phillips and Kennedy. Specifically, Converse (*in litt.* 2006, p. 4) noted that Phillips and Kennedy (2005) calculated plant density ''not for a pre-selected area, but for areas that were found to have concentrated numbers of plants, thus leading to seriously inflated estimates.'' In fact, density values reported by Phillips and Kennedy (2005) and Willoughby (2005b) are consistent with the concern that Phillips and Kennedy's estimates may be inflated. Phillips and Kennedy (2005, p. 11) estimated plant densities of 0.18 to 0.78 plants per square meter (1,800 to 7,800 plants per hectare or 728 to 3,156 plants per acre) as compared to Willoughby's (2005b, p. v.) 2005 estimates of 9 to 53 plants per acre (22 to 132 plants/ha). Only 0.1 percent of the 37,169 cells sampled by BLM in 2004 had a density equal to or greater than 1,800 plants/ha (USFWS 2006a), and 1 percent of the 123,488 cells sampled by BLM in 2005 contained a density equal to or greater than 1,800 plants/ha (USFWS 2006b).

The updated petition asserted that plant counts conducted from 1998 to 2005 by Phillips and Kennedy and BLM confirm that the Imperial Sand Dunes support more than 100,000 individual *Astragalus magdalenae* var. *peirsonii* and confirm that *A. magdalenae* var. *peirsonii* is abundant and thriving throughout the dunes (ASA 2005, p. 46). As noted above, there are weaknesses in the sampling methodology used in Phillips and Kennedy (2002, 2003, 2004, 2005, and 2006). These weaknesses affect the reliability of the estimates presented in the Phillips and Kennedy reports (2002, 2003, 2004, 2005, and 2006). However, we do not disagree with the updated petition that the Imperial Sand Dunes can support 100,000 or more individual *A. magdalenae* var. *peirsonii* plants. The BLM surveys of 2005 confirm this point (USFWS 2006b, Table 2; Willoughby 2005, p. 25).

*Distribution of Astragalus magdalenae* var. *peirsonii in the Algodones Dunes.* The updated petition (ASA 2005, p. 23) cites Phillips *et al.* (2001, p. 13) in qualitatively assessing the presence and abundance of *Astragalus magdalenae* var. *peirsonii* in open versus closed areas. Phillips *et al.* (2001, p. 4) stated that a ''general reconnaissance of virtually all portions of the dunes outside of the administrative closures and wilderness area was performed'' and that ''specific survey areas were selected and intensively searched for occurrences.'' Phillips *et al.* (2001, p. 13), in this reconnaissance, state that they observed *A. magdalenae* var. *peirsonii* colonies that ''appeared to be similar in number and abundance'' in both the open and closed areas of the dunes. However, this statement is inconsistent with other portions of the report. For example, the report also states that the ''area with dense occurrences in the large central closure was perhaps twice the size of the area with sites south of the closure and north of I–8. Although no counts were possible from the helicopter, many sites with large numbers of plants were observed within the closure.'' Phillips and Kennedy (2005, p. 7) also stated that the purpose of the 2001 surveys ''was to locate as many occurrences of the subject plants as possible, and to completely census and document reproductive and habitat data from every area in the dune system in which they were found,'' but noted that ''mappable concentrations of plants were noted * * * in less than 25% of the dunes proper'' (Phillips and Kennedy 2002, p. 17). Converse (*in litt.* 2006, p. 3) noted that some areas were not searched as intensively as others. In sum, it appears that all extant plants were probably not found within the large expanse of the dunes, that *A. magdalenae* var. *peirsonii* was unevenly distributed in the dunes, and that large concentrations of *A. magdalenae* var. *peirsonii* were noticeable within the areas closed to OHV use.

Survey efforts to date have clarified the uneven distribution of *A. magdalenae* var. *peirsonii* throughout the dunes. Even in the best of years, BLM observed *A. magdalenae* var. *peirsonii* in just 21 percent of the sample cells (USFWS 2006b, Table 1). In that year, 2005, half the observed *A. magdalenae* var. *peirsonii*, approximately 370,000 plants, occurred in 0.7 percent of the survey area (USFWS 2006b, Table 2) or about 145 acres (58 ha). Just over 11 percent of the survey area, or 54 percent of the occupied area, contained a trace density of plants (less than 39 plants/ac (100/ha)) (USFWS 2006b, p. 3). Further, the Service conducted a Chi-square analysis of BLM's 2005 data which revealed that the odds of finding *A. magdalenae* var. *peirsonii* in areas closed to OHV activity was 2.63 times greater than finding it in areas open to OHVs (USFWS 2006b, pp. 3–4). Phillips and Kennedy's 2005 (2005, Appendix A) and 2006 (2006, p. 8) reports further illustrate the fact that dense concentrations of plants produce large quantities of seed pods, which can, in turn, lead to high seed production estimates and high plant persistence in localized areas.

*Astragalus magdalenae* var. *peirsonii* exhibits high variability in density throughout the dunes, but density is highest in the southern half of the dunes (Willoughby 2005, Table 4; USFWS 2006b, Tables 1 and 2, Map 1). Phillips *et al.* (2001) established 19 of their 25 monitoring sites in close proximity to areas with high plant density (USFWS 2006b, Map 2). The difference between the current BLM studies and those of Phillips and Kennedy is one of detection rate. BLM systematically sampled the entire dunes and reported a detection rate of 0.21 (*A. magdalenae* var. *peirsonii* detected in 21 percent of the sample cells) in the best of years (USFWS 2006b, Table 1). Phillips and Kennedy systematically sampled areas selected for plant density yet can neither calculate nor report a rate of detection.

Phillips and Kennedy (2002, p. 10) observed that 70 to 75 percent of the dunes is not suitable habitat for *A. magdalenae* var. *peirsonii.* This observation closely corresponds to the 79 percent of unoccupied cells sampled by BLM and calculated by the Service (USFWS 2006b, Table 1) for 2005. As noted above, 11 percent of the area surveyed by BLM in 2005 contained a trace density of *A. magdalenae* var. *peirsonii,* suggesting that these areas are marginal habitat that supported plants due to the favorable conditions of 2005. Therefore, optimal habitat for *A. magdalenae* var. *peirsonii* may be substantially less than the 21 percent reported (USFWS 2006b). Considering that *A. magdalenae* var. *peirsonii* only occurs in the United States within the Algodones Dunes, and only within a small percentage of the dunes, it is a rare plant.

*Astragalus magdalenae* var. *peirsonii* is a relatively rare plant as further illustrated by comparison of its abundance and density to other psammophytic (dune loving) plants. The State endangered *Helianthus niveus* ssp. *tephrodes* (Algodones Dunes

sunflower), a psammophytic plant with closely parallel distribution to *A. magdalenae* var. *peirsonii,* was more abundant than *A. magdalenae* var. *peirsonii* in nearly all years surveyed (Willoughby 2004, p. 36; Willoughby 2005a, Table 2–1). Pavlik (*in litt.* 2006) commented on plant densities for common desert *Astragalus* and herbs. As noted by Rundel and Gibson (1996, Table 5.11), density for three *Astragalus* taxa in the Mojave Desert ranged from 400 to 1,200 plants per acre (1,000 to 3,000 plants/ha). Pavlik (*in litt.* 2006, p. 2) stated that ''if any of the densities of established plants of common species * * * were multiplied by the size of their geographic ranges, the total populations would be on the order of $10^8$ to $10^{10}$.'' Bowers (1996) also found similar plant densities for psammophytic dune plants in the Sierra del Rosario Dunes of northern Sonora, Mexico, only 60 miles (100 km) away from the Algodones Dunes and with a similar climate. Density of four annual plant taxa ranged from 1,170 to 11,600 plants/ac (2,900 to 28,700 plants/ha) and for three perennial plants ranged from 5,000 to 6,200 plants/ac (12,500 to 15,400 plants/ha) (Bowers 1996, Table 2). *Astragalus magdalenae* var. *peirsonii,* with a density of 9 to 53 plants/ac (22 to 132 plants/ha), is 2 to 4 orders of magnitude lower than other common desert and dunes plants of the California desert. By even a qualitative comparison with data collected by other researchers, *A. magdalenae* var. *peirsonii* is quite rare relative to other species and in its spatial distribution in the dune landscape.

In summary, *Astragalus magdalenae* var. *peirsonii* is restricted to one area within the United States with a comparatively lower density than other dune species, with high variability in population size and density, climate, spatial distribution, and area occupied. The different population estimates presented in Table 1 above are valid in and of themselves but cannot be compared to one another due to differences in scale and methodology. Because of the differences between the total number of samples and the total area sampled, we recognize the recent BLM surveys as the most informative population estimates for *Astragalus magdalenae* var. *peirsonii.* The work of Phillips and Kennedy has been valuable in providing information on various parameters of *A. magdalenae* var. *peirsonii* life history, but cannot be used to support the assertions of the updated petition. Phillips and Kennedy's population estimates are appropriate only in the areas of their limited surveys, making it difficult to use their estimates to predict overall population health, trend, or stability. As the evidence suggests in Table 1, the size of the reproductive population of *A. magdalenae* var. *peirsonii* varies widely among all years surveyed and varies in density across the dunes (Willoughby 2005, Appendix 1; USFWS 2006b, Map 1). We expect these natural annual and spatial variations will continue and, therefore, detecting overall trends will be difficult for this species.

**Seed Production and Seed Bank Dynamics**

As described above in the Background section, many annual and short-lived perennial plants have a substantial soil seed bank. This life-history trait complicates assessment of viability for these species. When seed banks are important features of the demography of a species, census and demographic information for adult populations may mislead us about population viability. Understanding the seed bank would help us better assess the long-term viability of a species. However, seed banks are complex and difficult to quantify (Doak *et al.* 2002, pp. 312, 317; Given 1994, pp. 66–67).

Phillips and Kennedy (i.e., Phillips and Kennedy 2006, p. 10) and the updated petition (i.e., ASA 2005, p. 44) emphasize the importance of understanding the seed bank to understanding the status of *Astragalus magdalenae* var. *peirsonii.* However, the updated petition seems to confuse the number of seeds produced (i.e., fecundity) with the number of seeds in the seed bank. In fact, the updated petition appears to equate seed production with recovery (ASA 2005, pp. 4–6). For example, Phillips and Kennedy (2002, p. 28) estimated seed production on their 25 survey sites at approximately 2.5 million seeds. However, they erroneously refer to estimated seed production as the seed bank (Phillips and Kennedy 2002, p. 30; 2003, pp. 13, 21; 2004, p. 16; 2005, pp. 16–17). Lincoln *et al.* (1993, p. 223) define a soil seed bank as ''the store of dormant seed buried in soil'' whereas fecundity is defined as ''the potential reproductive capacity of an organism or population, measured by the number of gametes or asexual propagules'' (Lincoln *et al.* 1993, p. 93).

Phillips and Kennedy (2005, Table 6) emphasize that a high seed estimate is, in and of itself, enough to ensure stability. Pavlik (*in litt.* 2006, p. 3), in his peer review, commented that this is incorrect ''knowing what we know about the high rates of seed mortality observed in other rare plants.'' In her peer review, Bowers (*in litt.* 2006, p. 8) stated that ''multiplying average fecundity per plant by number of plants in a sample or population yields an estimate for sample or population fecundity. It is incorrect to substitute fecundity for seed-bank size.'' Phillips and Kennedy do not estimate the size of the persistent seed bank (Baskin and Baskin 2001, pp. 141–143) but rather attempt to assess the potential seed bank, and therefore population size, based on an estimated reproductive rate where seed pod production roughly equals reproductive stability.

In addition, Phillips and Kennedy (2002–2006) compound their sampling bias discussed above into hypothetical seed production values. Annual seed production was calculated from a few sample sites and extrapolated to 60 sites from the Phillips et al. (2001) reconnaissance (Phillips and Kennedy 2006, p. 5). The average number of 171 seed pods per plant, median of 113 per plant (Phillips and Kennedy 2002, p. 27), was determined from only 10 plants (Phillips and Kennedy 2003, p. 12; 2004, p. 16). Phillips and Kennedy (2006, p. 9) calculated seed pod production based on the assumption that 100 percent of perennial plants are reproductive. They estimated an average 14 seeds per pod using Barneby's (1964, p. 862) observation of 11 to 16 ovules per pod (Phillips and Kennedy 2002, p. 27). Phillips and Kennedy's population and seed production estimates are based on sample sites selected for *Astragalus magdalenae* var. *peirsonii* abundance (Phillips and Kennedy 2001, p. 10), thereby introducing a sample bias to the stated estimate of 2.5 to 5.7 million seeds.

In addition to this sample bias, the estimate is biased by the assumption that most plants were reproductive. Kalisz (*in litt.* 2006, p. 3) noted this problem in her peer review, stating that it was incorrect to multiply the number of pods by the total number of plants since many were seedlings. In fact, not all plants reproduce in a given year, even when the climate is favorable for reproduction. Phillips and Kennedy reported 45 percent of plants were reproductive in 2001 (Phillips and Kennedy 2003, Appendix A) and 63 percent were reproductive in 2005 (Phillips and Kennedy 2005, Appendix A). The BLM estimated that 75 percent of plants were reproductive in the 2005 surveys (Willoughby 2005, Table 4). In field surveys conducted in 2006, a year with no germination where the only *Astragalus magdalenae* var. *peirsonii* individuals alive in the Algodones Dunes were perennating plants, the BLM reported that 68 percent of plants

were flowering adults (Willoughby 2006, p. vi). The Service reported 54 percent of plants as being reproductive in their study areas during 2006 (USFWS 2007, p. 13).

Furthermore, accurate estimates of seed production depend on accurate estimates of the number of seed pods produced and the number of seeds produced per pod. Median seed pod production, and therefore mean seed production, likely varies annually. Using a mean production value from only 10 plants at a single site will not yield an accurate estimate for a population. Phillips and Kennedy reported that first-year plants produce about five seed pods per plant and plants 1 year or more in age produce large quantities of seed pods (Phillips and Kennedy 2002, p. 27). Phillips and Kennedy (2005, p. 17) stressed that plants in their second year of growth and older produce many times more seed pods than first-year plants. Whether median seed pod production on older plants is 113 (Phillips and Kennedy 2002, p. 27) or 139 (USFWS 2007, p. 14), one of the limiting variables in *Astragalus magdalenae* var. *peirsonii* stability is the ability or capability of the plant to survive long enough to replenish the seed bank with enough seeds to ensure continuing cohorts of plants.

To estimate seed production per pod, in 2005 field surveys, the Service collected seed pods at random from plants throughout their survey area in April 2005. In this study, 416 seed pods from 78 plants were dissected and the undeveloped ovules were counted and separated from mature seeds. We observed an average of 5.2 mature seeds per pod. The total of mature seeds and undeveloped ovules (which are undeveloped seeds) averaged 11.4 per pod (McKinney *et al.* 2006, p. 85). One pod contained 15 mature seeds, while another pod contained 17 undeveloped ovules and mature seeds, closely matching the account of Barneby (1964, p. 862). The average of 5.2 mature seeds per pod is considerably less than the 14 seed per pod value used by Phillips and Kennedy in their seed production estimates (Phillips and Kennedy 2002, p. 27).

The BLM conducted a pilot seed bank study during spring 2007. This pilot study randomly sampled 735 of the total cells sampled during the spring 2005 surveys in the Gecko, Adaptive and Ogilby management areas. All *Astragalus magdalenae* var. *peirsonii* seeds on the sand surface within each cell were counted and then the cell was systematically sampled with 49 cores to a depth of 4 inches (10.16 cm), counting subsurface seed. BLM estimates a total of 53,200,000 seeds in the Gecko, AMA, and Ogilby management areas in 2007, corresponding to a density of 2,572 seeds/ac (6,356 seeds/ha) (Willoughby 2007, p. v, Table 5).

Finally, it is important to note that only a small fraction of seed produced in a given year survive to emerge as seedlings (Harper 1981, pp. 111–147; Fenner 1985, pp. 57–71). Dormant seeds that persist in the seed bank are subjected to many factors that may limit or preclude their ability to germinate. These factors include predation from animals or invertebrates, attack by microorganisms or fungi, habitat altered by wind, flood or mechanical events, or senescence (Baskin and Baskin 2001, pp. 149–160). After 5 years of greenhouse experiments, Porter *et al.* (2005, p. 29) reported high germination rates and little loss in seed viability. However, in artificial dune experiments the germination rate dropped to 27 percent and only another 2 percent of seeds germinated in the second season.

As noted above, Phillips and Kennedy (2005, p. 22) substantiated that plants in their first season could produce seed, although on a few seed-per-plant basis. The updated petition asserts that these first-year plants contribute significantly to the seed bank and that the seed bank is replenished within two or three growing seasons (ASA 2005, pp. 7–8). Phillips and Kennedy (2002, p. 27 and Table 7; 2003, pp. 20–21; 2004, p. 17) continually calculate the number of seeds produced per pod, per plant, and per site and equate that production with replacement of the seed bank. However, we know of no research or studies that provide information specifically on the replacement rate of *A. magdalenae* var. *peirsonii* to its seed bank or the seed bank baseline size. Phillips and Kennedy's field observations were all conducted in years with highly variable precipitation as compared to the previous two decades (see Willoughby 2006, Figure 3), and their studies cover a period with large variation in demographic rates. However, seed banks are governed by demographic rates that can be difficult to quantify over short study periods (Doak *et al.* 2002, p. 312). Willoughby (2007, p. 11) could not determine the seed bank age or associate it with the very productive year of 2005, so it is difficult to assign his estimate of 53,200,000 seeds as the seed bank baseline for the 2007 study areas. Also, no analysis of seed viability was conducted from the seeds sampled in spring 2007, further limiting the assessment of the seed bank size. Willoughby (2007, p. 11) suggests that seed bank sampling in a good rainfall year, after germination and before seed set, would address the question of seed bank depletion and seed bank age.

Kalisz and McPeek (1993, p. 319) emphasize that longer runs of bad precipitation years can magnify the negative effects on populations. Negative effects can include reduced germination, lower recruitment and reproduction, and runs of bad years exceeding the seed viability time in the seed bank. Because Phillips and Kennedy's (2002, p. 27 and Table 7; 2003, pp. 20–21; 2004, p. 17) estimates equate one seed produced with one plant germinated and we have no information on the seed bank baseline, their assertion that the seed bank is replaced within 2 or 3 growing seasons is speculative.

We agree with the updated petition (ASA 2005) that understanding the soil seed bank is important to understanding the long-term viability of *Astragalus magdalenae* var. *peirsonii.* However, for the reasons stated above, we do not agree that the work of Phillips and Kennedy (2002, 2003, 2004, and 2006) effectively elucidates the nature, extent, and dynamics of the seed bank for *A. magdalenae* var. *peirsonii* to the point that we fully understand the seed bank's contribution to the long-term persistence of *A. magdalenae* var. *peirsonii.* We also do not agree that these data provide evidence that *A. magdalenae* var. *peirsonii* will continue to persist because of the extent and nature of its seed bank. In fact, the information suggests that estimates of plant persistence and reproduction based on the anecdotal observations in the literature or single-year observations may not be accurate predictors of the nature or dynamics of the seed bank. Evidence suggests that not all plants (i.e., not 100 percent) reproduce in any given year, that seed pod production may be as much as one-third less than reported by Phillips and Kennedy, that seed production is as much as two-thirds less than that reported by Phillips and Kennedy, that only a small fraction of seeds may germinate from the persistent seed bank, and that under managed conditions about one-quarter of seeds in the wild may germinate. Phillips and Kennedy (2006, Table 3) did not consider any of these variables in their seed bank estimates. These variables and others (e.g., rate of seed mortality and aging, amount of seed lost to predators (Elzinga et al. 1998, p. 284)) must be considered for inclusion in models to estimate long-term persistence of *A. magdalenae* var. *peirsonii.* Pavlik (*in litt.* 2003, p. 4, comment for ASA (2001) petition) and Bowers (*in litt.* 2006, p. 9) noted that

Phillips and Kennedy have, however, begun to collect data valuable as initial parameters for these models.

**Summary of Factors Affecting the Species**

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the ''species'' is determined we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of threatened or endangered. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' in the significant portion of its range phrase refers to the range in which the species currently exists. For the purposes of this analysis, we will evaluate whether the currently listed species, *Astragalus magdalenae* var. *peirsonii,* should be considered threatened or endangered. Then we will consider whether there are any portions of *A. magdalenae* var. *peirsonii*'s range in which the status of the species differs from that determined for the species range-wide.

Merriam-Webster's Collegiate Dictionary defines ''foreseeable'' as ''being such as may be reasonably anticipated'' and ''lying within the range for which forecasts are possible'' (Merriam-Webster 2001, p. 456). For the purposes of this finding, the ''foreseeable future'' is the period of time over which events or effects reasonably can or should be anticipated, or trends reasonably extrapolated. Habitat for *Astragalus magdalenae* var. *peirsonii* in the United States is almost entirely in public ownership and management at the BLM Imperial Sand Dunes Recreation Area (ISDRA). Due to recent litigation, the specifics of how the BLM will manage the ISDRA in the short term are unclear. As described under ''A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range,'' the current Recreation Area Management Plan (RAMP) (BLM 2003a) is not being implemented due to a court order, but is the most recent plan available for analysis. At some point, BLM will implement a RAMP for the area, but when that will occur is also unclear. However, based on past management by BLM and the management direction for the ISDRA described in the current RAMP, we can reasonably anticipate that BLM will continue to manage habitat within the ISDRA in the long-term for multiple use, including OHV recreation. In light of such long-term management direction and the available data regarding impacts to *A. magdalenae* var. *peirsonii* resulting from anticipated continued and increased OHV use within the ISDRA, as analyzed below, we believe that reliable predictions can be made concerning the future as it relates to the status of *A. magdalenae* var. *peirsonii.*

In making this finding, we evaluated the best scientific and commercial data available (including the updated petition and associated documents (ASA 2005), our analysis (USFWS 2006a and 2006b) of BLM's raw data for the 2004 and 2005 surveys (Willoughby 2005a and 2005b, respectively), field studies conducted by the Service (Groom et al. 2007, USFWS 2007), the most recent reports by Phillips and Kennedy (2005 and 2006), BLM (Willoughby 2005b and 2006), and McGrann and McGrann (2005), and other information available to us) to determine whether delisting *Astragalus magdalenae* var. *peirsonii* is warranted. The following analysis examines the five factors described in section 4(a)(1) of the Act and those activities and conditions currently affecting, or that are likely to affect, *A. magdalenae* var. *peirsonii* within the foreseeable future.

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

In the final rule listing *Astragalus magdalenae* var. *peirsonii* (63 FR 53596, pp. 53605–53606) and in our 12-month finding on the previous petition to delist *A. magdalenae* var. *peirsonii* (69 FR 31523, pp. 31527–31529), we identified off-highway vehicle (OHV) use as a serious threat to *A. magdalenae* var. *peirsonii.* We continue to consider such activity, and the development associated with it, to present significant threats to *A. magdalenae* var. *peirsonii* and its dune habitat. The studies supporting this conclusion and the extent with which *A. magdalenae* var. *peirsonii* is threatened by OHVs are discussed below, as are probable effects of OHVs on seedling establishment, and visitation patterns in the Algodones Dunes.

*Studies on desert plants other than Astragalus magdalenae var. peirsonii.* Although few quantitative data are available, early studies documented general OHV impacts on desert and psammophytic vegetation in California. Bury *et al.* (1977, pp. 16–19, Fig. 11) compared eight paired sites in the Mojave Desert in 1974 and 1975, examining the impact of OHV use on creosote bush scrub and associated wildlife. Pavlik (1979, p. 75–79) quantified the immediate physical effects of direct contact with an OHV on the Eureka Dunes in Inyo County, California. Luckenbach and Bury (1983, p. 280) in non-replicated studies of paired plots along State Route 78 through the Algodones Dunes, reported reduced numbers of herbaceous and perennial plants, arthropods, lizards, and mammals between areas closed to entry (i.e., control plots) and those exposed to heavy OHV use. The results of these studies indicated that OHV impacts were higher or had a greater effect on habitat outside control plots. However, all of these studies were limited in scope because they either observed impacts on a small number of sample plants or the sample areas were limited in distribution.

*Studies with information on OHV damage to Astragalus magdalenae var. peirsonii.* Several studies included data and/or observations relevant to assessing OHV damage to *A. magdalenae* var. *peirsonii.* McGrann and McGrann (2005) assessed OHV impacts in paired plots along OHV closure boundaries. Phillips and his colleagues' reports (2001, 2003, and

2005) include estimations of numbers of plants damaged, likelihood of OHVs avoiding plants, and resilience of plants to OHV impacts. Willoughby (2005a, 2005b) included estimates of the numbers of plants damaged in 2004 and 2005. Groom et al. (2007) followed the fates of individual plants (some run over by OHVs and others not (i.e., ''controls'')) throughout the growing season. Finally, a study conducted by Service biologists as a follow-up to Groom et al. (2007) compared survival of *A. magdalenae* var. *peirsonii* over the growing season in areas open to OHVs with survival in areas closed to OHVs. Each of these studies is discussed briefly below.

McGrann and McGrann (2005, pp. 67–69), used 42 matching pairs of plots systematically distributed along closure boundaries in three study areas of the Algodones Dunes to assess OHV impacts on *Astragalus magdalenae* var. *peirsonii*. However, the results of this study were inconclusive due to the low number of plants sampled, sampling period, and climate. Only 19 plants were found among the 42 plots, and the Buttercup study area was sampled very late in the season. *Astragalus magdalenae* var. *peirsonii* densities were higher for small plants and seedlings on control plots versus impact plots with more than 30 OHV tracks per plot when all plots were pooled, but were not significant for adult plants (McGrann and McGrann 2005, pp. 71–72). In plots with fewer than 30 OHV tracks, 50 percent had higher overall plant density than in the control plot.

Because of the transient nature of the surface structure of dunes, most quantitative measures of OHV impacts are given in terms of numbers of plants impacted. Phillips *et al.* (2001, p. 12) stated that only 667 plants observed in the areas open to OHVs showed signs of contact with OHVs. Phillips and Kennedy (2003, p. 21) noted only 430 plants damaged by OHVs during 2003. However, we find these values to be of limited use for several reasons. First, both of these surveys occurred from March to May 2001 and 2003, respectively, well after the peak holidays with high dune visitation. Second, Phillips and Kennedy's damage reports based on their monitoring sites represent only about 138 ac (56 ha). If we extrapolate their data to *Astragalus magdalenae* var. *peirsonii* habitat in the area open to OHV activity, approximately 4,709 ac (1,905 ha), the number of plants potentially impacted by OHVs could be more than 10,000 plants, but we have no way of evaluating the accuracy of this extrapolation. Third, Phillips *et al.* (2001, p. 12) noted that signs of OHV effects are transitory, observing that ''as wind obliterated the tracks there was no sign of any effect.'' Phillips and Kennedy may be under estimating damage by assuming that the only direct evidence of any ''effect'' is a tire track in the sand that can be directly associated with a damaged plant. We assume that the wind will also obliterate any evidence of damage to plants by blowing away broken branches and burying broken stems in sand. Fourth, Phillips *et al.* (2001) did not record whether these were one-time observations over the survey days, or if damaged plants were tracked to prevent double-counting of individuals.

In addition, Phillips *et al.* (2001, p. 12) suggested that the number of damaged plants was minimal because OHV drivers avoid vegetated basins, where *Astragalus magdalenae* var. *peirsonii* often grows in proximity to shrubs, to prevent potential tire damage. The authors provided no information on plants observed outside of bowls with woody detritus, nor did they discuss the potential damage to plants from four-wheel quads or motorcycles that can traverse woody basins without damaging equipment. However, Phillips and Kennedy (2005, p. 22) also observed that *A. magdalenae var. peirsonii* was more widely distributed in 2005 compared with other years, ''with low density occurrences often observed between sites where no plants'' were before. This suggests that plants, at least in 2005, were not isolated to bowls with woody vegetation and therefore were unprotected.

Phillips *et al.* (2001, p. 12) anecdotally observed that nearly all plants that were run over were resilient and ''popped back up'' with no damage to the stems or flowers and that ''as soon as the wind obliterated the tracks, there was no sign of any effect.'' These observations of impact and resilience were made without determining the persistence or the productivity of the plants damaged. Additionally, no follow-up visits were noted, and no measures of impact to the habitat, description of type of damage, or effects on plant reproductive capacity were provided.

Willoughby (2005a, pp. 13–14) reported that 731 plants exhibited signs of OHV impact during the 2004 surveys, and more recently he reported that 8,113 plants exhibited signs of OHV impact along the 2005 survey transects (Willoughby 2005b, p. 24). Both of these estimates, 731 and 8,113 plants, are from one-time observations along transect surveys conducted during spring 2004 and 2005, respectively. In light of the number of survey transects in spring 2005, we consider Willoughby's (2005b, p. 24) estimate of 8,113 plants damaged by OHVs as the best single-date, dunes-wide estimate available. Nonetheless, this number was acquired from surveys conducted from mid-February through April 2005, well after peak-use holiday weekends. All survey cells were visited once during this time period. The estimate, 8,113 plants, does not include plants likely impacted during the peak holiday weekends prior to the surveys. We estimate that the number of plants impacted could be 2 to 3 times larger when these holidays are factored in, based on the number of peak-use days prior to the surveys, but we have no means to evaluate the accuracy of this estimate.

Groom *et al.* (2007) is the first study to date to monitor individual plant fates through a growing season. *Astragalus magdalenae* var. *peirsonii* GPS (Global Positioning System) coordinates were acquired on randomly selected plants marked in an experiment conducted from February until June 2005. Some plants (i.e., ''treatment plants'') in an area closed to OHV activity were purposefully struck with an OHV and their reproductive capacity and fate were tracked with repeated monthly visits. Results indicate that plants with canopies less than 18 inches (0.5 m) had a 33 percent lower survival rate than plants in the control group that were not struck (Groom *et al.* 2007, pp. 128–130). Service biologists continued to track survivorship in a follow-up study conducted from December 2005 until June 2006. No germination occurred during the 2006 growing season, indicating that all live plants encountered were greater than 1-year old. In this study, GPS coordinates were acquired for *A. magdalenae* var. *peirsonii* plants in two 618-ac (250-ha) study areas, one in an OHV-open area and one in an OHV-closed area. Every plant was revisited monthly to monitor health, reproductive state, biometrics, and seed pod production. Plants in the OHV-open area were 20 percent less likely to survive the entire study period than plants in the OHV-closed area (USFWS 2007, p. 14).

While the observational data reported by Phillips and Kennedy and BLM shed some light on OHV impacts to *Astragalus magdalenae* var. *peirsonii*, the results are of limited value. Groom *et al.* (2007) and the follow-up Service study have three principal advantages over the observational data. First, these studies were designed to test specific hypotheses regarding plant survival, using dune bowls or individual plants

that were randomly selected within each study area. Second, in both years, these studies documented plant fates through the season, rather than a single observation late in the season. Third, the 2006 study (USFWS 2007) covered all major holiday weekends except Thanksgiving, extending the time period of the study to correspond with OHV use in the dunes. The data including major holiday periods more accurately reflects plant fate because the risk to plants in the open area is dependent upon dune use patterns.

Most of the studies, and in particular Groom *et al.* (2007) and the follow-up Service study (USFWS 2007), indicate that *Astragalus magdalenae* var. *peirsonii* plants can be damaged by OHV activity. In fact, the observation by Phillips *et al.* (2001, p. 12) that ''the occurrence of dune plants and heavy use areas for vehicles is, to a large extent, mutually exclusive,'' describes similar findings by Willoughby (2000, p. 36), WESTEC (1977, pp. 131–134), Luckenbach and Bury (1983, p. 280), ECOS (1990, p. 81), and McGrann and McGrann (2005, pp. 69–76). While little or no documentation exists of the graded effects of medium- and low-use areas for vehicles, by the time the vehicle use level can be described as ''heavy,'' the area is generally devoid of plants. The exact process is not understood, but we postulate that either repeated depletion of pre-flowering seedlings depletes the seed bank, elimination of standing seed-producing plants diminishes and eventually extinguishes input to the seed bank, or untimely or excessive scarification of the seeds by the additional grinding actions of sand moved by OHVs causes seeds to desiccate. The conclusion that the petitioners reach suggesting OHVs are not damaging the *A. magdalenae* var. *peirsonii* population originated in Phillips *et al.* (2001) (see discussion in Distribution of *Astragalus magdalenae* var. *peirsonii* in the Algodones Dunes section). This conclusion is based on a reconnaissance of the dunes that assessed presence and abundance of *A. magdalenae* var. *peirsonii* in a general way in open and closed areas. It was not designed to determine whether OHVs damage *A. magdalenae* var. *peirsonii*, and it is internally inconsistent on whether differences in presence and abundance were observed in open and closed areas. If presence and abundance of *A. magdalenae* var. *peirsonii* were similar in open and closed areas, it would suggest that OHVs may not be affecting abundance. However, the Service's analysis of BLM's 2005 data indicates that the petitioner's assertion is incorrect (USFWS 2006b, pp. 3–4). Finally, Willoughby (2007, p. 9) concludes that ''the closed areas of the Gecko and Ogilby MAs have larger seed banks than the open areas.''

*Seedling establishment.* In addition, the coincidence of timing of seedling establishment and the cooler months preferred by OHV enthusiasts increases the susceptibility of *Astragalus magdalenae* var. *peirsonii* to impacts from OHVs (Romspert and Burk 1979, pp. 29–30). The period of plant sensitivity, approximately late October to late February, includes seed germination and emergence (Barneby 1964, p. 862; Phillips and Kennedy 2002, p. 29). Aside from the direct crushing of the delicate seedlings, OHVs in close proximity to the seedlings may indirectly affect germinating seedlings by accelerating soil desiccation that can result in root desiccation (Harper 1981, pp. 116–117; Lathrop and Rowlands 1983, p. 144). The roots of *A. magdalenae* var. *peirsonii* seedlings are especially sensitive to drying out if the plants or sand surface are disturbed. Seedling death may result from both types of impacts. Seedlings damaged but not killed may produce fewer flowers and seeds than undamaged seedlings leading to a gradual diminishment of the seed bank (Pavlik 1979, p. 76). This period of sensitivity directly overlaps five of the six visitation peaks to the Algodones Dunes, including Halloween, Thanksgiving, New Years Day, Martin Luther King Day, and Presidents' Day (BLM 2003a, pp. 89, 201). When Easter weekend is included, all holiday weekends, about 27 days, account for 50 percent of annual visitation to the Dunes, with the remaining 50 percent occurring on non-holiday weekends between October and May (BLM 2003a, pp. 89, 201).

*Visitation patterns.* Since we listed *Astragalus magdalenae* var. *peirsonii*, visitation by recreational users to the ISDRA has continued to increase (BLM 2003b, p. 25; BLM 2006a) and has outpaced previous projections (BLM 1987, Table 6). The updated petition (ASA 2005) did not address visitor use patterns or increases relative to the distribution of *A. magdalenae* var. *peirsonii*. The total number of visitors to the dunes in 2006 (BLM 2006a) has nearly quadrupled from 1995 (BLM 2003b, p. 25). Based on figures from BLM, visitor use increased by 69 percent from fiscal year 2000 (BLM 2003a, p. 237) to fiscal year 2006 (BLM 2006a). Specifically, BLM recorded 867,753 visitor use days in 2000 (BLM 2003a, p. 237) and 1,464,580 in 2006 (BLM 2006a). Visitor use was up an additional 5 percent in fiscal year 2006 over fiscal year 2005 (BLM 2006a) despite a court-ordered closure of 29 percent of the ISDRA and claims that high gas prices would reduce visitation, and was up slightly in fiscal year 2007 over fiscal year 2006 (BLM 2007). Visitor use is now more than 3 percent over the projected estimate for 2012/2013 (BLM 1987, p. 15; 2003a, p. 237; 2006a). User groups are advocating for building as many camping pads as possible until ''over a span of time 100 percent of both sides of [Gecko] road would be camping pads'' in the Gecko Management Area (ASA 2002, p. 4). We conclude that visitor use in the Algodones Dunes is likely to continue to increase.

The BLM has attempted to assess OHV impact areas on the dunes in 2 separate analyses. A vehicle track map (Willoughby 2000, Map 24) along selected transects of the Algodones Dunes on Easter weekend 1998 showed that considerable areas of potential habitat have been impacted. In a more recent study, a randomized sample of 775 survey cells occupied by *Astragalus magdalenae* var. *peirsonii* in 2005 were selected and analyzed from digital aerial photographs acquired on Presidents' Day weekend in 2006 (Willoughby 2006, p. 3). The results indicate a slight negative relationship between the logarithm (a common statistical transformation of data) total number of *A. magdalenae* var. *peirsonii* plants and the density of OHV tracks, but this relationship was not statistically significant ($P = 0.069$) (Willoughby 2006, p. 10, Figure 12). The results of both of these analyses were inconclusive because on-the-ground counts of plants coincident with the vehicle-track mapped areas were not performed and cumulative impacts to standing plants, seed banks, or habitat cannot be estimated; whereas the studies of Groom *et al.* (2007) and USFWS (2007) carefully monitored the fates of individual plants damaged by OHVs or in high OHV-use areas.

Though a court order continues to require that BLM maintain 49,300 ac (19,950 ha) of temporary vehicle closures within five selected areas in the ISDRA, BLM's 2003 Recreation Area Management Plan (RAMP) (2003a, pp. 37–78) proposed opening to OHV use (to various extents) all temporary closures in the dunes. Although this plan is not currently being implemented, it is the most recent plan available for analysis. Under this plan, the 27,700-ac (11,200-ha) North Algodones Dunes Wilderness (Wilderness) would continue to be closed to OHV use. However, less than 9 percent of the U.S. population of

*Astragalus magdalenae* var. *peirsonii* occurs within the Wilderness. Although some areas supporting *A. magdalenae* var. *peirsonii* are remote, technological advances, such as a fully implemented GPS navigation system (USDoD 2005, p. 2–2), affordable GPS units and cell phones, and OHVs with greater range, have removed the obstacles to OHV users to penetrate further into the dunes (ASA 2006). Thus, well-equipped vehicles can now travel farther on a tank of gas and are less likely to get lost in the featureless expanse of the dunes, expanding potential OHV impacts into areas that once inhibited access. If the court order is lifted and the temporary closures are reopened to OHV activity, adverse effects to *A. magdalenae* var. *peirsonii* populations within the U.S. will increase.

If the court order were to be lifted, and BLM's 2003 RAMP implemented, all areas in the Algodones Dunes with *Astragalus magdalenae* var. *peirsonii*, except the Wilderness area, would be open to some level of OHV use. Sixty-six percent of the U.S. population of *A. magdalenae* var. *peirsonii* is located in the temporary closures (USFWS 2006b, Table 2), 9 percent is in the Wilderness area, and the remaining 25 percent in areas open to OHV use. Currently, the odds of finding *A. magdalenae* var. *peirsonii* in areas closed to OHVs are 2.6 times greater than in areas open to OHV use (USFWS 2006b, pp. 3–4). Evidence indicates that 20 percent of the population occurring in areas open to OHV use will not survive the entire growing season (USFWS 2007, p. 14) and that the chances of an average plant surviving an impact will be reduced by 33 percent (Groom et al. 2007, pp. 128–130). If the temporary closures were removed and visitor use was equivalent to that now documented in current open areas throughout the dunes, it is reasonable to expect that plant density of *A. magdalenae* var. *peirsonii* would be reduced to the mean density level now recorded for the open areas, 23 plants/ac (56/ha) (USFWS 2006a, p. 4). We estimate that, at that density, the dunes-wide population would be reduced by approximately 41 percent (Bartel *in litt.* 2007, p. 2). This predicted reduction in the 2005 observed population for *A. magdalenae* var. *peirsonii* in the ISDRA may overestimate the effects of OHVs because we did not account for the minimization of impacts via BLM's implementation of the adaptive management proposed for the Adaptive Management Area (AMA) of the ISDRA, nor did we account for the distance from camping areas or access points that likely would ameliorate or attenuate the effects of OHV use. Conversely, the 41 percent figure may underestimate the effects of OHVs because we did not account for the increasing trend in OHV use in the Algodones Dunes. The AMA and Ogilby temporary closures total 37,519 ac (15,184 ha) and contain more than 50 percent of the current *A. magdalenae* var. *peirsonii* population (USFWS 2006b, Table 2). Even in light of the potential problems with this estimate, the best data indicates that reopening the temporary closure areas in the dunes to OHV use may reduce the *A. magdalenae* var. *peirsonii* population in these two management areas alone by 50 percent. In addition, the areas of highest abundance are areas closest to, and within easy access of, the sand highway (the main unpaved thoroughfare between staging areas and large, recreational dunes or dune complexes) (USFWS 2006b, Map 1).

We are confident that reopening the temporary closure areas in the dunes to OHV use would increase the impact of OHVs on *Astragalus magdalenae* var. *peirsonii*. However, we acknowledge that there is uncertainty with respect to the future management of the area by the BLM. BLM and the Service are currently working together to consider options for future management of the Algodones Dunes and the potential impacts of various scenarios on *A. magdalenae* var. *peirsonii*. It is conceivable that future management decisions could provide protection and management that would ameliorate threats to *A. magdalenae* var. *peirsonii* to such an extent that we would consider proposing to delist the species.

In summary, areas within the dunes subject to intensive OHV use have a lower abundance of *Astragalus magdalenae* var. *peirsonii* while plants within the interior portions of the dunes and within temporary closure areas appear to have been less affected by OHV use. The updated petition and associated documents report hundreds of plants detected during relatively brief survey periods that were impacted by OHVs (ASA 2005). Repeat visits to marked plants attest to a lower survival rate for plants struck by OHVs (Groom *et al.* 2007, pp. 128–130) and for plants in open areas in general (USFWS 2007, p. 14). Thus, studies of the effects of OHVs on *A. magdalenae* var. *peirsonii* (e.g., Groom *et al.* 2007), the reported absence of dune plants from areas of heavy OHV use, the documented trends of increasing visitorship in the Algodones Dunes, the potential for the lifting of the temporary closures, and the uncertainty associated with future management of the ISDRA support the conclusion that OHV use continues to pose a significant threat to *A. magdalenae* var. *peirsonii* and its dune habitat in the foreseeable future, and we can reliably predict that the impacts of continued and increasing levels of OHV use anticipated to occur, particularly if *A. magdalenae* var. *peirsonii* is no longer listed, would likely result in a downward trend in the population until *A. magdalenae* var. *peirsonii* is in danger of extinction.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

We do not have any data suggesting that *Astragalus magdalenae* var. *peirsonii* is, or may be, overutilized for commercial, recreational, scientific, or educational purposes.

*C. Disease or Predation*

Herbivory was reported for some *Astragalus* taxa in the final rule listing *A. magdalenae* var. *peirsonii*. As part of a series of reports on the natural history of *A. magdalenae* var. *peirsonii*, Porter (2003a, p. 4) noted the general poor health of adult plants and attributed it to rodent and insect herbivory. Porter (2002a, p. 07862) reported ''nearly ubiquitous'' harvesting of leaflets and young inflorescences by rodents in *A. magdalenae* var. *peirsonii* populations. Most of the plants had leaves, leaflets, or terminal portions of the stems removed, likely by unidentified rodents that had left abundant tracks around *A. magdalenae* var. *peirsonii* plants. Porter (2003a, p. 4) also had similar results in 2003. To the extent that rodents remove photosynthetic tissue and young inflorescences, plants are likely to exhibit a loss of vigor and reduction in reproductive output (i.e., seeds) as noted by Hulme (1994, pp. 647–650). Indeed, Phillips and Kennedy (2002, p. 24) noted that seed bank counts were lower in areas where they noted kangaroo rat tracks and dens and suggested that this should be investigated. *Astragalus magdalenae* var. *peirsonii*, with its large seeds, may be more prone to seed predation than the observations reported by BLM or Phillips and Kennedy (Hoffmann *et al.* 1995, pp. 203–205). Pavlik (*in litt.* 2003, p. 5, comment for ASA (2001) petition) noted that rodents may be a constant, long-term source of high seed mortality that could dramatically reduce the seed bank.

Beetles, in the family Bruchidae, were reported to contribute to the high mortality of seeds and reduced seed crop for *Astragalus magdalenae* var. *peirsonii* by Romspert and Burk (1979, pp. 28–29). Larvae of these beetles eat

the contents of the seeds before emerging as adults. Fruits collected in April continued to release beetles into October (Romspert and Burk 1979, p. 29). Porter (2003a, p. 5) found between 45 and 86 percent of the fruits on the few *A. magdalenae* var. *peirsonii* plants where he could find fruits were infested with bruchid beetles. The range of infested fruits was 0 to 29 percent for dispersed fruits on the ground. Similarly, for another obligate dune plant, *Astragalus lentiginosus* var. *micans*, Pavlik and Barbour (1985, p. 61) found that dispersed fruits had about 66 percent of the seeds eaten or damaged by insect larvae compared to 86 percent of the seeds in fruits still on the plant. Also the number of undamaged seeds decreased by more than 60 percent between April and May, indicating that predation is highest at dispersal time. The reduction of productivity of any given cohort of *A. magdalenae* var. *peirsonii* from seed predation is unknown but may locally be considerable in a given year. Seed predation has also been reported to cause significant loss of ovules or seeds in *Sidalcea nelsoniana*, a federally threatened perennial forb (Gisler and Mienke 1997, pp. 58–60), in *Astragalus canadensis* (Boe *et al.* 1989, pp. 514–515), and in two other species of *Astragalus* (Green and Palmbald 1975, pp. 1436–1437). As yet unidentified weevils were also observed to strip the epidermis from the stems, which would affect the movement of food and water in the plants (Porter 2003a, p. 4).

Available information suggests that rodent herbivory and seed predation by insects, as noted above, may play a pivotal role in plant viability in dune bowls (Hulme 1996, pp. 610–611). We do not believe that natural herbivory, by itself, is likely to pose a direct threat to the conservation of *Astragalus magdalenae* var. *peirsonii*. However, although the total impact to annual recruitment has not been quantified in the dunes, the additional loss or damage of seeds or seedlings through natural herbivory could exacerbate or augment threats to *A. magdalenae* var. *peirsonii* in the presence of other stressors such as increasing OHV activity, especially when the damage from natural herbivory potentially impacts 30 to 60 percent, or more, of the standing population (Porter 2003a, pp. 4–5).

*D. The Inadequacy of Existing Regulatory Mechanisms*

The discussion of the lack of regulatory protections for *Astragalus magdalenae* var. *peirsonii* by the State of California cited in the final listing rule (63 FR 53596) is still accurate. Pursuant to the Native Plant Protection Act (California Department of Fish and Game (CDFG) Code) and the State Endangered Species Act (CESA), *A. magdalenae* var. *peirsonii* was listed as endangered in 1979. Because this plant primarily occurs on BLM-managed lands, provisions of CESA do not apply. The BLM and CDFG developed a habitat management plan (HMP) in 1987 that included provisions for monitoring transects every other year until trends were established. However, little monitoring specific to sensitive species was carried out by BLM prior to the listing of *A. magdalenae* var. *peirsonii*. Since the listing, BLM and CDFG have been conducting periodic monitoring for the rare plants on the Algodones Dunes.

The updated petition indicates that *Astragalus magdalenae* var. *peirsonii* has received ''adequate regulatory protection from BLM since 1977'' (ASA 2005, p. 49). This statement is based on the premise that BLM can only manage human activities, and human activities do not negatively impact *A. magdalenae* var. *peirsonii*. As indicated above in Factor A, we disagree with this assertion because we conclude that OHV use (i.e., human activity) is a significant threat to *A. magdalenae* var. *peirsonii*. Given our conclusion that OHV activity is a threat to *A. magdalenae* var. *peirsonii*, we note that BLM's management of OHV activity can affect the magnitude of the threat from OHVs to the plant. No assessment exists of the relative contribution of the portion of the population present in the Wilderness (permanently closed) to the persistence of *A. magdalenae* var. *peirsonii*. Less than 9 percent of *A. magdalenae* var. *peirsonii* plants were observed in the Wilderness in 2005, and though the Wilderness is considered closed to OHV use, indications of occasional illegal entry in the form of OHV tracks in the area can be found on maps (Willoughby 2000, Map 24). Designation of the Wilderness was one of the reasons cited in the final rule for changing the proposed status from endangered to threatened (63 FR 53609). As stated in the final listing rule (63 FR 53609), ''While this taxon remains vulnerable to the OHV use occurring over most of its dune habitat, the Service believes that the dispersed nature of its colonies and the wilderness designation reduce the potential for immediate extinction.''

BLM temporarily closed areas of the Algodones Dunes to off-highway and other vehicular traffic effective November 3, 2000. Notwithstanding the 2005 Record of Decision, 2003 RAMP, and Final Environmental Impact Statement for the ISDRA where BLM (2003a) proposed to reopen those temporary closures to OHV activity, the U.S. District Court for the Northern District of California ordered, among other things, that BLM ''maintain the vehicle closures as identified in the 'Temporary Closure of Approximately 49,300 Acres to Motorized Vehicle Use of Five Selected Areas in the ISDRA'.'' If the court order is lifted and these areas are reopened, the threat to *A. magdalenae* var. *peirsonii* would increase above current levels. Such action would open 29 percent of the ISDRA to OHV use, leaving the 27,700-ac (11,200-ha) Wilderness as the only closed area. Removing the closures and/or increasing the number of camping pads in the Gecko and Ogilby Management Areas is likely to reduce *A. magdalenae* var. *peirsonii* in those management areas significantly (Bartel *in litt.* 2007, p. 2). However, we expect that the species will continue to persist in fewer numbers in Gecko and Ogilby, even if OHV use increases.

In addition, as noted above in Factor A, there is considerable uncertainty with respect to future management of the Algodones Dunes. In light of the uncertain status of the 2003 RAMP, we believe that adequate regulatory mechanisms are not yet in place to support removing the protections of the Act.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

*Trespass.* Although the range-wide impact is difficult to assess, we have received an increase in reports of purposeful or unintentional trespass into *Astragalus magdalenae* var. *peirsonii* habitat that is closed to OHV use. Porter (2002b, pp. 2–3) described tracks and incursions of OHVs into areas closed to OHV traffic and an instance where all of the aerial stems of a plant had been cut off. These closed areas are outside of the Wilderness. Activity of this nature has been noted on maps and by ground personnel (Willoughby 2000, Map 24; Porter 2002b, p. 2).

*Low reproduction. Astragalus magdalenae* var. *peirsonii* may also be threatened by low numbers of reproducing individuals, a circumstance that occurs from time to time. As noted earlier, not all plants flower each year. Movements and fluctuations of populations have not been recorded for a long enough period to assess the significance of low reproduction to the survival of the taxon. The BLM (Willoughby 2001, p. 22) reported a total of only 86 plants throughout their transect areas in the 2000 survey. Phillips *et al.* (2001, p. 10) found only 5 plants more than a year old out of the

72,000 counted in their survey covering approximately 35,000 ac (14,000 ha) open to OHV use in 2001. Having so few older individuals may be a concern given that the older, larger plants contribute more to the seed bank than younger, flowering juveniles (Romspert and Burk 1979, p. 28; Phillips and Kennedy 2002, p. 27). Random events, like periodic drought, may have a significant detrimental effect on the species when so few individuals are present or when the habitat requirements are so narrow that random environmental conditions can result in the demise of an entire cohort. In 2003, the entire cohort of seedlings was lost due to delayed germination and high temperatures (Phillips and Kennedy 2003, p. 15; Porter 2003b, p. 1). The ecological impact of any cyclic depletion and restoration of the seed bank is unknown.

*Fragmentation and isolation*. As discussed above, less than 9 percent of *A. magdalenae* var. *peirsonii* plants were observed in the Wilderness in 2005. Implementation of the 2003 RAMP, as currently written, would fragment the entire range of the *A. magdalenae* var. *peirsonii* population into management islands of plants separated by large OHV-impact areas (see Willoughby 2006, Map 6). Effects to *A. magdalenae* var. *peirsonii* from fragmentation would be difficult to measure but may include lower seed production due to reduced visitation by pollinators (Jennersten 1988, pp. 361–363; Steffan-Dewenter and Tscharntke 1999, pp. 434–436; Baron and Bros 2005, pp. 48–50) and increased local predation pressure in instances where populations are reduced to isolated individuals (Girdler and Radtke 2006, pp. 220–222). If the Wilderness were isolated and the total population diminished as estimated, in light of proposed management actions, justification to delist *A. magdalenae* var. *peirsonii* would be difficult. *Astragalus magdalenae* var. *peirsonii* has evidently persisted at low abundance in areas of moderate to high OHV use over the short term. However, because protection is ensured for only 9 percent of the population, *Astragalus magdalenae* var. *peirsonii* is at increased risk of long-term population decreases due to events such as long-term drought, climate change, or focused predation.

**Significant Portion of the Range Analysis**

On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '' (U.S. DOI 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species. In other words, in considering significance, the Service should ask whether the loss of this portion likely would eventually move the species toward extinction, but not necessarily to the point where the species should be listed as threatened.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, or the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there; if the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

**Finding**

As required by the Act, we considered the five potential threat factors to assess whether *Astragalus magdalenae* var. *peirsonii* is threatened or endangered throughout all or a significant portion of its range. When considering the listing status of the species, the first step in the analysis is to determine whether the species is threatened or endangered throughout all of its range. The status review for *A. magdalenae* var. *peirsonii* contained in this document is for the entire range of this species as listed under the Act.

We have carefully assessed the best scientific and commercial information regarding the biology of this species and its threats. We reviewed the updated petition and associated documents, information available in our files, and other published and unpublished information submitted to us during the public comment period following our 90-day petition finding. We also reviewed new data and information on the life history and ecology of *Astragalus magdalenae* var. *peirsonii*.

For many years controversy has focused on the abundance of *Astragalus magdalenae* var. *peirsonii* in any given year and the implications of abundance figures for the long-term persistence of the species. For a species that fluctuates widely in numbers from year to year, an assessment of abundance may not be the most meaningful measure of the likelihood of persistence. Characterizing the population trend, resilience, and long-term viability of *A. magdalenae* var. *peirsonii* would be more relevant but has not been done in a rigorous and meaningful manner to date. In addition, we agree with the updated petition (ASA 2005) that understanding the soil seed bank is important to understanding the long-term viability of *A. magdalenae* var. *peirsonii*. However, we do not agree that the nature, extent, and dynamics of the seed bank for *A. magdalenae* var. *peirsonii* have been characterized to the point that we fully understand the seed bank's contribution to the long-term persistence of *A. magdalenae* var. *peirsonii*. In addition, we do not agree that the available data provide evidence that *A. magdalenae* var. *peirsonii* will continue to persist because of the extent and nature of its seed bank. In short, we have an incomplete understanding of the relationship of abundance data and seed bank data to the long-term persistence of *A. magdalenae* var. *peirsonii*. Therefore, we cannot conclude that high numbers of above-ground plants and the purported large numbers of seeds in the seed bank

ensure the long-term persistence of the species.

We continue to consider OHV activity the primary threat to *Astragalus magdalenae* var. *peirsonii*. Documentation available attests to historical and ongoing OHV impacts to the species (WESTEC 1977, pp. 1–135; ECOS 1990, pp. 1–85; Willoughby 2000, pp. 1–37, 2001, pp. 1–31, 2004, pp. 1–20, 2005, pp. 1–; Phillips *et al.* 2001, pp. 1–13; Phillips and Kennedy 2003, pp. 1–21; Groom *et al.* 2007, pp. 119–134; USFWS 2006b, pp. 1–9, and 2007, pp. 1–36). Areas within the dunes subject to intensive OHV use (e.g., staging areas) have a lower abundance of *A. magdalenae* var. *peirsonii*. Longer-term monitoring indicates that plants exposed to OHV activity have a reduced likelihood of survival (e.g., Groom *et al.* 2007, pp. 128–130). Available information suggests that within the foreseeable future OHV use will continue to increase and pose a threat to the survival of *A. magdalenae* var. *peirsonii*, and we can reliably predict that the impacts of continued and increasing levels of OHV use anticipated to occur, particularly if *A. magdalenae* var. *peirsonii* is no longer listed, would likely result in a downward trend in the population until *A. magdalenae* var. *peirsonii* is in danger of extinction. Secondary threats to *A. magdalenae* var. *peirsonii* include rodent and insect herbivory, seed predation, and effects of fragmentation and environmental stochasticity/catastrophes, all which may be exacerbated by the low reproduction of *A. magdalenae* var. *peirsonii*.

While the North Algodones Dunes Wilderness will continue to be closed to OHV use, this area alone is not sufficient to ensure the long-term survival of *Astragalus magdalenae* var. *peirsonii* because it provides only a small percentage of the entire habitat for this species within the Algodones Dunes and the area provides less available habitat for this plant relative to the areas south of State Route 78 that have in the past or may in the future be open to OHV use. Based on the 2005 population estimates derived by the BLM, less than 9 percent of the *A. magdalenae* var. *peirsonii* population in the United States occurs within the Wilderness. The distribution of *A. magdalenae* var. *peirsonii* from pre-2003 surveys indicates a higher relative abundance of plants in the central dunes south of State Route 78 and more recent surveys confirm this observation. Thus, the Wilderness alone is not sufficient to sustain this species because it does not provide sufficient habitat and habitat quality to ensure the long-term survival of this species, and the long-term viability of the species within the Wilderness is dependent upon the remainder of the range remaining viable. Thus, although direct impacts from OHV use are minimal within the Wilderness, the overall impacts to *A. magdalenae* var. *peirsonii* within the Wilderness that may result from the combined threats discussed above (including indirect effects of OHV use) are essentially equal to those present throughout the rest of the species' range.

Applying the process described above under ''Significant Portion of the Range Analysis'' for determining whether a species is threatened or endangered in a significant portion of its range, we next address whether any portions of the range of *Astragalus magdalenae* var. *peirsonii* warrant further consideration. As explained above, we have determined that *A. magdalenae* var. *peirsonii* remains threatened throughout all of its range due to the direct mortality, reduced survival, and/or reduced reproductive success that we predict would result from the effects of the identified threats analyzed in the five-factor analysis. We do not have any data suggesting that the identified threats to the species are concentrated in any portion of the range such that *A. magdalenae* var. *peirsonii* may be in danger of extinction in that portion. Therefore, we find that there are no portions of the range that warrant further consideration.

After a thorough review and consideration of all information available, we find that delisting *Astragalus magdalenae* var. *peirsonii* is not warranted at this time because the plant continues to be at risk due to the threats described above. We find that *A. magdalenae* var. *peirsonii* remains likely to become an endangered species within the foreseeable future throughout all of its range and should remain classified as a threatened species. In making this determination, we have followed the procedures set forth in section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424).

We will continue to monitor the status of the species, and to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

## References Cited

A complete list of all references cited in this document is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

## Author

The primary author of this document is Lloyd B. McKinney of the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 2, 2008.

**Kenneth Stansell,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. E8–16041 Filed 7–16–08; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 23

**[FWS-R9-IA-2008-0003] [96000-1671-0000-P5]**

**RIN 1018-AV70**

# Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Import and Export of Sturgeon Caviar

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the Fish and Wildlife Service (FWS), propose to revise the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by incorporating certain provisions related to international trade in sturgeon caviar adopted at the fourteenth meeting of the Conference of the Parties (CoP14) to CITES. We propose to reduce the quantity of caviar that may be imported or exported under the CITES personal effects exemption and amend the requirements for import of caviar from shared stocks subject to quotas. These changes would bring U.S. regulations in line with revisions adopted by consensus at the most recent meeting of the Conference of the Parties to CITES (June 2007). The revised regulations would help us more effectively promote species conservation, help us continue to fulfill our responsibilities under the Treaty, and help those affected by CITES to understand how to conduct lawful international trade in sturgeon caviar.

**DATES:** We will accept comments received on or before August 18, 2008.

**ADDRESSES:** You may submit comments by one of the following methods:

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

• U.S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018-AV70; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments).

**FOR FURTHER INFORMATION CONTACT:** Robert R. Gabel, Chief, Division of Management Authority; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203 (telephone, (703) 358–2093; fax, (703) 358–2280).

**SUPPLEMENTARY INFORMATION:**

## Background

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it entered into force on July 1, 1975, after the required 10 countries had ratified it. Currently 172 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

Section 8A of the Endangered Species Act, as amended in 1982 (16 U.S.C. 1531 *et seq.*), designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the Fish and Wildlife Service. The original U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first meeting of the Conference of the Parties (CoP) was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Treaty and on amendments to the listing of species in the CITES Appendices. The current U.S. CITES regulations took effect on September 24, 2007, and incorporate provisions from applicable resolutions and decisions adopted at meetings of the Conference of the Parties up to and including the thirteenth meeting (CoP13), which took place in 2004.

Article VII(3) of the Treaty provides for the import, export, or re-export of specimens that are personal or household effects (see the definitions in § 23.5) without CITES documents under specific circumstances. For some species, including sturgeon and paddlefish (Acipenseriformes), the Parties have established limits on the quantity of certain specimens that may be transported as personal and household effects. At CoP14, in June 2007, the Parties agreed to reduce the quantity of sturgeon or paddlefish caviar that may be imported or exported under the personal effects exemption from 250 grams to 125 grams (see Resolution Conf. 12.7 (Rev. CoP14) and Resolution Conf. 13.7 (Rev. CoP14)). This change was originally recommended by the International Sturgeon Enforcement Workshop to Combat Illegal Trade in Caviar (Brussels, 2006) and was endorsed by the United States and adopted by consensus at CoP14. We propose to amend 50 CFR 23.15(c)(3)(i) to incorporate this change.

The Parties also agreed to a new quota-setting process for caviar from shared stocks, including a change in the quota year so that it will coincide with the harvest season rather than the calendar year. Previously, under Resolution Conf. 12.7 (Rev. CoP13), ''Conservation of and trade in sturgeons and paddlefish,'' caviar from shared stocks subject to quotas (i.e., the Black Sea, Caspian Sea, and Amur River basins) had to be exported by the end of the calendar year in which it was harvested and processed. At CoP14, the Parties agreed that, from 2008 onward, the quota year will begin on the first of March and end on the last day of February of the following year. Exports of caviar from shared stocks subject to quotas must take place during the quota year in which the caviar is harvested and processed.

In addition, the sturgeon resolution was amended to specifically state that quotas must not be detrimental to the survival of the species in the wild and to remove the requirement that the Secretariat must confirm that the quotas have been agreed to by all relevant countries (see Resolution Conf. 12.7 (Rev. CoP14)). These changes were adopted by consensus at CoP14. We propose to amend 50 CFR 23.71(d) to reflect the relevant changes to the quota-setting process for caviar from shared stocks.

Elsewhere in today's **Federal Register**, we have published a direct final rule to promulgate the same regulatory changes to 50 CFR part 23 as proposed here. We published the direct final rule because these changes are non-controversial and we anticipate no significant adverse public comment. Therefore we had good cause to find that standard notice and public comment procedures would be unnecessary and contrary to the public interest. If we receive no significant adverse comments regarding these amendments on or before the comment due date specified in the DATES section of this document and the direct final rule, then these changes will become effective on the effective date specified in the DATES section of the direct final rule, and we will take no further action on this proposed rule. If we do receive significant adverse comments, then this proposed rule initiates the normal notice-and-comment rulemaking process.

## Required Determinations

*Regulatory Planning and Review*: This is not a significant regulatory action under Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget (OMB).

a. This proposed rule would not have an annual economic effect of $100 million or more or adversely affect a part of the economy, productivity, jobs, the environment, or other units of government. This proposed rule reduces the quantity of sturgeon or paddlefish caviar that an individual may import or export under the personal effects exemption (i.e., without a CITES document) from 250 grams to 125 grams. The personal effects exemption applies only to specimens for personal use that are hand-carried or checked as personal baggage on the same boat, plane, etc., as the traveler. This proposed rule also informs the public of a change in the quota-setting process and timeframe for export of caviar from shared stocks (i.e., the Black Sea, Caspian Sea, and Amur River basins). Publication of this proposed rule would assist U.S. businesses in complying with CITES requirements when engaging in international trade in sturgeon and paddlefish caviar.

We do not expect that this proposed rule would have a significant effect on the volume or dollar value of sturgeon or paddlefish caviar imported, exported, or re-exported to and from the United States. There is no indication that this proposed rule would result in statistically significant higher or lower levels of trade, permit applications, or permit issuance or denial. An economic analysis is not necessary for this proposed rule as it would not have an economic impact on large or small entities.

b. This proposed rule would not create inconsistencies with other agencies' actions. As the lead agency for implementing CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES.

c. This proposed rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This proposed rule would not raise novel legal or policy issues. As a Party to CITES, the United States is committed to fully and effectively implementing the Convention. All sturgeon and paddlefish (Acipenseriformes) are listed under CITES. This proposed rule informs individuals and businesses of provisions adopted at the most recent CoP for international trade in sturgeon and paddlefish caviar.

*Regulatory Flexibility Act*: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or 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 government jurisdictions) (5 U.S.C. 601 *et seq.*). However, 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. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). 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 U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. We expect that the majority of the entities involved with international caviar trade would be considered small as defined by the SBA. The declared value for U.S. international trade in sturgeon and paddlefish caviar was $13.4 million in 2005 and $13.7 million in 2006.

This proposed rule creates no substantial fee or paperwork changes in the permitting process. The regulatory changes are not major in scope and would create only a modest financial or paperwork burden on the affected members of the general public.

This proposed rule would benefit businesses engaged in international caviar trade by providing updated regulations for the international trade of CITES specimens. We do not expect these benefits to be significant under the Regulatory Flexibility Act. The authority to enforce CITES requirements already exists under the Endangered Species Act and is carried out by regulations contained in 50 CFR part 23. The requirements that must be met to import, export, and re-export CITES species are based on the text of CITES, which has been in effect in the United States since 1975.

We therefore certify that this proposed rule would 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.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

*Small Business Regulatory Enforcement Fairness Act*: This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Would not have an annual effect on the economy of $100 million or more. This proposed rule provides the importing and exporting community in the United States with updated regulations implementing CITES. This proposed rule would not have a negative effect on this part of the economy. It would affect all caviar importers, exporters, and re-exporters equally, and the benefits of having updated guidance on complying with CITES requirements would be evenly spread among all businesses, whether large or small. There is not a disproportionate share of benefits for small or large businesses.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This proposed rule may result in a small increase in the number of applications for import/export of caviar for personal use. Under the proposed rule, a CITES document would be required for any amount of caviar over 125g (a reduction from the 250g currently allowed without a permit under the personal effects exemption).

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule would assist U.S. businesses and individuals traveling abroad in ensuring that they are meeting all current CITES requirements, thereby decreasing the possibility that shipments may be delayed or even seized in another country that has implemented CITES resolutions not yet incorporated into U.S. regulations.

*Unfunded Mandates Reform Act*: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This proposed rule would not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. As the lead agency for implementing CITES in the United States, we are responsible for monitoring import and export of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES. The structure of the program imposes no unfunded mandates. Therefore, this proposed rule would have no effect on small governments' responsibilities.

b. This proposed rule would not produce a Federal requirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

*Takings*: Under Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. This proposed rule is not considered to have takings implications because it would not further restrict the import, export, or re-export of CITES specimens. Import, export, and re-export of caviar in amounts greater than 125 grams will still be allowed with the appropriate CITES documents. The proposed rule would update the regulations for the import, export, and re-export of CITES specimens, which would assist the importing and exporting community in conducting international trade in CITES specimens.

*Federalism*: These proposed revisions to part 23 do not contain significant Federalism implications. A Federalism Assessment under Executive Order 13132 is not required.

*Civil Justice Reform*: Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*: This proposed rule does not contain any new information collections or recordkeeping requirements for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We 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.

*National Environmental Policy Act (NEPA)*: The FWS has determined that this proposed rule is categorically

excluded from further NEPA review as provided by 516 DM 2, Appendix 1.9, of the Department of the Interior National Environmental Policy Act Revised Implementing Procedures (69 FR 10866, March 8, 2004). No further documentation will be made.

*Government-to-Government Relationship with Tribes*: Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Individual tribal members must meet the same regulatory requirements as other individuals who trade internationally in CITES species.

*Energy Supply, Distribution or Use*: On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. This proposed rule would revise the current regulations in 50 CFR part 23 that implement CITES. The regulations provide procedures to assist individuals and businesses that import, export, and re-export CITES wildlife and plants, and their parts, products, and derivatives, to meet international requirements. This proposed rule would not significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

*Clarity of this regulation*: We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

## Public Comments

We are seeking comments on whether the provisions in this proposed rule allow the affected public to effectively comply with CITES. You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information-on *http://www.regulations.gov*. If you provide personal identifying information in your written comments you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service; Division of Management Authority; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203; telephone, (703) 358-2093.

## List of Subjects in 50 CFR Part 23

Animals, Endangered and threatened species, Exports, Fish, Foreign officials, Foreign trade, Imports, Reporting and recordkeeping requirements, Transportation, Treaties, Wildlife.

## Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend title 50, chapter I, subchapter B of the CFR as follows:

## PART 23 – [AMENDED]

1. The authority citation for part 23 continues to read as follows:

**Authority:** Convention on International Trade in Endangered Species of Wild Fauna and Flora (March 3, 1973), 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

### § 23.15 [Amended]

2. Amend § 23.15 (c)(3)(i), the first entry in the table, by removing the words ''250 gm'' in the Quantity column and by adding in their place the words ''125 gm.''

3. Amend § 23.71(d) by removing paragraph (d)(4) and revising paragraphs (d)(1), (d)(2), and (d)(3) to read as follows:

### § 23.71 How can I trade internationally in sturgeon caviar?

* * * * *

(d) * * *

(1) The relevant countries have established annual export quotas for the shared stocks that were derived from catch quotas agreed among the countries. The quotas are based on an appropriate regional conservation strategy and monitoring regime and are not detrimental to the survival of the species in the wild.

(2) The quotas have been communicated to the CITES Secretariat and the Secretariat has communicated the annual export quotas to CITES Parties.

(3) The caviar is exported during the quota year (March 1 – last day of February) in which it was harvested and processed.

* * * * *

Dated: June 5, 2008

**David M. Verhey**

*Acting Assistant Secretary for Fish and Wildlife and Parks*

[FR Doc. E8–16198 Filed 7–16–08; 8:45 am]

BILLING CODE 4310–55–S

# Notices

Federal Register

Vol. 73, No. 138

Thursday, July 17, 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

### Submission for OMB Review; Comment Request

July 14, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Food and Nutrition Service

*Title:* Food Stamp Redemption Certificate.

*OMB Control Number:* 0584–0085.

*Summary of Collection:* The Food Stamp Act of 1977 requires the Department of Agriculture to issue regulations that provide for the redemption of coupons accepted by retail food stores through approved wholesale food concerns or through insured financial institutions. The Food and Nutrition Service (FNS) will provide authorized retail stores and wholesale food concerns with redemption certificates. The Redemption Certificate and Wholesaler Redemption Certificate (RCs) are used by all authorized wholesalers or retailers when depositing food stamp coupons, and are processed by financial institutions when they are presented for credit or for cash. The issuance of food stamp benefits through the Electronic Benefit Transfer (EBT) system has replaced the issuance of food coupons.

*Need and Use of the Information*: The Food and Nutrition Service (FNS) will collect information on the verification of the amount of coupons forwarded to the bank for redemption. RCs are distributed to each authorized retailer or wholesaler by FNS for completion. FNS uses the deposit information from the RC to monitor (1) deposits by retailer and wholesale food concerns, and (2) for store monitoring and compliance purposes.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 679.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 32.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E8–16362 Filed 7–16–08; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Edward R. Madigan United States Agricultural Export Excellence Board of Evaluators: Nominations

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

**ACTION:** Edward R. Madigan United States Agricultural Export Excellence Board of Evaluators: Nominations.

**SUMMARY:** Notice is hereby given that nominations are being sought for six (6) qualified persons to serve on the Edward R. Madigan United States Agricultural Export Excellence Board of Evaluators (Board). The role of the Board is to provide the Secretary of Agriculture with advice and recommendations for the selection of recipients of the Edward R. Madigan United States Agricultural Export Excellence Award.

**DATES:** Written nominations must be received on or before September 2, 2008.

**ADDRESSES:** Send all nominating materials to Mr. Dale Miller, Office of Trade Programs, Foreign Agricultural Service, Mail Stop 1020, 1400 Independence Avenue, SW., Washington, DC 20250–1020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dale Miller, Office of Trade Programs, Foreign Agricultural Service, Mail Stop 1020, 1400 Independence Avenue, SW., Washington, DC 20250–1020, telephone (202) 690–0752, *e-mail: dale.miller@fas.usda*. Form AD–755 is required and is available at the FAS home page: *http://www.fas.usda.gov/admin/ad755.pdf*. Form SF–181 is requested, but optional, and is available at *http://www.fas.usda.gov/admin/sf181.pdf*. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:** The Board is authorized by Section 261(h) of the Federal Agriculture Improvement and Reform Act of 1996. The overall purpose of the Board is to provide the Secretary of Agriculture with advice and recommendations for the selection of recipients of the Edward R. Madigan United States Agricultural Export Excellence Award. The Board is

composed of six (6) representatives from the private sector selected for their knowledge and experience in exporting U.S. agricultural products. More information about the purpose and function of the Board can be found at: *http://www.fas.usda.ov/info/madigan/madigan.asp*.

The members of the Board are appointed by the Secretary of Agriculture and serve at the discretion of the Secretary. Board members serve at their own expense; they are not compensated for their services and do not receive per diem or travel funds. Three (3) members will be selected for 2-year term maximum and three (3) others for 3-year term maximum. The Secretary may renew an appointment for one or more additional terms. The Board shall meet as often as the Secretary of Agriculture deems necessary either in person or via teleconference to review nominations and make recommendations.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, physical handicap, marital status, or sexual orientation. To ensure that the work of the Board takes into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the interest of minorities, women, and persons with disabilities.

Members are selected primarily for their knowledge and experience in exporting U.S. agricultural products. No person, company, producer, farm organization, trade association, or other entity has a right to representation on the Board. In making selections, every effort will be made to maintain balanced representation of the various broad industries within the United States as well as geographic diversity.

Dated: June 27, 2008.

**Michael W. Yost,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. E8–16382 Filed 7–16–08; 8:45 am]

**BILLING CODE 3410–10–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Information Collection; Subsistence Harvest Patterns in Prince William Sound

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection: Subsistence Harvest Patterns in Prince William Sound.

**DATES:** Comments must be received in writing on or before September 15, 2008, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to Aaron Poe, Glacier Ranger District, Chugach National Forest, Forest Service, USDA, P.O. Box 129, Forest Station Road, Girdwood, AK 99587.

Comments also may be submitted via facsimile to 907–783–2094 or by e-mail to: *apoe@fs.fed.us.*

The public may inspect comments received at Glacier Ranger District, 145 Forest Station Road, Girdwood, Alaska during normal business hours; 0800–1700 Monday through Friday. Visitors are encouraged to call ahead to 907–783–3242 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:** Aaron Poe at (907) 783–3242. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Subsistence Harvest Patterns in Prince William Sound.

*OMB Number:* 0596–New.

*Type of Request:* New.

*Abstract:* In 1989, Prince William Sound (PWS), the heart of the Chugach National Forest (CNF), was severely impacted by the Exxon Valdez Oil Spill (EVOS). In the aftermath of the spill, Federal and state trustees were awarded criminal and civil restitution funds to help with the recovery (and the evaluation of the recovery) of injured resources and human services, including traditional practices of subsistence harvest, which is still listed as ''recovering.'' For the current list of injured resources and services, please visit the Exxon Valdez Oil Spill Trustee Council's Web site at *http://www.evostc.state.ak.us/Publications/injuredresources.cfm.*

The CNF, as the major land-owning Federal trustee in PWS, plays an important role in the recovery process. One area of critical importance to CNF managers, which has received less attention by researchers, is the distribution, behavior, and experience of human users throughout the Sound and the impact of these users on EVOS recovering resources and services. Recreation use is increasing in the Sound, and there is concern that increased competition and rapid growth in commercial and independent recreation may be negatively impacting subsistence activities through direct competition for resources from sport fishers and hunters, but also indirectly by displacing subsistence harvesters from traditional harvest areas.

Understanding the subsistence harvest patterns in the Sound will add critical depth to the few existing PWS human use studies by:

(1) Describing the exact nature of overlap between subsistence and recreation use in Sound,

(2) Helping managers better understand the dynamics around the resulting interactions between these two important user groups, and

(3) Allowing managers to anticipate potential conflicts.

Conflicts between user groups have significant implications for EVOS impacted resources and services. Conflicts can diminish quality of life/experience for both subsistence and recreation groups (each already harmed by the spill) and push harvest and recreation activities into previously unused areas, potentially negatively affecting the 25 impacted and recovering resources.

The results of this survey (funded by EVOS criminal restitution dollars) will provide information on recovery and restoration activities undertaken by both the EVOS trustees and local resource managers relative to current and projected levels of human use. The study provides an excellent opportunity to assess the recovery of the subsistence human service injured and redistributed by the EVOS, as well as how CNF managers can further enhance recovery.

Residents from the four communities of PWS who are subsistence eligible (Chenega, Cordova, Tatitlek, and Whittier) will be consulted through individual household interviews conducted by current community institutions (that is, Tribal or community councils). Respondents will describe harvest practices and any recent changes in such activities due to other users or changes in species availability.

Researchers from the Forest Service, U.S. Department of Agriculture and University of Arizona will collect and analyze the data collected, then compare the data to information on recreation activities to identify the location and timing of potential interactions between subsistence harvesters and recreation users. Forest Service managers will use the resulting analysis to define baseline harvest patterns for the Prince William Sound, giving decision makers insight into the recovery of this important human

service (redistributed around the Sound in the aftermath of EVOS). This information will allow managers to mitigate potential conflicts. Further, study results may assist in the identification of potential changing resource harvest dynamics during a time of increasing human use in the Prince William Sound.

*Estimate of Annual Burden:* 30 minutes.

*Type of Respondents:* Individuals—(heads of households).

*Estimated Annual Number of Respondents:* 250.

*Estimated Annual Number of Responses per Respondent:* One.

*Estimated Total Annual Burden on Respondents:* 125 hours.

**Comment Is Invited**

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: July 11, 2008.

**Gloria Manning,**

*Associate Deputy Chief.*

[FR Doc. E8–16361 Filed 7–16–08; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Santa Fe National Forest, New Mexico, Motorized Travel Management Plan

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Santa Fe National Forest (Forest) will prepare an environmental impact statement to designate a system of roads, trails, and areas open to motorized travel by class of vehicle and time of year, in accordance with the Agency's 2005 Travel Management Rule. As part of the proposal, the Forest will also address the use of motor vehicles for dispersed camping and big game retrieval. Once a decision is made about which roads, trails, and areas will be open to motorized use, motorized travel off the designated system will be prohibited. The designated roads, trails, and areas will be published on a motor vehicle use map, which will serve as the primary tool for compliance and enforcement.

This notice summarizes the proposal, opportunities for public participation, decisions to be made, and estimated dates for publication of documents associated with the project.

**DATES:** Comments about the proposal should be submitted within 45 days of the date of publication of this notice in the **Federal Register**. The Forest expects to publish the draft environmental impact statement in June 2009 and the final environmental impact statement in September 2009. For public meeting dates, refer to the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** Send written comments to Julie Bain, Project Leader, Santa Fe National Forest Travel Management Planning, 1474 Rodeo Road, Santa Fe, NM 87505. Fax comments to (505) 438–7834. Send electronic comments to *comments-southwestern-santafe@fs.fed.us* with ''Travel Management'' in the subject line. Electronic attachments must be in one of the following formats: .doc, .rtf, .txt, or .pdf.

**FOR FURTHER INFORMATION CONTACT:**

*Process Information:* Julie Bain, Project Leader, Santa Fe National Forest, at (505) 438–7829 or *sftravelmgt@fs.fed.us.*

*Technical Information:* Diane Taliaferro, Recreation Program Manager, Santa Fe National Forest, at (505) 438–7823 or *sftravelmgt@fs.fed.us.*

The proposed action, maps, and other pertinent information about this project can be found on the Forest's Web site: *http://www.fs.fed.us/r3/sfe/travelmgt/index.html.*

**SUPPLEMENTARY INFORMATION:**

*Background:* People use motor vehicles to access the Santa Fe National Forest for a number of activities, such as hiking, horseback riding, hunting, camping, sightseeing, viewing wildlife, fishing, and collecting firewood or other forest products. People also use vehicles for administrative and commercial activities such as logging, grazing management, and utility maintenance.

The Forest Service has identified four major threats to the national forests and grasslands: (1) The risk of catastrophic fire, (2) the loss of open space, (3) invasive species, and (4) unmanaged recreation, including the effects of unmanaged off-highway vehicles (OHVs). In response to the latter, on November 9, 2005 the Forest Service published final travel management regulations governing OHVs and other motor vehicles on national forests and grasslands.

The Travel Management Rule requires that national forests designate a system of roads, trails, and areas open for motor vehicle use by class of vehicle, and if appropriate, by time of year. The designated roads, trails, and areas will be published on a motor vehicle use map for the public's use. After routes and areas are designated and the motor vehicle use map published, motor vehicle use not in accordance with these designations will be prohibited. The Travel Management Rule also addresses the use of vehicles to access campsites and retrieve big game.

*Proposed Action:* The full text and maps of the proposed action are located on the Forest's Web site at *http://www.fs.fed.us/r3/sfe/travelmgt/index.html.* Under the proposed action, the Forest would do the following: Change forest policy regarding motorized travel, designate a system of roads, trails, and areas, designate motorized access to dispersed camping, and limit the motorized retrieval of downed big game to the designated system. Each action is described below.

*Forest Policy:* The Santa Fe National Forest proposes to amend its current forest plan direction so that it complies with the Travel Management Rule and to update language related to management of the transportation system. The proposed action would:

- Designate a system of roads, trails, and areas open to motor vehicle use by the public by class of vehicle and time of year pursuant to section 212.51.
- Prohibit travel off the designated system pursuant to section 251.13.
- Remove the minimum open road density standard from all management areas.
- Amend the maximum open road density standard for specific units within management areas not meeting the open road density currently listed in the forest plan.
- Remove quantitative goals for road construction, reconstruction, and decommissioning.

*Roads:* To reduce the negative effects to national forest system lands and resources from excessive or poorly situated roads and still provide

motorized access, the Santa Fe National Forest proposes to designate 2,309 miles of the existing 4,924 miles of roads for motorized travel by the public by class of vehicle and season of use. This would reduce the number of miles authorized for motor vehicle use from the existing direction by 2,615 miles, equal to a 53% reduction.

The 2,309 miles proposed for designation includes 17 miles of unauthorized roads, 90 miles of closed forest roads, 9 miles of previously decommissioned roads, 73 miles of non-system roads, and 7 miles of undetermined roads. The remaining 2,113 miles proposed for designation are existing forest roads.

*Motorized Trails:* To provide opportunities for managed motorized recreation, the Santa Fe National Forest proposes to designate 247 miles of trail for motorized use. One hundred and five miles would be for ATVs and motorcycles, and 142 miles would be for motorcycles only. Additionally, approximately 2,040 miles of roads, some of which are coincident with trails, would also be available for use by ATVs and motorcycles.

This proposal would close some existing trails to motorized use, or not designate some trails, that are currently being used for such. It would designate approximately 71 miles of unauthorized trails. The proposal would convert the following miles of road to trail: 49 miles of closed forest roads, 13 miles of previously decommissioned roads, 7 miles of non-system roads, and 1 mile of undetermined road. The remaining 103 miles proposed for designation are existing forest trails.

*Motorized Areas:* To reduce the negative effects caused by vehicles traveling cross-country, the Santa Fe National Forest proposes to designate approximately 50 acres for motorized cross-country use. Cross-country motorized travel outside of these areas will be prohibited.

On the Jemez Ranger District, the Forest proposes 12 small areas totaling approximately 40 acres for motorcycle use. To access these areas, people would use designated motorized single-track trails. A trials motorcycle group has used these areas for competitive events under a special use permit for the last several years. Their attractiveness for cross-country travel lies in the large boulders and rocky terrain, where riders test their technical abilities at slow speeds.

On the Pecos/Las Vegas Ranger District, the Forest proposes ten areas, generally one acre or less to provide motorized dispersed camping in locations that are already well used for this activity. The Travel Management Rule does not differentiate among types of uses within a designated area, so vehicle use would not be limited to camping.

*Motorized Access to Dispersed Camping:* To reduce the risk of future damage to natural and heritage resources, the Santa Fe National Forest proposes to designate motorized access to dispersed camping.

The Forest used three methods to designate access to motorized dispersed camping: (1) Designating specific routes leading to dispersed campsites; (2) designating areas; and (3) designating corridors along certain roads pursuant to section 212.51(b). Parking safely next to the side of a designated road and using non-motorized means to get to a campsite will continue to be allowed throughout the Forest. The Forest's intent is to designate access to those areas where people are already camping, unless substantial resource damage is occurring.

The Forest proposes to designate 150-foot corridors on either side of 437 miles of road and 8 miles of trail, and 300-foot corridors on either side of the road along 71 miles of road. The roads leading to dispersed campsites beyond these designated distances are proposed individually for designation.

*Motorized Access to Retrieve Downed Big Game:* Recognizing that any OHV use off designated roads and trails has the potential to stimulate additional unintended use and subsequent habitat degradation, the Santa Fe National Forest proposes to limit the use of motor vehicles to retrieve downed game to designated routes only. No corridors to retrieve big game with a motorized vehicle are being proposed.

*Responsible Official:* The Responsible Official is the Forest Supervisor, Santa Fe National Forest, 1474 Rodeo Road, P.O. Box 1689, Santa Fe, NM 87504–1689.

*Nature of Decision To Be Made:* Based on the environmental analysis, the forest supervisor will decide: (1) Which roads, trails, and areas will be designated for motorized use by the public by vehicle class and time of year; (2) where to designate motorized access for dispersed camping; and (3) whether to designate motorized access to retrieve downed game; and (4) what forest plan amendments to adopt.

*Scoping Process:* This notice of intent initiates the scoping process that guides the development of the draft environmental impact statement. The Forest invites written comments and suggestions on the proposed action, including any issues to consider, as well as any concerns relevant to the analysis. The Forest encourages electronic correspondence on this proposed action. Forest staff will also conduct a series of public meetings:

1. Mora-Cleveland area: Monday, July 28, 2008, 6–8:30 p.m., CHET Fire Department, Highway 518, Cleveland, New Mexico.
2. Coyote: Tuesday, July 29, 2008, 6–8:30 p.m., Coyote Elementary School, W. Highway 96, Coyote, New Mexico.
3. Las Vegas: Wednesday, July 30, 2008, 6–8:30 p.m., West Kennedy Hall, NMHU, University Avenue, Las Vegas, New Mexico.
4. Jemez: Thursday, July 31, 2008, 6–8:30 p.m., Valles Caldera Conference Room, 18161 Highway 4, Jemez Springs, New Mexico.
5. Rowe-Pecos area: Saturday, August 2, 2008, 10 a.m.–12:30 p.m., Pecos Middle School Cafeteria, N. Highway 63, Pecos, New Mexico.
6. Peña Blanca: Tuesday, August 5, 2008, 6–8:30 p.m., Peña Blanca Community Center Gym, 778 Highway 22, Peña Blanca, New Mexico.
7. Glorieta, Eldorado, Cañoncito, Hondo area: Wednesday, August 6, 2008, 6–8:30 p.m., Hondo Volunteer Fire Department, 645 Old Las Vegas Highway, Santa Fe, New Mexico.
8. Cuba: Thursday, August 7, 2008, 6–8:30 p.m., Cuba Senior Center, 16A Cordova Street, Cuba, New Mexico.
9. Santa Fe: Tuesday, August 12, 2008, 6–8:30 p.m., Unitarian Universalist Congregation, 107 W. Barcelona Rd., Santa Fe, New Mexico.
10. Los Alamos: Thursday, August 14, 2008, 6–8:30 p.m., Fuller Lodge, 2132 Central Avenue, Los Alamos, New Mexico.
11. Española: Monday, August 18, 2008, 6–8:30 p.m., Española Ranger Station, 1710 N. Riverside Drive, Española, New Mexico.
12. Rio Rancho: Tuesday, August 19, 2008, 6–8:30 p.m., Destiny Center, 4401 Northern Blvd., NE., Rio Rancho, New Mexico.
13. Albuquerque: Wednesday, August 20, 2008, 6–8:30 p.m., UNM Conference Center, Room B, 1634 University Blvd., NE., Albuquerque, NM.

The meetings set aside time for informal discussions, a presentation, map review, and asking questions.

*Contacts at Ranger Districts:* The district rangers listed below can answer site-specific questions on the proposal. Coyote Ranger District: Francisco Sanchez, (575) 638–5526. Cuba Ranger District: Jim Eaton or Derek Padilla, (575) 289–3264.

Jemez Ranger District: Linda Riddle, (575) 829–3535. Pecos/Las Vegas Ranger District: Steve Romero, (505) 757–6121 or (505) 425–3535.

Española Ranger District: Sandy Hurlocker, (505) 753–7331.

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be a minimum of 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: July 2, 2008.

**Daniel J. Jiron,**

*Forest Supervisor.*

[FR Doc. E8–16374 Filed 7–16–08; 8:45 am]

BILLING CODE 3410–11–P

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ravalli County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Meeting.

**SUMMARY:** The Ravalli County Resource Advisory Committee will be meeting about a presentation ''Climate Change Solutions: Where do we go from here?'' given by Dr. Faith Ann Heinsch, and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

**DATES:** The meeting will be held on July 22, 2008, 6:30 p.m.

**ADDRESSES:** The meeting will be held at the Bitterroot National Forest Supervisors Office, 1801 North First, Hamilton, Montana. Send written comments to Daniel G. Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Daniel G. Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: July 7, 2008.

**David T. Bull,**

*Forest Supervisor.*

[FR Doc. E8–16220 Filed 7–16–08; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Revised Notice of Meetings, Santa Rosa and San Jacinto Mountains National Monument Advisory Committee

**AGENCIES:** Forest Service, U.S. Department of Agriculture; and Bureau of Land Management, U.S. Department of the Interior.

**ACTION:** Revised notice of meetings of the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee for 2008 and 2009.

**SUMMARY:** The Santa Rosa and San Jacinto Mountains National Monument Advisory Committee (Monument Advisory Committee) will meet as indicated below.

**DATES:**

- September 15, 2008.
- March 16, 2009.
- September 21, 2009.

All meetings of the Monument Advisory Committee will start at 3 p.m. and conclude at 6 p.m.

**ADDRESSES:** Meetings of the Monument Advisory Committee will be held at the County of Riverside Permit Assistance Center, Second Floor Conference Room, 38686 El Cerrito Road, Palm Desert, California.

**FOR FURTHER INFORMATION CONTACT:** Jim Foote, Monument Manager, Santa Rosa and San Jacinto Mountains National Monument, c/o Bureau of Land Management, 690 West Garnet Ave., P.O. Box 581260, North Palm Springs, CA 92258; telephone (760) 251–4800; facsimile message (760) 251–4899; e-mail *jfoote@ca.blm.gov.*

**SUPPLEMENTARY INFORMATION:** This notice identifies a change in meeting dates and times for the remainder of 2008, as published in the **Federal Register** on August 23, 2007, and identifies meeting dates for 2009. While the September 6, 2008 meeting has been changed to September 15, 2008, the meeting of December 6, 2008 is cancelled.

Meetings of the Monument Advisory Committee focus on implementation of the Santa Rosa and San Jacinto Mountains National Monument Management Plan (2004). All meetings are open to the public. A public comment period when members of the public may address the Monument Advisory Committee will occur at 4 p.m. during each meeting. Written comments may be sent to the Monument Manager at the address shown above; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: July 9, 2008.

**John R. Kalish,**

*Field Manager, Palm Springs-South Coast Field Office, California Desert District, Bureau of Land Management.*

Dated: July 9, 2008.

**Laurie Rosenthal,**

*District Ranger, San Jacinto Ranger District, San Bernardino National Forest, Forest Service.*

[FR Doc. E8–16337 Filed 7–16–08; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

**AGENCY:** Deschutes National Forest, USDA Forest Service.

**ACTION:** Notice of Proposed New Fee Sites.

**SUMMARY:** The Deschutes National Forest is planning to charge fees at eleven recreation sites. Most of the sites have recently been reconstructed and upgraded. There are plans to add amenities to all sites in order to improve services and experiences. With the exception of Fall River Guard Station, all sites will be administered according to the current fee structure on the Deschutes National Forest which requires a Recreation Pass for parking. Day use fees would be five dollars and recreation passes, such as the Annual Recreation Fee Pass or Interagency Pass would continue to be honored. 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.

Fall River Guard Station will be available for overnight rental. Cabin rentals offer a unique experience and are a widely popular offering on National Forests. The rental fee will be between $70 and $100 a night. Fall River Guard Station is eligible for the National Register of Historic Places and the nomination process is currently being completed. The cabin has been recently renovated and the last phases are almost finished. A campground style toilet will be installed and renters will be responsible for bringing their own water. The cabin will be ready for rental in September, 2008. Fees would continue to help protect and maintain the historic integrity of this cabin. Simax Beach consists of two beach areas that are divided by a rock jetty. One beach allows dogs and the other beach does not. Both beaches have picnic tables, bulletin boards, a paved parking area, a paved road, fire rings, toilets, garbage collection, and a portal sign.

Tranquil Cove is a day use picnic area with a parking lot, a toilet, picnic tables and fire rings.

Spring Boat Launch has a paved parking lot, docks, signs, garbage collection and a toilet. Crescent Lake Boat Launch has a paved parking lot, docks, signs, garbage collection and a toilet.

The Windy-Oldenberg Trailhead has a large parking lot, an interpretive kiosk, toilets, and garbage collection.

Trapper Creek Boat Launch has interpretive signs, a parking area, a dock, a toilet, and garbage collection.

The Whitefish Creek Trailhead is at the back of a horse camp with a small parking lot that is only capable of holding two or three truck and trailer combinations. The site is unable to handle the amount of current use and there are plans to relocate it to a better location with adequate parking, toilets and garbage collection.

Princess Creek Boat Launch has a picnic area, a parking area, docks, a toilet, and garbage collection.

Sunset Cove Boat Launch has a large paved parking lot, a dock that provides for disabled access, interpretive signs, a fish cleaning station, a toilet, and garbage collection. Willamette Pass/Rosary Trailhead has a parking area, a toilet and a signboard.

**DATES:** New fees would begin in May of 2009, contingent upon completion of certain improvements.

**ADDRESSES:** John Allen, Forest Supervisor, Deschutes National Forest, 1001 SW., Emkay Drive, Bend, OR 97702.

**FOR FURTHER INFORMATION CONTACT:** Leslie Moscoso, Recreation Fee Coordinator, 541–383–4712.

**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 11, 2008.

**John Allen,**

*Forest Supervisor.*

[FR Doc. E8–16383 Filed 7–16–08; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Rosemont Copper Project, Coronado National Forest, Pima County, AZ

**AGENCY:** Forest Service, USDA.

**Authority:** 40 CFR 1501.6.

**ACTION:** Notice of Solicitation of Interest and Eligibility of Federal and Non-Federal Cooperating Agencies.

**SUMMARY:** USDA Forest Service, Coronado National Forest is soliciting the interest and eligibility of potential federal and non-federal (tribal, state, and local governments and their agencies) in participating as cooperating agencies in the environmental study of the Mine Plan of Operation for the proposed Rosemont Copper Mine, Pima County, Arizona.

**DATES:** USDA Forest Service, Coronado National Forest requests written responses of interest and eligibility from potential federal and non-federal cooperating agencies by August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** For further information about this notice, please contact Ms. Reta Laford, Deputy Forest Supervisor, at (520) 388–8300.

**SUPPLEMENTARY INFORMATION:** The proposed Rosemont Copper Mine would extract and process ores from the Rosemont Deposit located approximately 30 miles southeast of Tucson, Arizona. The mine and associated facilities would encompass approximately 4,500 acres in public and private ownerships in Pima County, Arizona.

The Coronado National Forest, in compliance with the National Environmental Policy Act, published a Notice of Intent in the **Federal Register** (*http://www.fs.fed.us/r3/coronado/rosemont/documents/rosemont-noi-02282008.pdf*) to prepare an environmental impact statement on Rosemont Copper Company's Mine Plan of Operations. In March 2008, several agencies also received a scoping notice about this project. Briefly, the proposed action is to construct and operate an open-pit copper mine and associated processing facilities, including access roads, required utilities, and to reclaim affected lands. A full description of the proposed action (Mine Plan of

Operation) may be viewed at: *http://www.rosemontcopper.com/operations2.asp.*

The USDA Forest Service, Coronado National Forest is inquiring about federal and non-federal agency's interest and eligibility in serving as a cooperating agency. Federal and non-federal agencies interested in being a cooperating agency on this project should have jurisdiction by law (40 CFR 1508.15) and/or special expertise (40 CFR 1508.26) to contribute to the environmental study.

By August 29, 2008, federal and non-federal agency's desiring to cooperate in the environmental study of this Mine Plan of Operation should respond to this solicitation of interest with a written description of their interest and reasons for potential eligibility.

Written responses should be sent to: USDA Forest Service, Coronado National Forest, Attn: Rosemont Copper Project, 300 West Congress Street, Tucson, Arizona 85701.

Upon receipt of responses, the Coronado Forest Supervisor will make a determination of eligibility. Agencies that express interest, but for which eligibility is unclear, will be contacted for additional information. Agencies determined to be interested and eligible will receive a formal letter of invitation to be a cooperating agency. Additional information about the roles and responsibilities of cooperating agencies is available on the Council of Environmental quality Web site:

Memorandum for the Heads of Federal Agencies from James Connaughton, Chair: *http://ceq.hss.doe.gov/nepalregs/cooperating/cooperatingagenciesmemorandum.html.*

Attachment 1—Factors for Determining Whether to Invite, Decline or End Cooperating Agency Status: *http://ceq.hss.doe.gov/nepalregs/cooperating/cooperatingagencymemofactors.html.*

Identifying Non-Federal Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act: *http://ceq.hss.doe.gov/nepalregs/000925letter.html.*

Questions or concerns about the Mine Plan of Operation or agencies' respective roles and responsibilities during the preparation of this environmental study should be directed to Deputy Forest Supervisor, Reta Laford. Ms. Laford may be reached via telephone at (520) 388–8300.

Dated: July 9, 2008,

**Jeanine A. Derby,**

*Forest Supervisor.*

[FR Doc. E8–16314 Filed 7–16–08; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Application No. 88–10A16]**

### Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an Amended Export Trade Certificate of Review to Wood Machinery Manufacturers of America (''WMMA'').

**SUMMARY:** The U.S. Department of Commerce has issued an amended Export Trade Certificate of Review (''Certificate'') to the Wood Machinery Manufacturers of America (''WMMA'') on July 9, 2008. WMMA's application to amend its Certificate was announced in the **Federal Register** on April 21, 2008 (73 FR 21316). The original Certificate No. 88–00016 was issued to WMMA on February 3, 1989, and announced in the **Federal Register** on February 9, 1989 (54 FR 6312). The most recent amendment, No. 88–9A016, was issued to WMMA on August 8, 2005, and announced in the **Federal Register** on August 12, 2005 (70 FR 47178).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2006).

Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Amended Certificate**

WMMA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Mattison Rotary Lathes, LLC, La Center, Kentucky; Safety Speed Cut Manufacturing Company, Inc., Ham Lake, Minnesota; Western Cutterheads, Inc., La Center, Kentucky.

2. Reinstate as a ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): The Original Saw Co. (''OSC''), Britt, Iowa. OSC ceased to be a Member on April 12, 2007, when WMMA submitted an annual report that relinquished OSC's membership. WMMA seeks to reinstate OSC as a Member of the Certificate.

3. Delete the following company as a ''Member'' of WMMA's Certificate: Warsaw Machinery, Inc., Warsaw, Indiana.

The effective date of the amended certificate is April 10, 2008, the date on which WMMA's application to amend was deemed submitted. A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: July 11, 2008.

**Jeffrey Anspacher,**

*Director, Export Trading Company Affairs.*

[FR Doc. E8–16285 Filed 7–16–08; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### The Manufacturing Council: Meeting

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Supplemental Notice of a Meeting.

**SUMMARY:** The Manufacturing Council will hold a meeting to discuss the Sustainable Manufacturing Initiative and the Manufacturing 2040 project.

**DATES:** July 23, 2008.

*Time:* 2 p.m. (EDT).

**ADDRESSES:** U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC 20230.

**FOR FURTHER INFORMATION, CONTACT:** The Manufacturing Council Executive Secretariat, Room 4043, Washington, DC 20230 (*Phone:* 202–482–1369), or visit the Council's Web site at *http://www.manufacturing.gov/council.*

Dated: July 11, 2008.

**Kate Sigler,**

*Executive Secretary, The Manufacturing Council.*

[FR Doc. E8–16284 Filed 7–16–08; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–570–601**

### Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''the Department'') is conducting the twentieth administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from the People's Republic of China (''PRC''), covering the period June 1, 2006, through May 31, 2007. We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'') for which the importer–specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** July 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** Lori Apodaca or Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4551 and (202) 482–4474, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On June 26, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on TRBs from the PRC for the period June 1, 2006, through May 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 72 FR 30542 (June 1, 2007). On June 29, 2007, Koyo Corporation of U.S.A. (''Koyo'') requested that the Department conduct an administrative review of the duty order for entries of subject merchandise produced and/or exported by Yantai Timken Company Limited (''Yantai Timken''). Additionally, on June 29, 2007, Peer Bearing Company Changshan (''CPZ''), an exporter of TRBs, requested that the Department conduct an administrative review of its sales. On July 26, 2007, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of TRBs from the PRC for the period June 1, 2006, through May 31, 2007, for CPZ and Yantai Timken. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 41057 (July 26, 2007). On September 4, 2007, the Department issued its antidumping duty questionnaire to CPZ and Yantai Timken.

On October 5, 2007, the Department requested interested parties to submit comments on surrogate values. On October 19, 2007, we received a surrogate country submission from the Timken Company (''Petitioner''). On November 1, 2007, the Department received a surrogate values submission from Petitioner. On April 14, 2008, we received corrected factor values from Petitioner. On June 3, 2008, the Department received additional surrogate values from CPZ. On June 13, 2008, Petitioner submitted comments to the Department in response to CPZ's surrogate value comments.

On March 4, 2008, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until June 30, 2008. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 11617 (March 4, 2008).

#### CPZ

CPZ submitted its Section A questionnaire response on October 3, 2007, its Section C response on October 31, 2007, and its Section D response on November 5, 2007. The Department issued a Sections A, C and D supplemental questionnaire to CPZ on April 2, 2008. CPZ submitted its Sections A, C and D supplemental questionnaire response on April 29, 2008.

#### Yantai Timken

Yantai Timken submitted a letter to the Department dated September 25, 2007, stating that it will not be filing a questionnaire response as it had only a few exports to the United States, which were for use by its parent company, the Timken Company. *See* Letter from Yantai Timken to Department of Commerce, dated September 25, 2007 (''Non–Participation Letter'').

#### Period of Review

The POR is June 1, 2006, through May 31, 2007.

#### Scope of the Order

Imports covered by this order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15 and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

#### Non–Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006). No party to this proceeding has contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

*Surrogate Country*

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's factors of production (''FOP'') when available information does not permit NV to be

determined under section 773(a) of the Act. The Act further instructs the Department to value FOPs based on the best available information in a surrogate market economy country or countries considered to be appropriate by the Department. See Section 773(c)(1) of the Act.

When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. *See* Section 773(c)(4) of the Act. Further, the Department normally values all FOPs in a single surrogate country. *See* 19 CFR 351.408(c)(2). The sources of the surrogate values (''SVs'') are discussed under the ''Normal Value'' section below and in the Memorandum to the File, ''Factors Valuations for the Preliminary Results of the Administrative Review,'' dated June 30, 2008 (''Factor Valuation Memorandum''), which is on file in the Central Records Unit, Room 1117 of the main Department building.

The Department has determined that India, Indonesia, the Philippines, Egypt and Sri Lanka are countries comparable to the PRC in terms of economic development. *See* Memorandum from Ron Lorentzen to Robert Bolling; Antidumping Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (''Bearings''), from the People's Republic of China (PRC): Request for a List of Surrogate Countries, dated October 3, 2007. Once the economically comparable countries have been identified, we select an appropriate surrogate country by determining whether one of these countries is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.

On October 19, 2007, Petitioner submitted comments on the surrogate country selection. Petitioner stated that India is the appropriate surrogate country because India is at a comparable economic level with the PRC and is a significant producer of subject merchandise.

We have determined it appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (A) India is at a level of economic development comparable to that of the PRC, and (B) India is a significant producer of comparable merchandise. Furthermore, we have reliable data from India that we can use to value the FOPs. See Factor Valuation Memorandum. Thus, we have calculated NV using Indian prices when available and appropriate to value CPZ's FOPs.

**Separate Rates**

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation/review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''Sparklers''), as further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate–rate analysis is not necessary to determine whether it is independent from government control.

The sole participating company in this review, CPZ, stated that it is a China–Foreign joint venture, owned by two shareholders: Changshan Jingmi Bearing Group Co., Ltd., a Chinese company, and Illinois Peer Bearing Company LLC, a U.S. company. Therefore, the Department must analyze whether CPZ has demonstrated the absence of both *de jure* and *de facto* government control over export activities, and is entitled to a separate rate.

*a. Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by CPZ supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the company; and (3) there are formal measures by the government decentralizing control of the company. *See* CPZ's Section A Questionnaire Response, dated October 3, 2007.

*b. Absence of De Facto Control*

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates. We determine for CPZ that the evidence on the record supports a preliminary finding of de facto absence of government control based on record statements and supporting documentation showing the following: (1) CPZ sets its own export prices independent of the government and without the approval of a government authority; (2) CPZ retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) CPZ has the authority to negotiate and sign contracts and other agreements; and (4) CPZ has autonomy from the government regarding the selection of management. *See* CPZ's Section A Questionnaire Response, dated October 3, 2007.

The evidence placed on the record of this review by CPZ demonstrates an absence of *de jure* and *de facto* government control with respect to its

exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we are granting CPZ a separate rate.

**Application of Facts Available**

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (''*SAA*''), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id*. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

**Application of Total Adverse Facts Available**

Yantai Timken

On September 4, 2007, the Department issued its original questionnaire to Yantai Timken. On September 25, 2007, Yantai Timken stated it will not be filing a questionnaire response in this administrative review because it had only a few exports, which were for use by its parent company, Timken, and therefore had no commercial exports during the year. *See* Non–Participation Letter. Furthermore, Yantai Timken reported that its U.S. sales of subject merchandise (from pre–existing U.S. inventory) were few in number and small in value. Moreover, Yantai Timken stated that given the small volume of exports and sales it made during the POR, it has determined to forgo the expense of preparing and filing a questionnaire response. Because Yantai Timken failed to submit a questionnaire response, the Department was unable to conduct a separate–rate analysis of Yantai Timken. Accordingly, the Department finds that Yantai Timken has not demonstrated its entitlement to a separate rate and is, therefore, subject to the PRC–wide rate.

The PRC–Wide Entity

Because Yantai Timken did not respond to the Department's questionnaire, and therefore did not demonstrate its eligibility for separate–rate status, the Department is treating this PRC producer/exporter as part of the PRC–wide entity.

Additionally, because we have determined that Yantai Timken is part of the PRC–wide entity, the PRC–wide entity is now under review. Pursuant to section 776(a) of the Act, we further find that because the PRC–wide entity failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, or otherwise impeded the proceeding, it is appropriate to apply a dumping margin for the PRC–wide entity using facts otherwise available on the record. Additionally, we determine that the application of adverse facts available (''AFA'') is appropriate because the PRC–wide entity has failed to cooperate by not acting to the best of its ability to respond to the Department's request for information.

**Selection of the Adverse Facts Available Rate**

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In administrative reviews, the Department normally selects, as AFA, the highest rate determined for any respondent in any segment of the proceeding. *See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049, 52051 (September 12, 2007); *see also Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19506 (April 21, 2003).

The Court of International Trade (''CIT'') and the Court of Appeals for the Federal Circuit (''Federal Circuit'') have consistently upheld the Department's practice. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Circ. 1990) (''Rhone Poulenc''); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004)(upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less–than-fair–value investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 2005

Ct. Int'l. Trade 23 *23; Slip Op. 05–22 (February 17, 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA* at 890; *see also Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (December 23, 2004); *see also D&L Supply Co. v. United States, 113 F.3d 1220, 1223 (Fed. Cir. 1997)*. In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Rhone Poulenc*, 899 F.2d at 1190.

Consistent with the Department's practice and the purposes of section 776(b) of the Act, as AFA, we are assigning the rate of 60.95 percent to the PRC–wide entity, which is the highest rate found in any segment of the proceeding. This rate was calculated for Premier Bearing and Equipment Ltd. (''Premier'') in the final results of redetermination on remand from the CIT for the seventh administrative review of TRBs covering the POR of June 1, 1993, to May 31, 1994. *Peer Bearing Co. v. United States*, slip op. 02–53 (CIT 2002); as upheld by the Federal Circuit in 78 Fed. Appx. 718 (Fed. Cir. 2003); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review*, 67 FR 79902 (December 31, 2002) (''*TRBs Amended Final*''), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review*, 69 FR 10423 (March 5, 2004) (''*TRBs Amended Final 2*''). The Department preliminarily determines that this information is the most appropriate, from the available sources, to effectuate the purposes of AFA. The Department's reliance on secondary information to determine an AFA rate is subject to the requirement to corroborate. *See* section 776(c) of the Act and the ''Corroboration of Secondary Information'' section below.

**Corroboration of Secondary Information**

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See SAA* at 870. The *SAA* states that ''corroborate'' means to determine that the information used has probative value. The Department has determined that to have probative value information must be reliable and relevant. *See Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See SAA* at 870; *see also Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005).

The reliability of the AFA rate was determined by the calculation of the margin for Premier, pursuant to the final results of redetermination on remand from the CIT, for the seventh administrative review of TRBs (covering the POR of June 1, 1993, to May 31, 1994). *See TRBs Amended Final* and *TRBs Amended Final 2*. The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself. *See e.g., Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304, 41307–41308 (July 11, 2003). No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information contained in the 1993–1994 review is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers From Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (ruling that the Department will not use a margin that has been judicially invalidated). To assess the relevancy of the rate used, the Department compared the margin calculations of CPZ in this administrative review to the 60.95 percent rate. The Department found that the margin of 60.95 percent was within the range of the margins calculated on the record of this administrative review. *See* Margin Calculation Program, dated June 30, 2008. Because the record of this administrative review contains margins within the range of 60.95 percent, we determine that the 60.95 percent rate continues to be relevant for use in this administrative review.

As the adverse margin is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that this rate meets the corroboration criterion established in section 776(c) of the Act that secondary information has probative value. As a result, the Department determines that the margin is corroborated for the purposes of this administrative review and may reasonably be applied to the PRC–wide entity as AFA.

Because these are preliminary results of review, the Department will consider all margins on the record at the time of

the final results of review for the purpose of determining the most appropriate final margin for the PRC–wide entity. *See Notice of Final Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 42669 (July 11, 2000).

**Fair Value Comparisons**

To determine whether sales of TRBs to the United States by CPZ were made at LTFV, we compared constructed export price (''CEP'') to NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below.

**Constructed Export Price**

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for CPZ's sales where CPZ sold subject merchandise to its affiliated company in the United States, which in turn sold subject merchandise to unaffiliated U.S. customers. We calculated CEP for CPZ based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, ocean freight, marine insurance, other U.S. transportation, U.S. customs duty, where applicable, U.S. inland freight from port to the warehouse, and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In accordance with section 772(d)(1)(D) of the Act, we calculated CPZ's credit expenses and inventory carrying costs based on the Federal Reserve prime short–term rate. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. See CPZ Preliminary Results of Administrative Review: Program Analysis Memorandum, dated June 30, 2008. In its first supplemental Section D questionnaire response, dated April 29, 2008, CPZ requested that the Department compare NV to CEP on a Product Code (''PRODCOD'') basis, claiming that calculating dumping margins using Control Number (''CONNUM'') is distortive. We have determined not to use PRODCOD as a basis for comparing NV to CEP because CPZ has not provided an explanation or data to demonstrate why using CONNUM is distortive. Therefore, for the preliminary results, we have continued to use CONNUM to compare NV to CEP.

**Normal Value**

We compared NV to individual CEP transactions in accordance with section 777A(d)(2) of the Act. Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by the respondent for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market–economy currency, the Department may value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill v. United States*, 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market–based prices to value certain FOPs).

With regard to both import–based SVs, and market–economy import values, it is the Department's consistent practice that, where the facts developed in the United States or third country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non–industry-specific export subsidies), it is reasonable for the Department to find that it has particular and objective evidence to support a reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. *See China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1338–39 (CIT 2003).

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized, but rather relies on information that is generally available at the time of its determination. *See* H.R. Rep. 100–576, at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24. The Department has reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. Through other proceedings, the Department has learned that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, preliminarily finds it reasonable to infer that all exports to all markets from these countries may be subsidized. See Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005–2006 Administrative Review, 72 FR 42386 (August 2, 2007), and accompanying Issues and Decision Memorandum at Comment 1. Accordingly, the Department has disregarded prices from Indonesia, South Korea and Thailand in calculating NV.

**Factor Valuations**

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by CPZ for the POR. To calculate NV, the reported per–unit factor quantities were multiplied by publicly available Indian SVs (except as noted below). Unless indicated otherwise, we valued direct materials and packing materials using publicly available import data reported in the World Trade Atlas, published by Global Trade Information Services, Inc. (''WTA''). In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). This adjustment is in accordance with the

decision of the Circuit in *FederalSigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997). CPZ reported that it sourced the steel that it used to produce cages within the PRC. Therefore, the Department used contemporaneous Indian import data from WTA online, published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, to calculate SVs for the reported FOPs purchased from NME sources. Among the FOPs for which the Department calculated SVs using Indian import statistics are steel, steel scrap, and anti–rust oil. For a detailed description of all SVs used for respondents, *see* Factor Valuation Memorandum.

On June 3, 2008, CPZ submitted comments regarding SV selection for roller quality steel. CPZ argued that the SV data submitted by Petitioner is aberrational because the proposed HTS category does not specifically include bearing quality steel and the data is not contemporaneous with the POR. For the preliminary results, we have determined to use contemporaneous Indian import data from HTS category 7228.3029, as proposed by Petitioner, to calculate an SV for roller quality steel. We have preliminarily determined that, while the HTS category proposed by CPZ may have represented ''other'' types of bearing quality steel in the past, because the Indian HTS categories were revised in 2003, the HTS category proposed by Petitioner now represents ''other'' types of bearing quality steel. *See* Factor Valuation Memorandum.

The Department has instituted a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the POR exceeds 33 percent of the total volume of the input purchased from all sources during the same period. In these cases, unless case–specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted–average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is equal to or below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight average the weighted–average market economy purchase price with an appropriate SV according to their respective shares of the total volume of purchases, unless case–specific facts provide adequate grounds to rebut the presumption. When a firm has made market economy input purchases that may have been dumped or subsidized, are not bona fide, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33–percent threshold. *See Antidumping Methodologies: Market Economy Inputs, Expected Non–Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–19 (October 19, 2006). Also, where the quantity of the input purchased from market–economy suppliers is insignificant, the Department will not rely on the price paid by an NME producer to a market–economy supplier because it cannot have confidence that a company could fulfill all its needs at that price. *Id.* During the POR, CPZ did not purchase any inputs from a market economy supplier.

Where the Department could not obtain information contemporaneous with the POR with which to value FOPs, the Department adjusted the SVs using, where appropriate, the Indian Wholesale Price Index available at the website of the Office of the Economic Adviser, Ministry of Commerce and Industry, Government of India, http://eaindustry.nic.in/. See Factor Valuation Memorandum.

To value electricity, the Department used data from the International Energy Agency *Key World Energy Statistics* (2003 edition). *See* Factor Valuation Memorandum. Because the value was not contemporaneous with the POR, the Department adjusted the rate for inflation. For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), the Department used the PRC regression–based wage rate as reported on Import Administration's website, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, using 2005 data, http://ia.ita.doc.gov/wages/05wages/05wages–051608.htmltable1. The source of these wage–rate data is the International Labour Organization, Geneva, Labour Statistics Database, Copyright International Labour Organization, 1998–2007 Yearbook, Selection: years: 2004–2005, Chapter 5B: Wages in Manufacturing. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by CPZ. *See* Factor Valuation Memorandum. The Department used Indian transport information to value the freight–in cost of the raw materials. The Department determined the best available information for valuing truck and rail freight to be from the website www.infreight.com. This source provides daily rates from six major points of origin to five destinations in India during the POR. The Department obtained a price quote on the first day of each month of the POR from each point of origin to each destination and averaged the data accordingly. *See* Factor Valuation Memorandum.

To value factory overhead, depreciation, selling, general and administrative expenses and profit, the Department used an audited financial statement for the year ended December 31, 2006, for an Indian producer of bearings, SKF India Limited (''SKF''). We did not rely upon one company's financial statement that was placed on the record, namely the financial statement of Timken India Ltd., because Timken India Ltd.'s financial statements identify the receipt of ''export incentives'' (*i.e.*, DEPB Premium) in ''Other Income.'' India's DEPB Schemes have been found by the Department to provide a countervailable subsidy. *See, e.g., Certain Iron–Metal Castings From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 64 FR 61592, 61597 (November 12, 1999) (unchanged in *Certain Iron–Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 65 FR 31515 (May 18, 2000)); *see also http://ia.ita.doc.gov/esel/eselframes.html and Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 45034 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comments 4 and 8. In *Crawfish from the PRC,* the Department noted that where it has reason to believe or suspect that a company may have received subsidies previously found by the Department to provide a countervailable subsidy, financial ratios derived from that company's financial statements do not constitute the best available information. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007) (''*Crawfish from the PRC*''), and accompanying Issues and Decision Memorandum at Comment 1. Given the record information regarding Timken India Ltd.'s use of the DEPB

program, and the fact that we have another acceptable financial statement to use as a surrogate, consistent with the Department's decision in *Crawfish from the PRC*, we have not used Timken India Ltd.'s financial data in our surrogate ratio calculations. *See* Factor Valuation Memorandum for a full discussion of the calculation of SKF's ratios.

The Department used three sources to calculate an SV for domestic brokerage expenses: (1) data from the January 9, 2006, public version of the Section C questionnaire response from Kejriwal Paper Ltd. (''Kejriwal'') in the investigation of certain lined paper products from India; (2) data from Agro Dutch Industries Ltd. in the administrative review of certain preserved mushrooms from India; and (3) data from the February 28, 2005, public version of the Section C questionnaire response from Essar Steel in the administrative review of hot–rolled carbon steel flat products from India. Because these values were not concurrent with the POR of this review, we adjusted these rates for inflation using the WPI, and then calculated a simple average of the three companies' brokerage expense data. *See, e.g., Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 4175 (January 24, 2008); *see also* Factor Valuation Memorandum.

CPZ reported it recovered steel scrap from the production of cups, cones, rollers and cages for resale. However, CPZ did not claim an offset and its response is not clear regarding quantities generated and quantities sold. Therefore, for the preliminary results, we are not including a scrap offset in our margin calculation. We will issue a supplemental questionnaire regarding this issue and consider CPZ's response for the final results.

Finally, we used POR Indian import statistics to value material inputs for packing which, for CPZ, are plastic film, plastic bags, plastic strip, plastic pad, paper box, carton, iron knot, iron sheet, iron strip, and pallet cover. *See* Factor Valuation Memorandum.

**Currency Conversion**

We made currency conversions into U.S. dollars, in accordance with section 773(A)(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

**Preliminary Results of Review**

We preliminarily determine that the following weighted–average dumping margins exist for the period June 1, 2006, through May 31, 2007:

TRBs FROM THE PRC

| Producer/Exporter | Weighted–Average Margin (Percent) |
|---|---|
| Peer Bearing Company Changshan | 59.41 |
| PRC–wide entity* | 60.95 |

*including Yantai Timken

**Disclosure and Public Comment**

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttals to written comments may be filed no later than five days after the written comments are filed. *See* 19 CFR 351.309(d). Further, parties submitting written comments and rebuttal comments are requested to provide the Department with an additional copy of those comments on diskette. Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). If requested, a hearing normally will be held seven days after the scheduled date for submission of rebuttal comments. *See* 19 CFR 351.310(d).

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

**Deadline for Submission of Publicly Available Surrogate Value Information**

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline) the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, pursuant to 19 CFR 351.301(c)(1), the Department generally will not accept in the rebuttal submission additional, alternative SV information not previously on the record if the deadline for submission of such information has passed. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, the Department generally will not accept business proprietary information in either the SV submissions or the rebuttals thereto, as the regulation regarding the submission of SVs allows only for the submission of publicly available information.

**Assessment Rates**

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer- or customer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. To determine whether the duty assessment rates are *de minimis (i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate customer–specific *ad valorem* ratios based on export prices.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer- or customer–specific assessment rate calculated in the final results of this review is above *de minimis*.

For entries of the subject merchandise during the POR from companies not subject to this review, we will instruct CBP to liquidate them at the cash deposit rate in effect at the time of entry. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Additionally, the Department will instruct CBP to assess antidumping duties for the PRC–wide entity (including Yantai Timken) at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

**Cash–Deposit Requirements**

The following cash–deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for CPZ, the cash deposit rate will be that established in the final results of this review, except if the rate is zero or de minimis no cash deposit will be required; (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 60.95 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

*Notification to Importers*

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during 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.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act, and 19 CFR 351.221(b).

Dated: June 30, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8–16376 Filed 7–16–08; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Scientific Research, Exempted Fishing, and Exempted Activity Submissions

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before September 15, 2008.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Blackburn, (301) 713–2341 or *Jason.Blackburn@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Fishery regulations do not generally affect scientific research activities conducted by a scientific research vessel. Any persons planning to conduct research must submit a scientific research plan to ensure that the activities are considered research and not fishing. The researchers are required to submit reports of their scientific research activity after its completion. The National Marine Fisheries Service (NMFS) may also grant exemptions from fishery regulations for educational or other activities (e.g., the testing of fishing gear). The applications for these exemptions must be submitted, as well as reports on activities.

**II. Method of Collection**

Information may be submitted on paper or via e-mail, and in some cases by telephone.

**II. Data**

*OMB Control Number:* 0648–0309.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* Business or other for-profit organizations; individuals or households; not-for-profit institutions; state, local or tribal government.
*Estimated Number of Respondents:* 91.
*Estimated Time per Response:* Scientific research plans, 113 hours; scientific research reports, 3 hours; exempted fishing permit requests, 95 hours; exempted fishing permit reports, 47 hours; exempted educational requests, 3 hours; and exempted educational reports, 2 hours.
*Estimated Total Annual Burden Hours:* 11,003.
*Estimated Total Annual Cost to Public:* $232.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 14, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8–16310 Filed 7–16–08; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Southeast Region Bottlenose Dolphin Conservation Outreach Survey

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general

public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before September 15, 2008.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Stacey Carlson, (727) 824–5312 or *Stacey.carolson@noaa.gov* and Michelle McGregor, (301) 713–1406 or *michelle.mcgregor@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The objective of these surveys is to assess the level of awareness on issues related to regulations preventing feeding/harassment of wild bottlenose dolphins, which are protected under the Marine Mammal Protection Act. In particular, the surveys are designed to determine what commercial operators and the general public know about specific regulations prohibiting feeding and harassment of bottlenose dolphins, and how they gained their knowledge and/or perceptions on the topic. The initial geographic region for this survey is Panama City, Florida, where numerous incidences of dolphin harassment and feeding have been documented. The intent is to also use this survey in other areas of the southeast region to gain a similar understanding and ensure outreach messages are appropriate for intended audiences.

The recordkeeping and reporting requirements at 50 CFR part 679 form the basis for this collection of information. The National Marine Fisheries Service (NMFS) will request information from local residents, tourists and commercial businesses through a one-time survey. This information, upon receipt, will be used to develop effective and better-targeted outreach efforts in order to enhance bottlenose dolphin conservation in Florida.

## II. Method of Collection

Participants voluntarily complete paper questionnaires and methods of submittal include on-site, mail, and facsimile transmission of paper forms.

## III. Data

*OMB Control Number:* None.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* Individuals or households; business or other for-profit organizations.
*Estimated Number of Respondents:* 1,200.
*Estimated Time per Response:* 30 minutes.
*Estimated Total Annual Burden Hours:* 600.
*Estimated Total Annual Cost to Public:* $0.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 14, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8–16311 Filed 7–16–08; 8:45 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Availability of Seat for the Florida Keys National Marine Sanctuary Advisory Council

**AGENCY:** Office of National Marine Sanctuaries (ONMS) National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DCC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The Florida Keys National Marine Sanctuary (FKNMS) is seeking applications for the following vacant seat on its Sanctuary Advisory Council (council): Tourism—Lower Keys (alternate).

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; residency in the Sanctuary area; and philosophy regarding the protection and management of marine resources. Applicants who are chosen for seats normally serve three-year terms, pursuant to the Council's charter.

**DATES:** Applications are due by August 15, 2008.

**ADDRESSES:** Application packages may be obtained from the Sanctuary Advisory Council and Volunteer Coordinator at *Lilli.Ferguson@noaa.gov*, from the Web site at *http://www.floridakeys.noaa.gov*, by telephone at (305) 292–0311 x 245 or in writing to Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040. Completed applications should be sent to the same address listed above.

**FOR FURTHER INFORMATION CONTACT:** Lilli Ferguson at the above address, e-mail or telephone number.

**SUPPLEMENTARY INFORMATION:** Information concerning the council, including past meeting minutes and member contact information can be found at the Sanctuary Web site.

**Authority:** 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 19, 2008.

**Daniel J. Basta,**

*Director, Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration.*

[FR Doc. E8–15778 Filed 7–16–08; 8:45 am]

BILLING CODE 3510–22–M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The Stellwagen Bank National Marine Sanctuary (SBNMS or sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (council): *Conservation*

*(member)*. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two-to-three-year terms, pursuant to the council's Charter.

**DATES:** Applications are due by 15 September 2008.

**ADDRESSES:** Application kits may be obtained from *Elizabeth.Stokes@noaa.gov* or from Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066. Telephone 781–545–8026 X201. Completed applications should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** For further questions contact: *Nathalie.Ward@noaa.gov*, External Affairs Coordinator. Telephone: 781–545–8026 X206.

**SUPPLEMENTARY INFORMATION:** The Stellwagen Bank National Marine Sanctuary Advisory Council was established in March 2001 to assure continued public participation in the management of the Sanctuary. The Advisory Council's 21 members represent a variety of local user groups, as well as the general public, plus seven local, state and federal government agencies. Since its establishment, the Council has played a vital role in advising the Sanctuary and NOAP on critical issues and is currently focused on the sanctuary's new five-year Management Plan.

The Stellwagen Bank National Marine Sanctuary encompasses 842 square miles of ocean, stretching between Cape Ann and Cape Cod. Renowned for its scenic beauty and remarkable productivity, the sanctuary supports a rich diversity of marine life including 22 species of marine mammals, more than 30 species of seabirds, over 60 species of fishes, and hundreds of marine invertebrates and plants.

**Authority:** 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 7, 2008.

**Daniel J. Basta,**

*Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. E8–15779 Filed 7–16–08; 8:45 am]

**BILLING CODE 3510–22–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XJ11**

### U.S. Climate Change Science Program Draft Unified Synthesis Product Report: Global Climate Change in the United States

**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 28-day public comment period for the draft report titled, U.S. Climate Change Science Program Unified Synthesis Product (USP). 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 14, 2008.

**ADDRESSES:** The draft Unified Synthesis Product: is posted on the CCSP Web site at: *http://www.climatescience.gov/Library/sap/usp/default.php.*

Detailed instructions for making comments on this draft report are also provided on the CCSP webpage. Comments must be prepared in accordance with these instructions and submitted to: *USP-comments@climatescience.gov*

**FOR FURTHER INFORMATION CONTACT:** Dr. Anne Waple, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419–3463.

**SUPPLEMENTARY INFORMATION:** The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that promote climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues.

Dated: July 14, 2008.

**William J. Brennan,**

*Assistant Secretary of Commerce for Oceans and Atmosphere, and Acting Director, Climate Change Science Program.*

[FR Doc. E8–16386 Filed 7–16–08; 8:45 am]

**BILLING CODE 3510–12–S**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review, Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled the Application Instructions Training and Technical Assistance Cooperative Agreements form to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ralph Morales at (202) 606–6829 Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: Katherine_T._Astrich@omb.eop.gov*.

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**Comments**

A 60-day public comment Notice was published in the **Federal Register** on April 28, 2008. This comment period ended June 28, 2008. No public comments were received from this notice.

*Description:* The Corporation is seeking approval of the Application Instructions Training and Technical Assistance Cooperative Agreements. The application instructions will be used by potential applicants to apply for funding to provide training and technical assistance to Corporation grantees and subgrantees. Applications will be reviewed by the Corporation and providers selected through a rigorous review process.

The Application Instructions for Training and Technical Assistance Cooperative Agreements provides the submission and compliance requirements, application requirements and selection criteria of potential applicants interested in providing training and technical assistance to Corporation grantees and subgrantees. The instructions also provide the Corporation reporting requirements of successful applicants.

*Type of Review:* New Information Collection.

*Agency:* Corporation for National and Community Service.

*Title:* Application Instructions Training and Technical Assistance Cooperative Agreements.

*OMB Number:* 3045–0105.

*Agency Number:* None.

*Affected Public:* First-time grantees or current grantees re-competing for funding.

*Total Respondents:* 56.

*Frequency:* One (1) time.

*Average Time per Response:* 11.75 hours. Estimated at 16.5 hours for first-time respondents; 7 hours for current providers.

*Estimated Total Burden Hours:* 658 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Dated: June 30, 2008.

**Gretchen Van der Veer,**

*Director, Office of Leadership Development and Training.*

[FR Doc. E8–16334 Filed 7–16–08; 8:45 am]

BILLING CODE 6050–$$–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 08–54]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–54 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 2, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

JUN 26 2008
In reply refer to:
USP004201-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-54, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Pakistan for defense articles and services estimated to cost $75 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

| House | Senate |
|---|---|
| Committee on Foreign Affairs | Committee on Foreign Relations |
| Committee on Armed Services | Committee on Armed Services |
| Committee on Appropriations | Committee on Appropriations |

**Transmittal No. 08-54**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended**

(i) **Prospective Purchaser:** Pakistan

(ii) **Total Estimated Value:**

| | |
|---|---|
| Major Defense Equipment* | $ 50 million |
| Other | $ 25 million |
| TOTAL | $ 75 million |

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 21 AN/ALQ-211(V)9 Advanced Integrated Defensive Electronic Warfare Suite (AIDEWS) Pods, software support, repair and return, spare and repair parts, support equipment, technical assistance, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support.

(iv) **Military Department:** Air Force (NAP, Amd #1)

(v) **Prior Related Cases, if any:** FMS Case NAP-$891M-27Oct06

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(viii) **Date Report Delivered to Congress:** JUN 26 2008

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Pakistan – AN/ALQ-211(V)9 AIDEWS Pods

**The Government of Pakistan has requested a possible sale of 21 AN/ALQ-211(V)9 Advanced Integrated Defensive Electronic Warfare Suite (AIDEWS) Pods, software support, repair and return, spare and repair parts, support equipment, technical assistance, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support. The estimated cost is $75 million.**

**Given its geo-strategic location and partnership in the Global War on Terrorism (GWOT), Pakistan is a vital ally of the United States, as reflected in the June 2004 designation of Pakistan as a Major Non-North Atlantic Treaty Organization Ally. This proposed sale will contribute to the foreign policy and national security of the United States by helping an ally meet its legitimate defense requirements.**

**Pakistan intends to purchase the AIDEWS pods to enhance its existing F-16 fighter aircraft. This proposed sale will ensure Pakistan's existing fleet is compatible with the new F-16 Block 50/52 aircraft.**

**Consistent with U.S. conventional arms transfer policy and arms control initiatives, this potential sale will allow the Pakistani Air Force to modernize its fighter inventory, thereby enabling Pakistan to support both its own air defense needs and coalition operations.**

**Release of the AIDEWS equipment to Pakistan will neither affect the regional balance of power nor introduce a new technology as this level of capability or higher already exists in other countries in the region.**

**The principal contractor will be ITT Corporation of Clifton, New Jersey. There are no known offset agreements in connection with this proposed sale.**

**Implementation of this proposed sale will require multiple trips to Pakistan involving U.S. Government and contractor representatives for technical reviews, support, and program management over a period of up to 15 years.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

**Transmittal No. 08-54**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

**Annex**
**Item No. vii**

**(vii) Sensitivity of Technology:**

**1. The AN/ALQ-211(V)9 is the external "pod" variant of the Advanced Integrated Defensive Electronic Warfare Suite (AIDEWS) and it provides passive radar warning, wide spectrum radio frequency jamming. The pod variant has identical components contained in the internal AIDEWS. The pod classification is also the same as the internal AIDEWS system. The system software and hardware are Confidential, but the system is classified Secret when loaded with a US-derived electronic warfare database. There is no functional difference between the external pod and the internal AIDEWS system.**

**2. Additional sensitive items include Classified and Unclassified operating manuals and maintenance technical orders containing performance information, operating and test procedures, and other information related to support operations and repair. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters, and other similar critical information.**

**3. Also, as with the internal system, In-Country-Reprogramming (ICR) is not released. The USAF is programming the pod with the same functionality as contained in the internal AIDEWS system; therefore, the pod variant (V)9 will not have Digital Radio Frequency Memory functionality.**

**4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.**

[FR Doc. E8–15780 Filed 7–16–08; 8:45 am]
BILLING CODE 5001–06–C

## DEPARTMENT OF EDUCATION

## DEPARTMENT OF THE TREASURY

## OFFICE OF MANAGEMENT AND BUDGET

### Federal Family Education Loan Program (FFELP)

**AGENCY:** Department of Education, Department of the Treasury, Office of Management and Budget.

**ACTION:** Notice of terms and conditions of purchase of loans under the Ensuring Continued Access to Student Loans Act of 2008; correction; extension of deadline.

**SUMMARY:** On July 1, 2008, the Department of Education, the Department of the Treasury, and the Office of Management and Budget published a notice of terms and conditions of purchase of loans under the Ensuring Continued Access to Student Loans Act of 2008 in the **Federal Register** (Notice of Terms and Conditions). Appendix D to the Notice of Terms and Conditions contained several minor errors. This document corrects Appendix D. This document also extends the deadline, specified in Appendix B and Appendix C of the Notice of Terms and Conditions, for submission of a Notice of Intent to Participate under the Loan Purchase Commitment and Loan Participation Purchase programs.

**FOR FURTHER INFORMATION CONTACT:** Kristie Hansen, U.S. Department of Education, Office of Federal Student Aid, Union Center Plaza, 830 First Street, NE., Room 113F1, Washington, DC 20202. *Telephone:* (202) 377–3309 or by *e-mail: Kristie.Hansen@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

**SUPPLEMENTARY INFORMATION:**

### Correction

In the notice of terms and conditions of purchase of loans under the Ensuring Continued Access to Student Loans Act of 2008, published July 1, 2008 (73 FR 37422), make the following correction:

On pages 37449 and 37450, Appendix D is removed and replaced with Appendix D, attached.

*Extension of Deadline:* The Notice of Terms and Conditions announced the terms and conditions that govern the Loan Purchase Commitment Program (Loan Purchase Program Terms and Conditions) and the Loan Participation Purchase Program (Loan Participation Purchase Program Terms and Conditions) (collectively, the ''Terms and Conditions'') established by the Department of Education, the Department of the Treasury and the Office of Management and Budget pursuant to the Ensuring Continued Access to Student Loans Act of 2008.

The Loan Purchase Program Terms and Conditions provided in Appendix B (73 FR 37432) that a ''Lender may not sell Eligible Loans to the Department on which the first disbursement was made prior to the date on which the Department receives the Notice of Intent, unless the Department receives the Notice of Intent on or before a date fifteen calendar days after the terms of the Program are published in the **Federal Register**.'' Similarly, the Loan Participation Purchase Program Terms and Conditions provided in Appendix C (73 FR 37447) that the ''Eligible Lender may not sell Participation Interests to the Department relating to loans for which the first disbursement was made prior to the date on which the Department receives the Notice of Intent, unless the Department receives the Notice of Intent on or before a date fifteen calendar days after the terms of the program are published in the **Federal Register**.''

Under these provisions, the Notice of Intent for both programs would have to be received by the Department on or before July 16, 2008 to ensure loans for which the first disbursement was made on or after May 1, 2008 were eligible for the programs. To provide lenders with additional time to submit the Notice of Intent for both programs, the Department, the Department of the Treasury, and the Office of Management and Budget are extending that deadline until July 31, 2008.

### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: July 10, 2008.

**Sara Martinez Tucker,**

*Under Secretary for Education.*

Dated: July 10, 2008.

**Taiya Smith,**

*Executive Secretary and Deputy Chief of Staff of the Department of the Treasury.*

Dated: July 9, 2008.

**Steve McMillin,**

*Deputy Director, Office of Management and Budget.*

**BILLING CODE 4000–01–P**

## APPENDIX D
## NOTICE OF INTENT TO PARTICIPATE

[_____, 200_]

U.S. Department of Education
Washington, D.C.
By: E-mail: ffel.agreementprocess@ed.gov

**Re: Loan Purchase Commitment Program and/or Loan Participation Purchase Program for Eligible FFELP Loans**

Ladies and Gentlemen:

The undersigned, an eligible Federal Family Education Loan Program (FFELP) lender under Section 435(d)(1) of the Higher Education Act of 1965, as amended (HEA), eligible lender trustee, or holder of beneficial interests in FFELP Loans ("Undersigned"), hereby notifies the United States Department of Education that it intends to participate in one or both of the following FFEL Loan Purchase programs for the 2008-2009 academic year. The Loan Purchase programs are authorized under Section 459A of the HEA, as amended by the Ensuring Continued Access to Student Loans Act of 2008 (Pub. L. No. 110-227), and described in the Notice of Terms and Conditions of Purchase of Loans under the Ensuring Continued Access to Student Loans Act of 2008 (Register Notice) published in the Federal Register, Vol. 73, No. 127, July 1, 2008. Signifying intent to participate in one or both of the programs offered does not require actual participation in such programs.

CHECK THE APPLICABLE BOX(ES): ☐ Loan Purchase Commitment Program
☐ Loan Participation Purchase Program and the Loan Purchase Commitment Program

By signifying its intent to participate in such program(s), the Undersigned hereby certifies and agrees that:

1. If the Undersigned participates in either of the programs, it will continue to originate or acquire FFELP loans made to students and parents.

2. If the Undersigned participates in the Loan Participation Purchase Program, it will sell, from time to time, participation interests in FFELP loans to the Department of Education with an aggregate unpaid principal balance of not less than $50,000,000 in loans either held by such eligible lender or aggregated with other FFELP loans held by one or more eligible lenders. Note that there is no minimum for the Loan Purchase Commitment Program.

3. The Undersigned acknowledges that it shall not be permitted to sell FFELP loans or participation interests therein to the Department of Education with respect to which the first disbursement was made prior to the date on which the Department of Education receives this Notice of Intent to Participate, except that, if the Department of Education receives this Notice of Intent to Participate by July 31, 2008 the Undersigned shall be permitted to sell to the Department of Education FFELP loans or participation interests

therein, as applicable, where the first disbursement of the loan(s) was made on or after May 1, 2008.

For the purpose of item 3 above, the Department of Education will return to the Undersigned, via electronic mail (e-mail), information indicating the date the Notice of Intent to Participate was received by the Department of Education.

The Department of Education has provided that it will accept signed copies of this Notice of Intent sent as a PDF attachment via e-mail at the address below.

The Undersigned is aware that it must refer to the Federal Register Notice and to the agreements referred to therein for a complete description of the terms and conditions under which the Department of Education will administer the Loan Purchase Programs. The Undersigned also is aware that in order to participate in the Loan Purchase programs it must execute a Master Agreement for the respective program. If the Undersigned is a beneficial holder of FFELP loans, include on this form the LID(s) under which it operates. If the Undersigned, as an eligible lender trustee, files this Notice on behalf of its beneficial holders of FFELP loans, include the name and LID of each of those beneficial holders.

This Notice of Intent to Participate is hereby executed and dated as of the date first listed above.

By executing this Notice of Intent, the Undersigned now possesses an option to participate in the Loan Purchase Program or Programs indicated by the Undersigned above.

The Undersigned asks that the Department of Education please direct all inquiries and correspondence relating to these programs to:

[UNDERSIGNED NAME AND LENDER ID NUMBER]
[ELIGIBLE LENDER TRUSTEE NAME OR BENEFICIAL HOLDER NAME, IF ANY AND LIDS]
[STREET ADDRESS]
[CITY], [STATE] [ZIP]
Attention of: [NAME], [TITLE]
By Phone - [XXX-XXX-XXXX]
By Fax – [XXX-XXX-XXXX]
By E-mail – [email address]

[NAME OF ENTITY]

By:_____
Name:
Title:

The completed, signed, and dated Notice of Intent to Participate should be sent as a PDF attachment to an e-mail message addressed to ffel.agreementprocess@ed.gov. The e-mail message subject line should read "Submission of Notice of Intent to Participate."

For questions concerning the submission and receipt of the email please call (202) 377-4401.

[FR Doc. E8–16241 Filed 7–16–08; 8:45 am]
BILLING CODE 4000–01–C

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–342]**

### Application to Export Electric Energy; The Royal Bank of Canada

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Royal Bank of Canada (RBC) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests, or requests to intervene must be submitted on or before August 18, 2008.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On July 9, 2008, DOE received an application from RBC for authority to transmit electric energy from the United States to Canada as a power marketer. RBC has requested an electricity export authorization with a 5-year term. RBC does not own or control any electric generation, transmission, or distribution assets, nor does it have a franchised service area. The electric energy which RBC proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

RBC will arrange for the delivery of exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by RBC has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

*Procedural Matters:* Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the RBC application to export electric energy to Canada should be clearly marked with Docket No. EA–342. Additional copies are to be filed directly with Robin J. Bowen, McDERMOTT WILL & EMERY LLP, 600 13th Street, NW., Washington, DC 20005–3096.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm*, or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on July 14, 2008.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. E8–16366 Filed 7–16–08; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. P–2197–084]**

### Alcoa Power Generating Incorporated; Notice of Application for Temporary Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 10, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for temporary variance of minimum flow release and reservoir drawdown limit.

b. *Project No.:* 2197–084.

c. *Date Filed:* July 8, 2008.

d. *Applicant:* Alcoa Power Generating Incorporated.

e. *Name of Project:* Yadkin.

f. *Location:* On the Yadkin/Pee Dee River, in Montgomery, Stanley, Davidson, Rowan, and Davie Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Marshall Olson, Alcoa Power Generating Inc., 293 NC 740 Highway, P.O. Box 576, Badin, NC 28009–0576, (704) 422–5622.

i. *FERC Contact:* Thomas LoVullo, (202) 502–8900; e-mail: *thomas.lovullo@ferc.gov.*

j. *Deadline for filing comments, motions to intervene and protests:* August 11, 2008.

Please include the project number (P–2197) on any comments or motions filed. 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.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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. A copy of any

motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Alcoa Power Generating, Inc. is requesting a temporary variance of the minimum flow release requirement under license article 33 for the Yadkin Project. Due to worsening drought conditions in the project area and the need to conserve water, Alcoa requests that it be allowed to reduce the weekly average discharge flow of 1,400 cubic feet per second (cfs) to a weekly average of 1,000 cfs, effective as soon as possible. Additionally, Alcoa requests a temporary variance from the operating guides, at the Narrows reservoir, in order to balance outflows with the High Rock reservoir. Included with Alcoa's request were concurrences received from the Drought Management Team (DMT) established as a result of the 2002 drought. On July 10, 2008, the Commission granted the licensee's requests, but reserved authority to require changes in project operation based upon comments received from this notice.

l. *Location of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or by calling (202) 502–8371, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *ferconlinesupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filing must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16293 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2210–176]**

### Appalachian Power Company; Notice of Application To Amend License and Soliciting Comments, Motions To Intervene, and Protests

July 10, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2210–176.

c. *Date Filed:* June 17, 2008.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791a–825r.

h. *Applicant Contact:* Elizabeth B. Parcell, Plant Coordinator I, Appalachian Power Company, P.O. Box 2021, Roanoke, Virginia 24022–2121 (703) 985–2348.

i. *FERC Contact:* Any questions on this notice should be addressed to Jade Alvey, Telephone (202) 502–6849, and e-mail: *Jade.Alvey@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protest:* August 11, 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 and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Appalachian Power Company (APC) is seeking Commission approval to grant permission to Jim Petrine to stabilize shoreline through the use of riprap, and to construct a single dock, along shoreline identified as an Impact Minimization Zone (IMZ), as defined in the project's shoreline management plan (SMP). The proposed dock would be single-family use and would be located at the terminus of Windward Pointe Drive, a new road serving The Winward at Point Cheli, a new development located northeast of Long Island Drive, in Franklin County, Virginia. The licensee is requesting a variance as required by the SMP for development within the IMZ. In accordance with the SMP, Jim Petrine has developed a plan to relocate woody debris in the activity area currently serving as fish habitat to an alternate location nearby and obtained concurrence on the plan from the Virginia Department of Game and Inland Fisheries.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16290 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

July 10, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP99–301–212.
*Applicants:* ANR Pipeline Company.
*Description:* ANR Pipeline Company submits Rate Schedule FSS negotiated rate agreements and amendments to eleven (11) Rate Schedule FTS–1 negotiated rate agreements etc with Wisconsin Public Service Corp, effective 10/31/08.
*Filed Date:* 07/08/2008.
*Accession Number:* 20080710–0144.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* RP99–301–213.
*Applicants:* ANR Pipeline Company.
*Description:* ANR Pipeline Company submits one (1) Rate Schedule FSS negotiated rate service agreement, (8) eight Rate Schedule FTS–1 negotiated rate service agreements etc with UGI Utilities, Inc, effective 4/1/09 or 11/1/09.
*Filed Date:* 07/08/2008.
*Accession Number:* 20080710–0145.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* RP00–157–019.
*Applicants:* Kern River Gas Transmission Company.
*Description:* Kern River Gas Transmission Company submits Thirteenth Revised Sheet 495, Eighth Revised Sheet 496 to FERC Gas Tariff, Second Revised Volume 1, to be effective 7/9/08.
*Filed Date:* 07/08/2008.
*Accession Number:* 20080710–0147.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* RP08–441–000.
*Applicants:* West Texas Gas, Inc.
*Description:* West Texas Gas, Inc. submits a report detailing its purchased gas cost reconciliation for 12-month period ending 4/30/08 pursuant to Section 19 of the General Terms and Conditions of its FERC Gas Tariff and Article 1.
*Filed Date:* 07/08/2008.
*Accession Number:* 20080710–0146.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* CP05–119–005; CP05–121–004.
*Applicants:* Cameron Interstate Pipeline, LLC.
*Description:* Cameron Interstate Pipeline, LLC submits their Revised Pro Forms Sheet 6 et al, and informs that they estimate that it will place its pipeline facilities into service on or about 9/15/08.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080708–0039.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or

call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–16306 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

July 9, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER98–3184–011; ER00–494–005.

*Applicants:* TransAlta Energy Marketing; TransAlta Centralia Generation LLC.

*Description:* TransAlta Entities submits updated market power analysis for the Northeast region, which demonstrates that the TransAlta Entities continue to be eligible to make wholesale sales of electric capacity & energy etc.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0003.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER99–2156–015; ER96–719–022; ER97–2801–023.

*Applicants:* Cordova Energy Company LLC; MidAmerican Energy Company; PacifiCorp.

*Description:* Cordova Energy Company LLC et al. submits updated market power analysis.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0219.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER99–3502–008; ER02–1884–007; ER02–1884–008.

*Applicants:* Berkshire Power Company, LLC; Waterside Power, LLC.

*Description:* Berkshire Power Co et al. submits a Compliance Filing pursuant to Order 697.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080703–0152.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER00–2129–001; ER00–2508–003; ER00–1749–004; ER01–3035–007; ER04–944–004; ER03–382–005; ER06–1272–004; ER99–1801–009; ER02–1762–006; ER07–1300–001.

*Applicants:* Orion Power Midwest, L.P.; Reliant Energy Mid-Atlantic Pwr Holdings; Reliant Energy New Jersey Holdings, LLC; Reliant Energy Seward, LLC; Reliant Energy Wholesale Generation, LLC; Reliant Energy Electric Solutions, LLC; Reliant Energy Power Supply, LLC; Reliant Energy Services, Inc., Reliant Energy Solutions East, LLC; Reliant Energy Solutions Northeast, LLC.

*Description:* Reliant NE MBR Entities submits their triennial market power analysis for the Northeast Region and revisions to their market based rate tariffs.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080707–0009.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER00–2738–008; ER99–1004–009; ER01–1721–006; ER00–2740–008; ER02–564–006; ER06–653–003.

*Applicants:* Entergy Nuclear Fitzpatrick, LLC; Entergy Nuclear Generation Company; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; Entergy Nuclear Vermont Yankee, LLC; Entergy Nuclear Power Marketing, LLC.

*Description:* Entergy Nuclear Affiliates submits updated market power analysis to support the continued allowance of market-based rates.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0106.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER00–3614–008.

*Applicants:* BP Energy Company.

*Description:* BP Energy Co submits an updated market power analysis and proposed tariff revisions in compliance with Order 697 and 697–A.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0210.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER01–1268–011; ER01–1269–010; ER01–1271–011; ER01–1266–010; ER01–1273–011; ER01–1277–010; ER02–1213–009.

*Applicants:* Mirant Canal, LLC; Mirant Chalk Point, LLC; Mirant Kendall, LLC; Mirant Bowline, LLC; Mirant Mid-Atlantic, LLC; Mirant Potomac River, LLC; Mirant Energy Trading, LLC.

*Description:* Mirant Canal, LLC et al. (Mirant Entities) submits their joint triennial market power filing pursuant to Order 697 under ER01–1268 *et al.*

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0112.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER01–3103–015.

*Applicants:* Astoria Energy LLC.

*Description:* Astoria Energy LLC submits the Combined Notice of Change in Status Under Order 652 and Compliance/Triennial Filing Under Order 697 etc.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0217.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER02–973–005.

*Applicants:* UBS AG.

*Description:* UBS AG submits an application for determination of their status as a Category 1 seller pursuant to Order 697 and 697–A.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0208.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER04–708–006.

*Applicants:* Horsehead Corp.

*Description:* Horsehead Corp submits an application for determination of their status as a Category 1 seller pursuant to Order 697 and 697–A.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0207.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER04–734–003; ER07–981–001.

*Applicants:* Barclays Bank PLC; Barclays Capital Energy Inc.

*Description:* Barclays Bank PLC et al. submits an updated market power analysis and proposed tariff revisions in compliance with Order 697 and 697–A.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0209.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER04–925–019.

*Applicants:* Merrill Lynch Commodities, Inc.

*Description:* Petition of Merrill Lynch Commodities, Inc requesting classification as a Category 1 seller pursuant to Order 697 etc.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080703–0154.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER05–454–005; ER06–805–002; ER07–528–003; ER06–642–004; ER05–118–006; ER05–131–006; ER06–804–001; ER06–1446–004; ER03–796–007; ER06–784–003.

*Applicants:* Bear Swamp Power Company LLC; Brookfield Energy Marketing Inc.; Brookfield Energy Marketing U.S. LLC; Brookfield Power Piney & Deep Creek LLC; Carr Street Generating Station, L.P.; Erie Boulevard Hydropower, L.P.; Great Lakes Hydro America, LLC; Hawks Nest Hydro LLC; Katahdin Paper Company LLC; Rumford Falls Hydro LLC.

*Description:* Bear Swamp Power Co, LLC et al. submits an updated market power analysis proposed tariff revisions and request for confidential treatment.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0017.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER06–560–001.

*Applicants:* Credit Suisse Energy LLC.

*Description:* Credit Suisse Energy LLC submits a filing explaining why CSE qualifies as a Category 1 Seller of wholesale electricity in the Northeast region of the United States and in all other Regions specified by the Commission Appendix D etc.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080707–0001.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER06–635–004; ER06–634–004; ER95–1007–023.

*Applicants:* Edgecombe Genco, LLC; Spruance Genco, LLC; Logan Generating Company, LP.

*Description:* Edgecomb Genco, LLC et al. submits updated market power analysis in compliance with the requirements of Order 697–A.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0110.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER06–759–004.

*Applicants:* Selkirk Cogen Partners, L.P.

*Description:* Selkirk Cogen Partners, L.P. submits updated market power analysis in compliance with the requirements of section 35.37 of the regulations of the FERC and the regional schedule set forth in Order 697 A for the Northeast region.

*Filed Date:* 06/30/2008; 07/1/08.

*Accession Number:* 20080702–0213; 20080702–0214.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER06–764–002; ER06–1226–001.

*Applicants:* Premcor Refining Group Inc.; Valero Power Marketing LLC.

*Description:* The Premcor Refining Group, Inc. and Valero Power Marketing, LLC's joint application for Category 1 Seller Determinations, Filing of Triennial Market-Based Rate Update etc.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080707–0012.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER06–864–012; ER07–1356–004; ER07–1112–003; ER07–1113–003; ER07–1115–003; ER07–1116–003; ER07–1117–003; ER07–1358–004; ER07–1118–003; ER07–1119–003; ER07–1120–003; ER07–1122–003; ER06–1543–009; ER00–2885–019; ER01–2765–018; ER08–148–003; ER05–1232–011; ER02–1582–016; ER02–2102–018; ER03–1283–013.

*Applicants:* Bear Energy LP; BE Alabama LLC; BE Allegheny LLC; BE CA LLC; BE Colquitt LLC; BE Ironwood LLC; BE Satilla LLC; BE Ironwood LLC; BE KJ LLC; BE Louisiana LLC; BE Rayle LLC; BE Red Oak LLC; BE Walton LLC; Brush Cogeneration Partners; Cedar Brakes I, L.L.C.; Cedar Brakes II, LLC; Central Power & Lime Inc; J.P. Morgan Ventures Energy Corporation; Mohawk River Funding IV, L.L.C.; Utility Contract Funding, L.L.C.; Vineland Energy LLC

*Description:* Bear Energy, LP et al. submits their Triennial Report.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0188.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER06–1280–002; ER00–2181–005; ER02–556–009.

*Applicants:* Hess Corporation; Hess Energy, Inc.; Select Energy New York, Inc.

*Description:* Hess Corp et al. submits an Updated Market Power Analysis.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0111.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER06–1402–001; ER06–1403–001.

*Applicants:* Westmoreland Partners (ROVA I); Westmoreland Partners (ROVA II).

*Description:* Westmoreland Partners submits a request for classification as a Category 1 seller pursuant to Order 697 and 697–A.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080703–0201.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER07–74–001.

*Applicants:* Caithness Long Island, LLC.

*Description:* Caithness Long Island, LLC submits a notice of their status as a Category 1 seller pursuant to Order 697 and 697–A.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0206.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER07–189–005; ER07–190–005; ER07–191–005; ER07–192–003.

*Applicants:* Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; Duke Energy Shared Service, Inc.

*Description:* Duke Energy MBR Companies submits an updated market power analysis focusing on the generation owned and controlled by Duke Energy Ohio, Inc.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0192.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER07–911–002; ER98–2782–015.

*Applicants:* RPL Holdings, Inc.; AG Energy L.P.

*Description:* RPL Holdings, Inc et al. submits a filing demonstrating their status as a Category 1 seller pursuant to Order 697 and 697–A under ER07–911 *et al.*

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0160.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER08–1–002.

*Applicants:* Yuma Power Limited Liability Company.

*Description:* Yuma Power Limited Liability Co submits a revised market-based rate tariff sheets in compliance with Order 697 and 697–A under ER08–1.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0203.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER08–200–002; ER06–1291–002; ER07–565–001; ER07–566–001; ER07–412–002.

*Applicants:* Waterbury Generation, LLC; MT. Tom Generating Company LLC; FirstLight Hydro Generating Company; FirstLight Power Resources Management, LLC; ECP Energy I, LLC.

*Description:* Waterbury Generation, LLC et al. submits an updated market power analysis to conform to the requirements of Order 697.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0096.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER08–201–003; ER08–202–003.

*Applicants:* Cogentrix Virginia Leasing Corporation; James River Cogeneration Company.

*Description:* Cogentrix Virginia Leasing Corp et al. submits an updated market power analysis in compliance with Order 697 and 697–A under ER08–201 *et al.*

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0205.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER08–1213–000.

*Applicants:* Westmoreland Partners.

*Description:* Westmoreland Partners request the withdrawal and deletion from its market-based rate tariff of two long-term, market-based Power Purchase Agreements with Virginia Electric and Power Company etc under ER08–1213.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080707–0071.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–16307 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings # 2

July 10, 2008.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* ER08–1204–000.
*Applicants:* Vermont Transco LLC.
*Description:* Vermont Transco LLC submits an ''updated Exhibit A for the 1991 Transmission Agreement'' a rate schedule commonly referred to as the VTA and designated as Rate Schedule 1, effective 7/1/08.
*Filed Date:* 07/01/2008.
*Accession Number:* 20080703–0136.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER08–1205–000.
*Applicants:* New England Power Pool.
*Description:* The New England Power Pool Participants Committee submits signature pages of the New England Power Pool Agreement dated as of 9/1/71, as amended executed by Correct Building Product LLC *et al.*
*Filed Date:* 07/01/2008.
*Accession Number:* 20080703–0137.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER08–1206–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool Inc submits an unexecuted Service Agreement for Network Integration Transmission Service with Oklahoma Municipal Power Authority *et al.*
*Filed Date:* 07/01/2008.
*Accession Number:* 20080703–0138.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER08–1207–000.
*Applicants:* Virginia Electric and Power Company.
*Description:* Virginia Electric and Power Co submits revised tariff sheets to the open access transmission tariff of PJM Interconnection, LLC to implement transmission rate incentives.
*Filed Date:* 07/01/2008.
*Accession Number:* 20080707–0149.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER08–1209–000.
*Applicants:* ISO New England Inc.
*Description:* ISO New England, Inc and New England Power Pool Participants Committee submits related materials addressing tariff revisions related to resources needed for reliability in the Forward Capacity Market.
*Filed Date:* 07/01/2008.
*Accession Number:* 20080703–0156.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER08–1207–001.
*Applicants:* Virginia Electric and Power Company.
*Description:* Virginia Electric and Power Co submits an errata to its 7/1/08 request for Transmission Investment Incentive under ER08–1207.
*Filed Date:* 07/02/2008.
*Accession Number:* 20080703–0204.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–1208–000.
*Applicants:* American Electric Power Service Corporation.
*Description:* AEP Operating Companies submits a second revision to the Interconnection and Local Delivery Service Agreement with City of Clyde under ER08–1208.
*Filed Date:* 07/02/2008.
*Accession Number:* 20080703–0149.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–1210–000.
*Applicants:* Arizona Public Service Company.
*Description:* ANPP Switchyard Participants submits a partially executed Amended and Restated ANPP Hassayampa Switchyard Interconnection Agreement entered into between the ANPP Switchyard Participants and the Palo Verde *et al.* under ER08–1210.
*Filed Date:* 07/02/2008.
*Accession Number:* 20080703–0209.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–1211–000.
*Applicants:* Green Energy Partners LLC.
*Description:* Green Energy Partners, LLC submits a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authorization under ER08–1211.
*Filed Date:* 07/02/2008.
*Accession Number:* 20080703–0205.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–1212–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc submits revised pages to its Open Access Transmission Tariff under ER08–1212.
*Filed Date:* 07/02/2008.
*Accession Number:* 20080703–0206.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–1214–000.
*Applicants:* Wisconsin Electric Power Company.

*Description:* Wisconsin Electric Power Company submits certain tariff revisions to the Restated Power Service Agreement with Ontonagon County Rural Electrification Association, to be effective 9/1/08 under ER08–1214.
*Filed Date:* 07/02/2008.
*Accession Number:* 20080707–0072.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–1215–000.
*Applicants:* Wisconsin Electric Power Company.
*Description:* Wisconsin Electric Power Company submits certain tariff revisions to the Restated Power Service Agreement with the City of Crystal Falls Michigan, effective 9/1/08 under ER08–1215.
*Filed Date:* 07/02/2008.
*Accession Number:* 20080707–0073.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–1216–000.
*Applicants:* Wisconsin Electric Power Company.
*Description:* Wisconsin Electric Power Company submits certain tariff revisions to its Formula Rate Wholesale Sales Tariff, to be effective 9/1/08 under ER08–1216.
*Filed Date:* 07/02/2008.
*Accession Number:* 20080707–0074.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–1217–000.
*Applicants:* Wisconsin Electric Power Company.
*Description:* Wisconsin Electric Power Company submits certain tariff revisions to the Restated Power Service Agreement with Alger Delta Cooperative Electric Association, to be effective 9/1/08 under ER08–1217.
*Filed Date:* 07/02/2008.
*Accession Number:* 20080707–0075.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–1218–000.
*Applicants:* Wisconsin Electric Power Company.
*Description:* Wisconsin Electric Power Company submits certain tariff revisions to the Restated Power Service Agreement between Wisconsin Electric and Wisconsin Public Power, Inc under ER08–1218.
*Filed Date:* 07/02/2008.
*Accession Number:* 20080707–0076.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–1219–000.
*Applicants:* CL Power Sales Ten, L.L.C.
*Description:* CL Power Sales Ten, L.L.C. submits a Notice of Cancellation under ER08–1219.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080703–0207.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1220–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits a fully executed Network Integration Transmission Service Agreement with Illinois Municipal Electric Agency under ER08–1220.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080703–0208.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1221–000; ER08–61–002.
*Applicants:* ISO New England Inc.
*Description:* ISO New England, Inc et al. submits revised tariff sheets and supporting testimony of Marc Montalvo, Manager of Market Development for the ISO under ER08–1221.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080707–0084.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1222–000.
*Applicants:* ISO New England Inc.
*Description:* ISO New England Inc *et al.* submits revised tariff sheets concerning the methodology for determining external node prices in the day-ahead energy market under ER08–1222 *et al.*
*Filed Date:* 07/03/2008.
*Accession Number:* 20080707–0296.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1223–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits a notice of cancellation for a Wholesale Market Participant Agreement under ER08–1223.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080707–0302.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1224–000.
*Applicants:* ISO New England Inc.
*Description:* ISO New England, Inc *et al.* submits 1st Revised Sheet 7011B *et al.* to FERC Electric Tariff 3 relating to retirement of existing capacity resources etc. and supporting testimony of David LaPlante under ER08–1224.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080707–0301.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1225–000.
*Applicants:* Cloud County Wind Farm, LLC.
*Description:* Petition of Cloud County Wind Farm, LLC for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority under ER07–1225.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080707–0297.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1226–000.
*Applicants:* Arlington Wind Power Project LLC.
*Description:* Petition of Arlington Wind Power Project LLC for Order Accepting Market-Based Rate Tariff for Filing and Granting Waivers and Blanket Approvals under ER07–1226.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080707–0298.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1227–000.
*Applicants:* Rail Splitter Wind Farm, LLC.
*Description:* Petition of Rail Splitter Wind Farm, LLC for Order Accepting Market-Based Rate Tariff for filing and granting Waivers and Blanket Approvals, effective 9/1/08 under ER08–1227.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080707–0299.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1228–000.
*Applicants:* Wheat Field Wind Power Project LLC.
*Description:* Petition of Wheat Field Wind Power Project LLC for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority under ER07–1228.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080707–0303.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1229–000.
*Applicants:* New York Independent System Operator, Inc.
*Description:* New York Independent System Operator, Inc submits an executed Large Generator Interconnection Agreement with Atlantic Wind, LLC under ER08–1229.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080707–0300.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1230–000.
*Applicants:* Severstal Sparrows Point, LLC.
*Description:* Severstal Sparrows Point, LLC submits the Notice of Succession and Motion for Determination of Category 1 Seller Status under ER08–1230 *et al.*
*Filed Date:* 07/03/2008.
*Accession Number:* 20080708–0038.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1231–000.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Company submits the unexecuted Interconnection Facilities Agreement between the City of Riverside and SCE under ER08–1231.

*Filed Date:* 07/07/2008.

*Accession Number:* 20080708–0037.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 28, 2008.

*Docket Numbers:* ER08–1233–000.

*Applicants:* Public Service Electric and Gas Company.

*Description:* Public Service Electric and Gas Co submits revised tariff sheets to the Open access transmission tariff under ER08–1233.

*Filed Date:* 07/07/2008.

*Accession Number:* 20080708–0034.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 28, 2008.

*Docket Numbers:* ER08–1234–000.

*Applicants:* American Electric Power Service Corporation.

*Description:* AEP Texas Central Company submits executed generation interconnection agreement dated 6/18/08 between AEP Texas Gas Central and two electric generating companies, Nueces Bay WLE, LP and Barney Davis etc. under ER08–1234.

*Filed Date:* 07/08/2008.

*Accession Number:* 20080709–0229.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 29, 2008.

*Docket Numbers:* ER08–1235–000.

*Applicants:* Midwest Independent Transmission System.

*Description:* Duquesne Light Company and Midwest Independent Transmission System Operator, Inc seeks FERC's acceptance and approval for the reliable integration of Duquesne's transmission facilities etc. under ER08–1235.

*Filed Date:* 07/03/2008.

*Accession Number:* 20080708–0132.

*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–1236–000; ER00–3751–005; ER00–2117–005; ER00–2118–005; ER93–493–017; ER07–400–001.

*Applicants:* ANP Bellingham Energy Company, LLC; ANP Blackstone Energy Company, LLC; Milford Power Limited Partnership; ANP Funding I, LLC; IPA Trading, LLC.

*Description:* IPA Entities submits an updated market power analysis supporting their continued authorization to sell power at market based rates under ER08–1236 *et al.*

*Filed Date:* 06/30/2008.

*Accession Number:* 20080708–0045.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER08–1238–000; ER99–1293–010.

*Applicants:* Monmouth Energy, Inc.

*Description:* Monmouth Energy, Inc. submits updated market power analysis and an errata to this filing on 07/08/08.

*Filed Date:* 07/07/2008; 07/08/2008.

*Accession Number:* 20080709–0239; 20080709–0238.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 28, 2008.

*Docket Numbers:* ER08–1239–000.

*Applicants:* Pocono Energy Services, LLC.

*Description:* Pocono Energy Services, LLC submits a notice of cancellation.

*Filed Date:* 07/08/2008.

*Accession Number:* 20080709–0232.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 29, 2008.

Take notice that the Commission received the following foreign utility company status filings:

*Docket Numbers:* FC08–10–000.

*Applicants:* Pubnico Point, L.P.

*Description:* Self Certification Notice of Foreign Utility Company Status of Pubnico Point, L.P.

*Filed Date:* 07/07/2008.

*Accession Number:* 20080707–5200.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 28, 2008.

*Docket Numbers:* FC08–11–000.

*Applicants:* Mount Copper, L.P.

*Description:* Self Certification Notice of Foreign Utility Company Status of Mount Copper, L.P.

*Filed Date:* 07/07/2008.

*Accession Number:* 20080707–5202.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 28, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA08–24–001.

*Applicants:* Alcoa Power Generating, Inc.—Yadkin.

*Description:* Yadkin Division of Alcoa Power Generating, Inc. submits the blacklined Open Access Transmission Tariff sheets containing revised effective dated under OA08–24.

*Filed Date:* 07/07/2008.

*Accession Number:* 20080708–0036.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 28, 2008.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH08–31–000

*Applicants:* Energy West Incorporated

*Description:* FERC 65–B Notification of Energy West Resources, Inc's. change in exempt holding company status under PH08–31, et. al.

*Filed Date:* 07/07/2008.

*Accession Number:* 20080707–5231.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 28, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–16308 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

July 10, 2008.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC08–107–000.
*Applicants:* Duke Energy Corporation, Catamount Energy Corp, Ryegate Associates, Rumford Cogeneration Co LP.
*Description:* Duke Energy Corp, Catamount Energy Corp, Ryegate Associates et al submits an application requesting authorization for the indirect acquisition of securities at Catamount, Ryegate and Rumford under EC08–107.
*Filed Date:* 07/01/2008.
*Accession Number:* 20080707–0054.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* EC08–108–000.
*Applicants:* Forward Energy LLC, EFS Forward, LLC, Wachovia Investment Holdings, LLC.
*Description:* Forward Energy LLC *et al.* submits an application for authorization re the sale and transfer of a portion of the Class A membership interests etc.
*Filed Date:* 07/02/2008.
*Accession Number:* 20080703–0211.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* EC08–110–000.
*Applicants:* Baja California Power, Inc., AIG Highstar Capital ll Ocean Star The N, AIG Highstar Capital ll Prism Fund Ocean, AIG Investor Ocean Star The Netherlands, Uluru Finance Limited, GMR Infrastructure (Malta) Limited.
*Description:* Baja California Power, Inc submits an application for order authorizing Indirect Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action under EC08–110.
*Filed Date:* 07/08/2008.
*Accession Number:* 20080710–0096.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 29, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER94–1061–028.
*Applicants:* Rainbow Energy Marketing Corporation.
*Description:* Rainbow Energy Marketing Corporation requests that FERC accept the request for Category Seller determination as timely filed, or alternatively find that good cause exists to grant waiver under ER94–1061.
*Filed Date:* 07/01/2008.
*Accession Number:* 20080703–0140.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER97–324–011; ER97–3834–018.
*Applicants:* Detroit Edison Company; DTE Energy Trading, Inc.
*Description:* The Detroit Edison Company et al submits the revised Market-Based Rate Tariffs under ER97–324 *et al.*
*Filed Date:* 07/03/2008.
*Accession Number:* 20080709–0233.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER97–3561–006; ER98–3771–002; ER00–2839–006; ER00–1737–012; ER04–834–005; ER96–2869–014; ER02–1342–004; ER97–30–007; ER99–1432–010; ER99–1695–012; ER01–2763–002; ER00–3621–010; ER05–34–006; ER01–468–009; ER05–35–006; ER05–36–006; ER05–37–006; ER04–318–005; ER04–249–006; ER02–23–012; ER07–1306–005.
*Applicants:* Virginia Electric and Power Company; State Line Energy, L.L.C.; Kincaid Generation, L.L.C.; Elwood Energy, LLC; Dominion Nuclear Connecticut, Inc.; Dominion Energy New England, Inc.; Dominion Energy Marketing, Inc.; Dominion Energy Salem Harbor, LLC; Dominion Energy Brayton Point, LLC; Dominion Energy Manchester Street, Inc.; Dominion Energy Kewaunee, Inc.; Dominion Retail, Inc.; Fairless Energy, LLC; NedPower Mount Storm, LLC.
*Description:* Notice of Change in Status Under Order No. 697–A of Dominion Resources Services, Inc. under ER97–3561, *et al.*
*Filed Date:* 07/02/2008.
*Accession Number:* 20080702–5128.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER99–2061–002.
*Applicants:* Enjet, Inc.
*Description:* Enjet, Inc submits an updated market power analysis and rate schedule revisions under ER99–2061.
*Filed Date:* 07/07/2008.
*Accession Number:* 20080709–0234.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 28, 2008.

*Docket Numbers:* ER99–3502–008; ER02–1884–007; ER02–1884–008.
*Applicants:* Berkshire Power Company, LLC; Waterside Power, LLC.
*Description:* Errata to Order No. 697 Compliance Filing of June 30, 2007 of Berkshire Power Company, LLC, *et al.* and Withdrawal of Duplicative Revised Tariff Sheets of Waterside Power, LLC under ER99–3502, *et al.*
*Filed Date:* 07/07/2008.
*Accession Number:* 20080707–5245.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER00–895–009.
*Applicants:* Onondago Cogeneration Limited Partnership.
*Description:* Onondaga Cogeneration Limited Partnership request that FERC accept the attached request for Category 1 Seller determination ( Request) as timely filed, or alternatively find that good cause exist to grant waiver.
*Filed Date:* 07/01/2008.
*Accession Number:* 20080707–0003.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER01–174–004.
*Applicants:* Lighthouse Energy Trading Company, Inc.
*Description:* Lighthouse Energy Trading Co, Inc requests that the FERC accept their request for Category 1 Seller determination, or alternatively find that good cause exist to grant waiver pursuant to Order 697.
*Filed Date:* 07/01/2008.
*Accession Number:* 20080707–0010.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER02–1398–004; ER08–1100–002; ER08–1099–002; ER05–1249–007.
*Applicants:* KeySpan-Ravenswood, LLC; National Grid-Glenwood Energy Center, LLC; National Grid-Port Jefferson Energy Center, LLC; Granite State Electric Co.
*Description:* Compliance filing of National Grid USA to comply with directives in FERC's Order.
*Filed Date:* 07/03/2008.
*Accession Number:* 20080707–0295.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER02–2559–008; ER02–669–008; ER00–2391–009; ER00–3068–008; ER98–3511–012; ER02–1903–009; ER99–2917–010; ER98–3566–015; ER02–1838–008; ER98–3563–012; ER98–3564–013; ER02–2120–006; ER05–714–003; ER03–623–008; ER04–290–004; ER01–1710–011; ER04–187–006; ER05–236–006; ER02–2166–008; ER01–2139–012; ER03–1375–005.
*Applicants:* Backbone Mountain Windpower LLC; Bayswater Peaking Facility, LLC; Doswell Limited Partnership; FPL Energy Cape, LLC; FPL Energy Maine Hydro, LLC; FPL Energy Marcus Hook, L.P.; FPL Energy MH 50, LP; FPL Energy Seabrook, LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; FPLE Rhode Island State Energy, L.P.; Gexa Energy LLC; Jamaica Bay Peaking Facility, LLC; Meyersdale Windpower, LLC; Mill Run Windpower, LLC; North Jersey Energy

Associates, L.P.; Northeast Energy Associates, LP; Pennsylvania Windfarms, Inc.; Somerset Windpower, LLC; Waymart Wind Farm L.P.

*Description:* The FPLE Companies submit the Triennial Updated Market Power Analysis under ER02–2559 *et al.*

*Filed Date:* 06/30/2008.

*Accession Number:* 20080707–0013.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER03–9–012; ER98–2157–013.

*Applicants:* Westar Energy, Inc.; Kansas Gas and Electric Company.

*Description:* Revised Notice of Change in Status of Westar Energy, Inc.

*Filed Date:* 07/02/2008.

*Accession Number:* 20080702–5077.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER03–9–014; ER06–1313–004; ER98–2157–015.

*Applicants:* Westar Energy, Inc., Kansas Gas and Electric Company.

*Description:* Refund Report of Westar Energy, Inc., *et al.*

*Filed Date:* 07/03/2008.

*Accession Number:* 20080703–5148.

*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER03–114–005; ER04–183–004.

*Applicants:* Great Bay Power Marketing, Inc.; Great Bay Hydro Corporation.

*Description:* Great Bay Power Marketing, Inc and Great Bay Hydro Corp's application for qualification as Category 1 Sellers and revised tariff sheets pursuant to Orders 697 and 697–A under ER03–114 *et al.*

*Filed Date:* 07/01/2008.

*Accession Number:* 20080707–0011.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER03–774–009.

*Applicants:* Eagle Energy Partners I, L.P.

*Description:* Lehman Brothers Commodity Services, Inc and Eagle Energy Partners I, LP submits their petition requesting classification as a Category 1 Seller pursuant to Order 697 and market-based rate compliance filings under ER05–1420 *et al.*

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0001.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER03–1182–006; ER04–698–006; ER99–415–016.

*Applicants:* Tyr Energy, LLC; Tor Power, LLC; Commonwealth Chesapeake Company, LLC.

*Description:* Tyr Energy LLC *et al.* requests that FERC accept the request for Category 1 Seller determination as timely filed, or alternatively find that good cause exists to grant waiver.

*Filed Date:* 07/01/2008.

*Accession Number:* 20080703–0139.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER05–1288–001; ER04–1013–003.

*Applicants:* Wheelabrator North Andover Inc., Wheelabrator Westchester, L.P.

*Description:* Wheelabrator North Andover Inc *et al.* submits updated market analysis in compliance filing etc under ER05–1288 *et al.*

*Filed Date:* 06/27/2008.

*Accession Number:* 20080702–0104.

*Comment Date:* 5 p.m. Eastern Time on Friday, July 18, 2008.

*Docket Numbers:* ER06–1512–001.

*Applicants:* Verso Androscoggin LLC.

*Description:* Verso Androscoggin LLC request that the FERC accept the attached request for Category 1 Seller determination (Request) as timely filed, or alternatively find that good cause exists to grant waiver.

*Filed Date:* 07/01/2008.

*Accession Number:* 20080707–0002.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER06–758–005.

*Applicants:* Chambers Cogeneration, Limited Partnership.

*Description:* Chambers Cogeneration, Limited Partnership submits a supplement to its updated market power analysis in compliance with Order 697–A.

*Filed Date:* 06/30/08; 07/01/2008.

*Accession Number:* 20080702–0215; 20080702–0216.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER07–466–002.

*Applicants:* MET MA, LLC.

*Description:* MET MA, LLC submits Order 697 compliance filing and Application for Category 1 Status under ER07–466.

*Filed Date:* 06/30/2008.

*Accession Number:* 20080702–0119.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER07–1040–001; ER06–169–002; ER08–1108–001.

*Applicants:* Hopewell Cogeneration Ltd Partnership, Syracuse Energy Corporation, SUEZ Energy Marketing NA, Inc.

*Description:* Hopewell Cogeneration Limited Partnership *et al.* submits an updated market power analysis supporting their continued authorization to sell power at market-based rates and filed workpapers on 7/1/08.

*Filed Date:* 06/30/2008; 07/01/2008.

*Accession Number:* 20080708–0042; 20080708–0043.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 21, 2008.

*Docket Numbers:* ER07–1136–002.

*Applicants:* Camp Grove Wind Farm LLC.

*Description:* Order No. 697 Compliance Filing of Camp Grove Wind Farm LLC.

*Filed Date:* 07/01/2008.

*Accession Number:* 20080630–5145.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER07–1136–003; ER08–561–001.

*Applicants:* Benton County Wind Farm LLC, Camp Grove Wind Farm LLC.

*Description:* Notice of Change of Status of Camp Grove Wind Farm LLC, *et al.* in ER07–1136, *et al.* Filed Date: 07/02/2008.

*Accession Number:* 20080702–5076.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER07–1174–003; OA07–74–003.

*Applicants:* MATL LLP.

*Description:* MATL LLP submits a compliance filing re OATT Attachments C and K under ER07–1174 *et al.*

*Filed Date:* 07/03/2008.

*Accession Number:* 20080708–0044.

*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–371–002.

*Applicants:* Cooperative Energy Incorporated.

*Description:* Cooperative Energy Inc submits FERC Rate Schedule 1, Original Sheet which correctly reflects the effective date of 6/22/08 re notification of excess sales under ER08–371.

*Filed Date:* 07/02/2008.

*Accession Number:* 20080703–0202.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–541–002.

*Applicants:* American Electric Power Service Corporation.

*Description:* The American Electric Power Service Corp submits amendment to the Revised Interconnection and Local Delivery Service Agreement with the City of Garrett under ER08–541.

*Filed Date:* 07/02/2008.

*Accession Number:* 20080703–0148.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–569–002.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits revised tariff sheets for Article II.C of Attachment Q–PJM Credit Policy of the PJM Open Access

Transmission Tariff, Sixth Revised Volume 1 etc under ER08–569 *et al.*

*Filed Date:* 07/03/2008.

*Accession Number:* 20080707–0085.

*Comment Date:* 5 p.m. Eastern Time on Thursday, July 24, 2008.

*Docket Numbers:* ER08–808–001.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc submits the Alternate Pro Forma Sheet 30 in compliance with FERC's 6/6/08 Order under ER08–808.

*Filed Date:* 07/08/2008.

*Accession Number:* 20080710–0100.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 29, 2008.

*Docket Numbers:* ER08–951–001.

*Applicants:* PSEG Energy Resources & Trade LLC.

*Description:* PSEG Energy Resources and Trade, LLC submits an amendment to its 5/13/08 filing of a new rate schedule under ER08–951.

*Filed Date:* 07/08/2008.

*Accession Number:* 20080710–0099.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 29, 2008.

*Docket Numbers:* ER08–964–001.

*Applicants:* Outback Power Marketing, Inc.

*Description:* Outback Power Marketing, Inc submits an amendment to its 5/16/08 Notice of Cancellation under ER08–964.

*Filed Date:* 07/01/2008.

*Accession Number:* 20080703–0203.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER08–996–001.

*Applicants:* CBA Endeavors, LLC.

*Description:* CBA Endeavors, LLC submits the amendment to 5/20/08 Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority under ER08–996.

*Filed Date:* 07/07/2008.

*Accession Number:* 20080708–0035.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 28, 2008.

*Docket Numbers:* ER08–1193–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Pacific Gas and Electric Company submits the revisions to the Generator Special Facilities Agreement and the Generator Interconnection Agreement between PG&E Geysers Power Company, LLC under ER08–1193.

*Filed Date:* 07/01/2008.

*Accession Number:* 20080708–0274.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER08–1195–000.

*Applicants:* Red Hills Wind Project LLC.

*Description:* Application for Red Hills Wind Project, LLC for order accepting market-based rate tariff, granting authorizations and blanket authority, and waiving certain requirements under ER08–1195.

*Filed Date:* 07/02/2008.

*Accession Number:* 20080707–0004.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 23, 2008.

*Docket Numbers:* ER08–1200–000.

*Applicants:* MidAmerican Energy Company.

*Description:* MidAmerican Energy Co submits Notices of Cancellation of agreements with Western Area Power Administration.

*Filed Date:* 07/01/2008.

*Accession Number:* 20080703–0150.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER08–1201–000.

*Applicants:* Southwestern Electric Power Company.

*Description:* Southwestern Electric Power Co submits amendments to an agreement with Tex-La Electric Cooperative, Inc.

*Filed Date:* 07/01/2008.

*Accession Number:* 20080703–0141.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER08–1202–000.

*Applicants:* Huntrise Energy Fund LLC.

*Description:* Huntrise Energy Fund LLC Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

*Filed Date:* 07/01/2008.

*Accession Number:* 20080703–0151.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

*Docket Numbers:* ER08–1203–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corp submits an amendment to the Participation Load Agreement with the California Department of Water Resources.

*Filed Date:* 07/01/2008.

*Accession Number:* 20080703–0142.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 22, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–16309 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI08–12–000]**

### Crane & Company; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

July 10, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI08–12–000.

c. *Date Filed:* June 30, 2008.

d. *Applicant:* Crane & Company.

e. *Name of Project:* Byron Weston Hydroelectric Project.

f. *Location:* The proposed Byron Weston Hydroelectric Project will be located on the East Branch Housatonic River, in Dalton, Berkshire County, Massachusetts.

g. *Filed Pursuant To:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Chad W. Cox, P.E., CZA GeoEnvironmental, Inc., One Edgewater Drive, Norwood, MA 02446; *telephone:* (781) 278–5787; Fax: (781) 278–5701; *e-mail: http://www.chad.cox@gza.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* August 11, 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. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing link.

Please include the docket number (DI08–12–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed run-of-river Byron Weston Hydropower Project will include: (1) An existing 200-foot-long, 23-foot-high stone-and-masonry-gravity dam, (2) a 6-foot-diameter penstock, (3) a 176-kW turbine/generator, located within the Byron Weston No. 2 Mill; and (4) appurtenant facilities. Power generated will be used on-site.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16300 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI08–9–000]**

### Gary E. Hall; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

July 10, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI08–9–000.

c. *Date Filed:* June 17, 2008.

d. *Applicant:* Gary E. Hall.

e. *Name of Project:* Potter Creek Hydroelectric Project.

f. *Location:* The proposed Potter Creek Hydroelectric Project will be located on Potter Creek, near Olney, in Flathead County, Montana, affecting T. 32 N, R. 24 W, sec. 23, Montana Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Gary E. Hall, P.O. Box 133, Olney, Montana 59927; telephone: (406) 881–2345; e-mail: *www.garius@centurytel.net.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* August 11, 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. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing link.

Please include the docket number (DI08–9–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Potter Creek Hydropower Project will include: (1) An existing 3-foot-high, 50-foot-long dam impounding a .07-acre-foot reservoir; (2) A proposed 100-foot-long, 4-inch-diameter plastic penstock; (3) A proposed powerhouse containing a 50-Watt generator, directing power into a battery; and (4) appurtenant facilities. The proposed project will not be connected to an interstate grid. The project will occupy federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16299 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI08–11–000]**

### HPML LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

July 10, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI08–11–000.

c. *Date Filed:* June 23, 2008.

d. *Applicant:* HPML LLC.

e. *Name of Project:* Delia Creek Hydroelectric Project.

f. *Location:* The proposed Delia Creek Hydroelectric Project will be located on Delia Creek, near the towns of Palmer and Wasilla, Matanuska-Susitna Borough, Alaska, affecting T. 20 N, R. 1 E, sec. 36, Seward Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Jill Reese, P.O. Box 91187, Anchorage, AK 99509; *telephone:* (907) 232–9648; *Fax:* (907) 745–6004; *e-mail: www.jilreese@gmail.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or *e-mail address: henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* August 11, 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. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Please include the docket number (DI08–11–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Delia Creek Hydropower Project will include: (1) A proposed 3-foot-high, 12-foot-wide diversion structure; (2) a buried 10-inch-deep desander box, directing water into a 2600-foot-long HDPE penstock; (3) a 15-foot-long by 15-foot-wide powerhouse containing a 50-kW turbine and generator; (4) a tailrace emptying into the Little Susitna River; and (5) appurtenant facilities. The proposed project will not be connected to an interstate grid, and will not occupy any tribal or federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must

be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16301 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI08–10–000]**

### John Werner; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

July 10, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI08–10–000.

c. *Date Filed:* June 22, 2008.

d. *Applicant:* John Werner.

e. *Name of Project:* Jordan Mill Hydroelectric Project.

f. *Location:* The proposed Jordan Mill Hydroelectric Project will be located on the Royal River, near the town of New Gloucester, in Cumberland County, Maine.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* John Werner, 17 Sawyer Road, New Gloucester, Maine 04260; *telephone:* (207) 926–5055; *e-mail: www.cwerner1@maine.rr.com*.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or *e-mail address: henry.ecton@ferc.gov*.

j. *Deadline for filing comments, protests, and/or motions:* August 11, 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. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Please include the docket number (DI08–10–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Jordan Mill Hydropower Project will include: (1) An existing 10-foot-high, 25-foot-long concrete-and-cut-stone gravity dam impounding a 38.25-acre-foot reservoir; (2) a proposed 450-foot-long, 12-inch-diameter plastic penstock; (3) a proposed 8-foot-wide by 12-foot-long powerhouse containing a 10-kW generator; (4) a 390-foot-long transmission line; and (5) appurtenant facilities. The proposed project will not be connected to an interstate grid, and will not occupy any tribal or federal lands. Power generated will be used on-site.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16302 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL08–75–000]**

### PacifiCorp; Notice of Filing

July 10, 2008.

Take notice that on July 3, 2008, PacifiCorp tendered for filing a Petition for Declaratory Order for Incentive Rate Treatment approving specific incentive rate treatments for PacifiCorp's Energy Gateway Transmission Expansion Project.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on July 24, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16298 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER08–1125–000]**

### Brookfield Renewable Energy Marketing US, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 10, 2008.

This is a supplemental notice in the above-referenced proceeding of Brookfield Renewable Energy Marketing US, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 1, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16297 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13221–000]**

### Pacific Gas and Electric Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

July 10, 2008.

On May 8, 2008, Pacific Gas and Electric Company filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mokelumne Pumped Storage Project to be located in Amador and Calaveras Counties, California on private and federal land managed by the U.S. Forest Service.

The proposed project would consist of one of the following three possible designs: (1)(i) Use of the existing Lower Bear River Reservoir, with a surface area of 746 acres, storage capacity of 49,079 acre feet, and normal water surface elevation of 5,822 feet, as the upper reservoir with the possibility of a dam raise to increase capacity; (ii) a 16,000 foot long power tunnel including intake structure, penstock, and tailrace, (2)(i) use of the existing Upper Bear River Reservoir, with a surface area of 320 acres, storage capacity of 6,756 acre feet, and a normal water surface elevation of 5,876 feet, as the upper reservoir with the possibility of a dam raise to increase capacity; (ii) a 20,000 foot long power tunnel including intake structure, penstock, and tailrace, (3)(i) A newly constructed dam in the Cole Creek area about 150 feet high and 700 feet long; (ii) a reservoir with a surface elevation of 6,139 feet and capacity of 12,856 acre feet; (iii) an 11,700 foot long power tunnel including intake structure, penstock, and tailrace; (4) the existing Salt Springs Reservoir, with a surface area of 960 acres, storage capacity of 141,817 acre feet, and a normal water surface elevation of 3,959 feet, would act as the lower reservoir for the proposed plans; (5) a powerhouse with a total installed capacity from 380–1140 MW; (6) a transmission line about 3,000 feet long and of 230 or 500 kV and; (7) appurtenant facilities. The annual electrical production would be between 523 and 742 GWh.

*Applicant Contact:* Mr. Randal S. Livingston 245 Market Street, N11E–1137, San Francisco, CA 94105, (415) 973–6950.

*FERC Contact:* Steven Sachs, (202) 502–8666.

Deadline for filing comments, motions to intervene, competing applications

(without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13221) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16291 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13234–000]**

### City and Borough of Sitka; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

July 10, 2008.

On June 3, 2008, The City and Borough of Sitka filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Takatz Lake Project to be located on Takatz Lake in the Borough of Sitka, Alaska. The project would occupy federal lands managed by the U.S. Forest Service.

The proposed project would consist of: (1) A 200 foot high concrete arch dam; (2) a reservoir with an elevation of 1,040 feet mean sea level and a capacity of 82,400 acre feet; (3) a 2,800 foot long, unlined power tunnel fed by a lake tap and draining into a 1,000 foot long steel lined penstock; (4) a powerhouse containing two turbine-generator units with a total installed capacity of 27.7 MW; (5) a 26 mile long, 69 kv transmission line and; (6) appurtenant facilities. The project is estimated to have an annual generation of 106.9 GWh.

*Applicant Contact:* James E. Dinley, 100 Lincoln Street, Sitka, AK 99835, 907–747–1808.

*FERC Contact:* Steven Sachs, 202–502–8666.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13234) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16292 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13214–000]**

### Lock 12 Hydro Partners; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

July 10, 2008.

On April 28, 2008, Lock 12 Hydro Partners filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Kentucky Lock and Dam 12 Project to be located at river mile 220.9 on the Kentucky River at Lock and Dam 12 in Estill County, Kentucky. Existing facilities are owned by the Kentucky River Authority.

The proposed project would utilize the existing Lock and Dam 12 owned by the Kentucky River Authority and would consist of: (1) A powerhouse containing 4 turbine generator units producing a total installed capacity of 2.7 MW; (2) a 1,000 foot transmission line; and (3) appurtenant facilities. The annual production would be 11 GWh which would be sold to a local utility.

*Applicant Contact:* Mr. David Brown Kinloch, 414 S. Wenzel Street, Louisville, KY 40204, (502) 589–0975.

*FERC Contact:* Steven Sachs, (202) 502–8666.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13214) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16295 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13213–000]**

### Lock 14 Hydro Partners; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

July 10, 2008.

On April 28, 2008, Lock 14 Hydro Partners filed an application, pursuant

to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Kentucky Lock and Dam 14 Project to be located at river mile 249 on the Kentucky River at Lock and Dam 14 in Lee County, Kentucky. Existing facilities are owned by the Kentucky River Authority.

The proposed project would utilize the existing Lock and Dam 14 owned by the Kentucky River Authority and would consist of: (1) A powerhouse containing 4 turbine generator units with a total installed capacity of 2.7 MW; (2) a 2,000 foot transmission line; and; (3) appurtenant facilities. The annual production would be 11 GWh which would be sold to a local utility.

*Applicant Contact:* Mr. David Brown Kinloch, 414 S. Wenzel Street, Louisville, KY 40204, (502) 589–0975.

*FERC Contact:* Steven Sachs, (202) 502–8666.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13213) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16296 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13220–000]**

### Pacific Gas and Electric Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

July 10, 2008.

On May 7, 2008, Pacific Gas and Electric Company filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Kings River Pumped Storage Project to be located in Fresno County, California on private and federal land managed by the U.S. Forest Service.

The proposed project would consist of one of the following two possible designs: (1) (i) A dam in the Lost Canyon area 200 ft high and 700 ft long; (ii) a reservoir with a surface elevation of 7,720 ft and an estimated storage capacity of 15,695 acre-feet, (iii) an 8,000 foot long power tunnel including intake structure, penstock, and tailrace; (2) (i) A dam in the Lower Short Hair Creek area with a height of 175 ft high and length of 1,700 ft; (ii) a reservoir with full pool elevation of 8,245 ft and storage capacity of 16,290 acre-feet; (iii) a 14,000 foot long power tunnel including intake structure, penstock, and tailrace; (3) the existing Wishon reservoir, with a surface area of 1,025 acres, storage capacity of 128,639, and a normal water surface elevation of 6,550 feet, would act as the lower reservoir for either proposed plan; (4) a powerhouse with a total installed capacity from 380–1140 MW; (5) a transmission line between 2,000 and 5,000 feet long and of 230 or 500 kV and; (6) appurtenant facilities. The proposed project would have an annual production between 304 and 912 GWh.

*Applicant Contact:* Mr. Randal S. Livingston, 245 Market Street, N11E–1137, San Francisco, CA 94105, (415) 973–6950.

*FERC Contact:* Steven Sachs, (202) 502–8666.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13220) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16294 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD08–5–000]**

### Compliance Workshop; Notice of Comment Period for Workshop on Regulatory Compliance

July 10, 2008.

As announced at the Workshop on Regulatory Compliance held July 8, 2008, the Commission is providing the opportunity for written comments to be filed in this proceeding until July 22, 2008.

The Commission encourages electronic submission in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–16303 Filed 7–16–08; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[Docket No. EPA–R02–OAR–2008–0497; FRL–8694–3]**

## Adequacy Status of the Submitted 2008 and 2009 8-Hour Ozone Motor Vehicle Emission Budgets for Transportation Conformity Purposes for New Jersey

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

**ACTION:** Notice of Adequacy.

**SUMMARY:** In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets for $NO_X$ and VOC in the submitted reasonable further progress and attainment demonstration state implementation plans for the New Jersey portions of the New York-Northern New Jersey-Long Island, NY-NJ-CT and Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone nonattainment areas to be adequate for transportation conformity purposes. The transportation conformity rule (40 CFR part 93) requires that the EPA conduct a public process and make an affirmative decision on the adequacy of budgets before they can be used by metropolitan planning organizations in conformity determinations. As a result of our finding, the metropolitan planning organizations in New Jersey (the North Jersey Transportation Planning Authority, the Delaware Valley Regional Planning Commission, and the South Jersey Transportation Planning Organization) must use the new 2008 and 2009 8-hour ozone budgets for future transportation conformity determinations.

**DATES:** This finding is effective August 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Matthew Laurita, Air Programs Branch, Environmental Protection Agency—Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3895, *laurita.matthew@epa.gov*.

The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

**SUPPLEMENTARY INFORMATION:**

### Background

On October 29, 2007, New Jersey submitted reasonable further progress and attainment demonstration state implementation plans to EPA for both the New York-Northern New Jersey-Long Island, NY-NJ-CT (New York), and Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (Philadelphia), 8-hour ozone nonattainment areas. The purpose of New Jersey's submittal was to demonstrate New Jersey's progress toward attaining the 8-hour ozone National Ambient Air Quality Standard. New Jersey's submittal included motor vehicle emissions budgets (''budgets'') for 2008 and 2009 for use by the State's metropolitan planning organizations in making transportation conformity determinations. On March 19, 2008, the availability of these budgets was posted on EPA's Web site for the purpose of soliciting public comments. The comment period closed on April 18, 2008, and EPA received no comments.

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to New Jersey on June 9, 2008. The findings letter states that the 2008 motor vehicle emissions budgets in New Jersey's SIPs for both the New York and Philadelphia 8-hour ozone nonattainment areas are adequate because they are consistent with the required rate of progress plan. With regard to the 2009 motor vehicle emissions budgets, the findings letter states that these budgets are adequate for transportation conformity purposes because they provide for continued progress toward attainment of the 8-hour ozone standard. These budgets serve to strengthen the SIP through continued progress towards attainment and ensure that motor vehicle emissions remain consistent with the emissions levels provided for in the SIP. New Jersey submitted the budgets on October 29, 2007, as part of the reasonable further progress plans and 8-hour ozone attainment demonstrations for the New York and Philadelphia 8-hour ozone nonattainment areas. EPA's finding will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in 40 CFR 93.118(f). We have followed this rule in making our adequacy determination. The motor vehicle emissions budgets being found adequate today are listed in Table 1.

TABLE 1.—8–HOUR OZONE MOTOR VEHICLE EMISSIONS BUDGETS FOR NEW JERSEY

[Tons per day]

| Metropolitan Planning Organization | 2008 | | 2009 | |
|---|---|---|---|---|
| | $NO_x$ | VOC | $NO_x$ | VOC |
| North Jersey Transportation Planning Authority (excluding Ocean County) | 143.60 | 85.38 | 133.39 | 79.00 |
| North Jersey Transportation Planning Authority (Ocean County only) | 8.69 | 6.93 | 12.65 | 6.45 |
| Delaware Valley Regional Planning Commission | 69.67 | 27.75 | 63.66 | 25.98 |
| South Jersey Transportation Planning Organization | 32.93 | 14.14 | 29.64 | 13.04 |

**Authority:** 42 U.S.C. 7401–7671 q.

Dated: July 8, 2008.

**Alan J. Steinberg,**

*Regional Administrator, Region 2.*

[FR Doc. E8–16390 Filed 7–16–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8694–4]**

## Clean Water Act Section 303(d): Availability of List Decisions

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

**ACTION:** Notice of Availability.

**SUMMARY:** This notice announces the availability of EPA's final action identifying water quality limited segments and associated pollutants in Texas to be listed pursuant to Clean Water Act (CWA) Section 303(d), and request for public comment. Section 303(d) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On July 9, 2008, EPA partially approved, and partially disapproved, Texas' 2008 303(d) submission. Specifically, EPA approved Texas' listing of 836 water body-pollutant combinations, and associated priority rankings. EPA disapproved Texas' decision not to list one (1) water body-pollutant combination. EPA identified this additional water body pollutant-combination along with priority ranking for inclusion on the 2008 Section 303(d) List.

EPA is providing the public the opportunity to review its final decision to add one water body pollutant-combination to Texas' 2008 Section 303(d) List, as required by EPA's Public Participation regulations (40 CFR Part 25). EPA will consider public comments and if necessary amend its final action on the additional water body pollutant-combination identified for inclusion on Texas' Final 2008 Section 303(d) List.

**DATES:** Comments must be submitted in writing to EPA on or before August 18, 2008.

**ADDRESSES:** Comments on the decisions should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–2145, facsimile (214) 665–7373, or e-mail: *smith.diane@epa.gov*. Oral comments will not be considered. Copies of the documents which explain the rationale for EPA's decision and a list of the water quality limited segment for which EPA disapproved Texas' decision not to list can be obtained at EPA Region 6's Web site at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm*, or by writing or calling Ms. Smith at the above address. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

**FOR FURTHER INFORMATION CONTACT:** Diane Smith at (214) 665–2145.

**SUPPLEMENTARY INFORMATION:** Section 303(d) of the CWA requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, Texas submitted to EPA its listing decisions under Section 303(d) on April 1, 2008. On July 9, 2008, EPA approved Texas' listing of 836 water body-pollutant combinations and associated priority rankings. EPA disapproved Texas' decision not to list one (1) water body-pollutant combination. EPA identified this additional water body pollutant-combination along with priority ranking for inclusion on the 2008 Section 303(d) List. EPA solicits public comment on its identification of one (1) additional water body-pollutant combination for inclusion on Texas' 2008 Section 303(d) List.

Dated: July 10, 2008.

**Miguel I. Flores,**

*Director, Water Quality Protection Division, Region 6.*

[FR Doc. E8–16387 Filed 7–16–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8693–8]**

## Amendment to the Guidelines for the Award of Monitoring Initiative Funds under Section 106 Grants to States, Interstate Agencies, and Tribes

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

**ACTION:** Notice of availability.

**SUMMARY:** This notice amends the ''Guidelines for the Award of Monitoring Initiative Funds under Section 106 Grants to States, Interstate Agencies, and Tribes'' published in the **Federal Register** (71 FR 157190, March 29, 2006). The guidelines describe the formula necessary for EPA to allot Clean Water Act (CWA) section 106 water pollution control program grant funds that have been targeted in EPA's appropriation process to support enhanced monitoring efforts by states, interstate agencies, and tribes. These guidelines describe the specific activities that states, interstate agencies, and tribes must carry out under the monitoring initiative in order to receive the funds. These activities will improve state and tribal capacity to monitor and report on water quality, and include two components: Implementation of comprehensive monitoring strategies including building capacity for state-scale statistically-valid surveys of water condition, and collaboration on statistically-valid surveys of the nation's waters. This amendment retains the allotment formula set out in the March 29, 2006, guidelines, and adds a performance-based standard for incorporating use of statistically-valid surveys into state water monitoring programs. The amended guidelines are in this **Federal Register** notice in their entirety and replace the guidelines published March 29, 2006.

**DATES:** The guidelines are effective on July 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** Joan Warren, Office of Water, Office of Wetlands, Oceans, and Watersheds, 4503T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 566–1215; *e-mail address: warren.joan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*Regulated Entities:* States, interstate agencies, and tribes that are eligible to receive grants under section 106 of the CWA.

## II. Background

Numerous reports have identified the need for improved water quality monitoring and analysis at local, state, or national scales. In 2000, the General Accounting Office reported that EPA and states cannot make statistically-valid assessments of water quality and lack the data to support key management decisions. In 2001, the National Research Council recommended that EPA and states promote a uniform, consistent approach to ambient monitoring and data collection to support core water quality programs. In 2002, the H. John Heinz III Center for Science, Economics, and the Environment found that water quality data are inadequate for reporting on fresh water, coastal and ocean water quality indicators at a nationwide scale. The U.S. Commission on Ocean Policy issued similar conclusions in 2004. The National Academy of Public Administration (NAPA) stated that improved water quality monitoring is necessary to help states make more effective use of limited resources. EPA's Draft Report on the Environment 2003 found that there is not sufficient information to provide a national answer with confidence and scientific credibility to the question, 'What is the condition of U.S. waters and watersheds?'

EPA has been working with federal, state, and other partners to develop and promote the use of a variety of monitoring tools to most efficiently answer water quality management questions at multiple geographic scales. Statistically-based surveys, predictive models, remote sensing and targeted monitoring are examples of these tools. In combination, these tools can be used by states and tribes to describe the magnitude of water resource concerns, help focus on key stressors that are both widespread and high risk, and prioritize site-specific monitoring activities to identify and address problem areas. Incorporating these tools into monitoring strategies and into monitoring program designs should help states and tribes meet multiple state and national monitoring objectives cost-effectively.

States have traditionally monitored only a small percentage of all the nation's waters: Approximately 20% of streams and rivers, 40% of lakes, and 35% of estuarine waters. They have used a site-specific, targeted monitoring approach to generally focus limited monitoring resources on heavily used or problem waters. The waters monitored may not reflect conditions in state waters as a whole. In addition, states often monitor a different set of waters from cycle to cycle. These targeted assessments, while providing important site-specific information, do not fully meet the intent of the CWA section 305(b) requirement. Under section 305(b) states must report on the extent of their waters meeting the fishable and swimmable goals of the CWA. Statistically-valid surveys offer a cost-effective and efficient way to fulfill CWA requirements, complement traditional monitoring designs, and support a broader range of management decisions. There is widespread acceptance of the use of statistical surveys in reports on the nation's housing, labor, health, agricultural, and other sectors.

To address the need for credible reports on water quality status and trends nationwide, the President's Fiscal Year 2005 through FY 2009 budgets specifically requested

> ''Not less than $18.5 million shall be provided through Clean Water Act Section 106 grants for State and interstate agencies' implementation of EPA-approved statistically representative, probabilistic water quality monitoring activities.''

The FY 2006 Conference Report, which accompanied EPA's FY 2006 appropriation, designated an additional, separate portion of the total section 106 funds to be targeted for this monitoring initiative.

On January 3, 2006, EPA published a revision to its CWA section 106 grant regulations (40 CFR 35.162(d)) that provides the Agency with the flexibility to allot separately funds such as these which have been targeted for specific water pollution control elements (71 FR 17, January 3, 2006). In this situation, such allotment can occur only after EPA establishes an allotment formula after consultation with states and interstate agencies. On March 29, 2006, EPA published the guidelines for applying the increased funding to enhance monitoring activities, including maintaining and improving statistically-valid water quality monitoring programs to provide information for decision makers and the public. These amended guidelines include this allotment formula, as well as further details regarding the use of and accountability for these funds.

## III. Guidelines for the Award of Monitoring Initiative Funds Under Section 106 Grants to States, Interstate Agencies, and Tribes

These guidelines describe the formula necessary for EPA to allot section 106 water pollution control program grant funds that have been targeted to support enhanced monitoring efforts by states, interstate agencies, and tribes. These guidelines also describe the specific activities that states, interstate agencies, and tribes must implement to receive the monitoring initiative funds. These activities will improve state and tribal capacity to monitor and report on water quality through the two components of the monitoring initiative: Implementation of comprehensive monitoring strategies including building capacity for state-scale statistically-valid surveys of water condition, and collaboration on statistically-valid surveys of the nation's waters.

The first component will strengthen state and tribal programs consistent with priorities contained in their comprehensive monitoring strategies. The second component may serve state and tribal programs and produce a statistically-valid survey of water condition at nationwide and regional scales. States may opt to build upon these national/regional surveys to obtain a state-scale statistical survey. Data gathered through the national/regional-scale surveys can be used to support water quality criteria development and to identify the extent to which emerging pollutants may be of concern. Survey data may potentially be used for developing state-scale predictive tools, documenting the performance of monitoring methods, and assessing the comparability of data.

EPA consulted with states and interstate organizations in the development of these guidelines beginning in March 2004. EPA reached an understanding with the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) on the distribution of the monitoring initiative increment in the FY 2005 section 106 grant funds. EPA continued discussions with ASIWPCA about the monitoring increment grant funds, including use of the FY 2006 increment for statistically-valid surveys of the nation's waters. EPA also consulted with state environmental commissioners through the Environmental Council of the States. Beginning in November 2007, EPA consulted with states and interstate organizations in the development of this amendment through conference calls with a workgroup composed of members of ASIWPCA.

### *A. Formula for Allocation of Monitoring Initiative Funds*

To be eligible to receive monitoring initiative funds, states, interstate agencies, and tribes must apply for the funds by preparing a workplan that details planned actions for carrying out both components of the monitoring initiative: Implementation of

comprehensive monitoring strategies and collaboration on statistically-valid surveys of the nation's waters. A state may request in-kind assistance from EPA under the grant to complete the survey for the sites located within its jurisdiction. If a state does not apply for funds or meet the workplan criteria in these guidelines to implement its strategy and/or complete the survey, including requesting in-kind assistance, EPA may withhold the funds allotted for this purpose and award the funds to any eligible recipient in the region, including another agency of the same state or an Indian tribe/tribal consortium for the same environmental program (40 CFR 35.117).

For Fiscal Year 2006 and beyond: Allocation of Monitoring Initiative Funds

$18.23 million* will be distributed in the following manner:

1. $9.77 million of these funds will be allocated as follows for implementing monitoring strategies and building monitoring program capacity—

$169,900 for each state,
$84,950 for each territory and the District of Columbia,
$240,410 to be distributed among interstate agencies, and
$528,506 to be distributed among the tribes, in accordance with the section 106 grant formula for tribes.

2. $8.45 million will be allocated for surveying water quality condition nationwide. Grant recipients will use this portion of the monitoring initiative funds for statistically-valid surveys of water body condition repeated over time to determine status and trends in water condition. The distribution of these funds will be tailored based on the water body type being surveyed, i.e., coastal waters, streams, lakes, rivers, and wetlands, and the number of sample sites needed. EPA will work with states, interstate agencies, and tribes to define the target population (size and type of water body) for each survey. After this consultation, EPA will develop a list of randomly selected sites to be sampled for the survey. For each survey, approximately 1,000 sites in the contiguous 48 states will be sampled. A state or tribe in the contiguous 48 states will receive funding for each sampling site falling within its jurisdiction. A separate fund of $450,000 will be used to support survey work in Alaska, Hawaii, Puerto Rico and the trust territories. If a grant recipient is able to sample the sites needed for its participation in a nationwide survey for less than the funds allotted for each site, the remaining funds must be used for implementation of its monitoring strategy and/or to build capacity for state-scale statistically-valid surveys.

Performance-Based Standard for Implementation of Statistical Surveys

3. To accelerate the use of state-scale statistical surveys as called for in the President's budget requests, EPA is incorporating a performance-based standard in the allotment of the section 106 Monitoring Initiative funds. This performance-based standard will start in FY 2008 with adjustments to allocations, if necessary, beginning in FY 2009. Monitoring Initiative funds may continue to be used for building state monitoring program capacity according to the guidelines, set out in March 2006 and discussed above in Section III.A.1, as long as at least five states each year adopt state-scale statistically-valid surveys as part of their state monitoring programs. During FY 2007, 30 states were implementing, as part of their monitoring network, statistical surveys at the state-scale for at least one water resource. This number serves as the baseline for the performance-based standard. The goal is to have five additional states adopt the use of state-scale statistically-valid surveys each year (i.e., 35 States in 2008, 40 in 2009, 45 in 2010, and 50 in 2011). For every state below the target of five additional states each year, beginning with the allotment of FY 2009 Monitoring Initiative funds, 20% of the Monitoring Initiative funds used for building monitoring capacity (100% equals $169,900 * per state) will be reallocated among those states implementing state-scale statistical surveys. For example, if only three additional states adopt the use of statistical surveys by the end of FY 2008 (for a total of 33 states, two states short of the goal of five additional states), 40% of the capacity building funds (i.e., $67,960 per state *) of the 17 states not implementing statistical surveys will be evenly reallocated in FY 2009 to the 33 states that are implementing such surveys (i.e., $35,009 per state *).

Process and Criteria for Determining Implementation of Statistical Surveys as a Component of a State's Monitoring Program

At the end of each fiscal year beginning in FY 2008, a state must submit a certification to EPA that the state is implementing a state-scale statistically-valid survey meeting the criteria set out below. EPA, through Headquarters' and Regional Monitoring Coordinators' consultation, will make a determination on the status of state implementation of state-scale statistical surveys based on the state's certification and adherence to the following criteria:

a. State is implementing a statistical survey design that provides condition estimates for a population of waters (e.g., streams, rivers, lakes, coastal waters, or wetlands) of the state based on an unbiased, representative sample of a subset of those waters.

i. The state assesses water quality conditions using core indicators for at least one designated use consistent with the *Elements of a State Water Monitoring and Assessment Program* guidance. Over time, state surveys incorporate a full suite of appropriate biological, chemical and physical indicators as described in the guidance. Initial statistically-valid, probability surveys (through 2012), however, may be based on a subset of indicators tailored to specific water quality issues (e.g., biological integrity, recreation, fish consumption, etc.).

ii. The implementation of a state-scale statistically-valid survey may span several years. A state may use a rotating basin approach and survey different watersheds over time, or spread the sites required across the state over multiple years—as long as these surveys can be aggregated for a state-scale survey. For example, a state may choose to sample 10 sites each year over a five-year period.

iii. States may use methods and protocols employed in the national surveys, or state methods.

iv. State surveys aim to achieve 90% confidence +/−10%. This typically requires about 50 sites.

v. Surveys assess at least one water type (streams, lakes, rivers, coastal waters, or wetlands).

vi. A state's monitoring strategy indicates a commitment to continuing statewide statistical surveys as a component of its comprehensive monitoring program.

b. State continues to participate in the national/regional scale surveys, unless the state-scale survey is fully consistent with national survey design and methods.

c. State reports the results of the state-scale survey by 2012, preferably as a component of the state's Integrated Report/305b/303d (narrative form) and/or in the probability survey module of the Assessment Database. (EPA will modify this module to accommodate state assessment categories, *e.g.*, good/

* EPA will use this numerical formula to determine the monitoring allotments for FY 2009 and beyond based on the amount of EPA's final annual budget targeted for these purposes.

* These amounts assume the same level of funding as specified in Section IIIA1.

fair/poor, biocondition gradient levels, etc.).

[*Note:* EPA acknowledges that because of the unique nature of its land and waters, the State of Alaska may take longer to meet the above criteria.]

*B. Supplemental Workplans for Monitoring Initiative Activities*

These guidelines describe the types of commitments grant recipients must include in a separate workplan covering the monitoring initiative portion of their section 106 grant. Because these funds have to be tracked and reported separately, EPA will negotiate specific annual activities to be included in these workplans that must address how recipients will (1) implement the state, interstate agency, or tribal monitoring strategy, including implementing or building capacity for state-scale statistically-valid surveys of water condition, and (2) collaborate on statistically-valid surveys of the nation's waters.

1. Implementing Monitoring Strategies

*Why Strategies Are Important*

An important objective for state, interstate agency, and tribal monitoring strategies is to maximize the efficiency of monitoring and assessment resources to increase the amount of waters monitored or assessed; provide the information needed to allow decision makers and the public to set priorities; develop and apply controls; and determine the effectiveness of our investments in water quality protection and restoration. EPA agrees with the NAPA finding that investing in efficient monitoring and assessment programs will result in social cost savings by ensuring that the resources invested in environmental protection activities are addressing the greatest needs and are achieving performance objectives. In addition, the successful use of market-based approaches, such as trading for water quality protection and restoration, depends on the availability of adequate monitoring data and information.

*State Water Monitoring and Assessment Strategies*

In March 2003, EPA issued the *Elements of State Water Monitoring and Assessment Program* guidance to provide a framework for strengthening state monitoring programs by the end of FY 2014. This guidance describes 10 elements of a water monitoring and assessment program. The elements provide a basic framework that may be tailored to the specific needs of states or other organizations. A brief description of each element is provided below.

• Monitoring Program Strategy

The comprehensive monitoring program strategy is a long-term plan that describes how the state implements a monitoring program that serves water quality decision needs for all its waters, including streams, rivers, lakes, the Great Lakes, reservoirs, estuaries, coastal waters, wetlands, and ground water. The strategy should describe how the state addresses each of the other nine elements of the guidance. It should reflect the input of the full range of monitoring partners within the state.

• Monitoring Objectives

Monitoring objectives drive the state's implementation of monitoring activities. The state's objectives should reflect the needs of the Clean Water Act and the Safe Drinking Water Act and other water management activities. These objectives include, but are not limited to, assessing the extent of state waters that support the goals of the CWA.

• Monitoring Design

The monitoring design explains how monitoring sites are selected to meet monitoring objectives, including providing water quality data of documented quality for many purposes such as setting water quality standards, assessing overall water conditions, listing impaired waters, developing total maximum daily loads (TMDLs), and writing National Pollutant Discharge Elimination System (NPDES) permits. To meet decision needs most efficiently, states may integrate several monitoring designs (e.g., fixed station, intensive and screening-level monitoring, rotating basin, judgmental and probability design). Over half of the states are implementing statistically-valid surveys as a component of their monitoring network. As states implement their state monitoring strategies, EPA expects them to build capacity for state-scale statistically-valid surveys of water condition. EPA encourages states to leverage the national/regional scale surveys to support these state-scale statistically-valid surveys. Monitoring designs may also incorporate predictive tools such as landscape and water quality modeling, remote sensing and deployed data sondes.

• Core and Supplemental Water Quality Indicators

A core set of monitoring indicators (e.g., water quality parameters) includes physical/habitat, chemical/toxicological, and biological/ecological endpoints selected to assess attainment with applicable water quality standards throughout the state. The core indicators should be supplemented, as appropriate, to meet the full range of monitoring objectives. Supplemental indicators should be monitored when there is a reasonable expectation that a specific pollutant may be present in a watershed, or to support a special study such as screening for potential pollutants of concern.

• Quality Assurance

A state must have a quality assurance program to ensure the scientific validity of monitoring data and of sampling and laboratory activities. Data of documented quality are critical to support decision making and resource allocation.

• Data Management

Timely access to data of documented quality is another key element of a state monitoring program. All states are expected to use an electronic data system to manage water quality, fish tissue, toxicity, sediment chemistry, habitat, and biological data. The state data management strategy should address timely data entry, follow appropriate metadata and state/federal geo-locational standards, and allow public access. Consistent with CWA section 106(e), EPA will require states to use the new Water Quality Exchange to transfer data to EPA's STORET data warehouse from the state's data management system.

• Data Analysis/Assessment

A state's assessment methodology describes how water quality data are evaluated to determine whether waters are attaining water quality standards. The assessment methodology addresses how states collect data from various monitoring sources (including federal, state and local governments, volunteer monitors, academia, permitted dischargers under the National Pollutant Discharge Elimination System (NPDES), drinking water utilities, etc.), what types and quality of data are needed to support different levels of decisions, and how data are reviewed, analyzed and compared to water quality standards.

• Reporting

A monitoring program must ensure timely submission of water quality reports and lists, such as those required under sections 106, 303(d), 305(b), 314 and 319 of the CWA and section 406 of the Beaches Act. EPA encourages states to streamline reporting activities by consolidating reports and using electronic data management and reporting systems. EPA's *2002 Integrated Water Quality Monitoring and Assessment Report Guidance* called

for integration and consistency in the development and submission of section 305(b) water quality reports and section 303(d) impaired waters lists. To accomplish this integration, EPA expects that all states will use EPA's Assessment Database (ADB) or a compatible electronic format to record their water quality assessment decisions.

• Programmatic Evaluation

The state, in consultation with EPA, should conduct periodic reviews of its monitoring program to determine how well it serves water quality decision needs for all waters of the state. This involves evaluating each aspect of the monitoring program to determine how well each of the elements listed here are being implemented to serve water resource management activities and to identify needed changes and additions for future monitoring cycles.

• General Support and Infrastructure Planning

The state monitoring strategy should identify current and future resource needs to fully implement its monitoring program. This planning activity should describe funding, staff, training, laboratory and information management resources and needs.

*Tribal Monitoring Strategies*

In October 2006, EPA issued *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act* that requires tribes to develop monitoring strategies appropriate to their capabilities and needs, and provide reports on water quality to EPA. The tribal guidance outlines reporting requirements and data expectations for all tribal programs receiving section 106 funds. These requirements will help tribes to collect critical data and information for effective management of their water quality programs. The requirements will also help EPA measure environmental results of the section 106 Tribal Program and comply with the Government Performance and Results Act (GPRA) and other federal requirements. In the reports that tribes are required to submit as set forth in their CWA section 106 work plan, tribes will be required to include the following: a description of identified needs, goals, and objectives of their monitoring programs; a description of sampling methodology and parameters sampled; and a narrative account detailing the types of water sampled, sampling procedures, data summaries, and the tribe's interpretation of both the data and the assessment methodology used. Tribes are also required to the maximum extent possible to include water quality data for up to nine parameters: dissolved oxygen, pH, water temperature, total phosphorus, total nitrogen, turbidity, *E. coli* or enterococci, macroinvertebrates, and basic habitat information.

*Using Section 106 Monitoring Initiative Funds To Implement Monitoring Strategies*

EPA expects states, territories, interstate organizations and tribes to use the first component of the monitoring initiative to assist in implementation of their monitoring strategies in keeping with schedules set out in the strategies, including implementing or building capacity for state-scale statistically-valid surveys of water condition. The monitoring activities for which these funds are used must be accounted for and reported on through separate section 106 workplans, and must be used to help states and tribes build program capacity to enhance water monitoring activities. Funds must not be used for ongoing or routine monitoring activities. They could be used to develop or augment a state's monitoring network design. For example, activities could include implementing a state-scale statistically-valid survey, expanding coverage, adding waterbody types, increasing intensive monitoring (e.g., watersheds); developing or refining core and supplemental indicators, including biological assessment programs; enhancing data analysis and management; increasing lab capability; and/or hiring new staff or purchasing equipment. EPA Regional monitoring and section 106 staff will work with each section 106 grant recipient to ensure that the workplan reflects these monitoring activities and that the state or tribe is making progress in implementing the priorities and milestones set out in its monitoring strategy.

EPA and the states through their monitoring strategies have identified the following activities, among others, as priorities for enhancing monitoring programs:

• Leveraging resources through partnerships to improve data management to facilitate data sharing and reduce redundancy of sample collection;

• Developing predictive tools to extend use of monitoring data;

• Using statistically-valid monitoring designs and assessment methodologies to represent the condition of all state or tribal waters with statistically-valid (probability-based) surveys and account for variability in water quality and uncertainty in sampling methods; and

• Improving the rigor of biological condition assessment to take advantage of its ability to integrate the effects of multiple stressors, provide a more accurate assessment of ecological effects, and improve diagnostic ability to identify causes of degradation.

2. Collaborating on Statistically-Valid Surveys of the Nation's Waters

Supplemental workplans must also address activities that state and tribes will implement as part of their participation in the statistically-valid surveys of the nation's waters. A key element of improving the credibility of reports on the condition of the nation's waters as called for under CWA section 305(b) is the use of a statistically-valid survey design. The *Elements of a State Water Monitoring and Assessment Program* recommends that monitoring strategies include the use of probability-based networks that support statistically-valid inferences about the extent of waters that support the goals of the CWA and achieve state water quality standards. EPA's 1997 *Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates*, written with state participation, also recommends the use of probabilistic monitoring or statistically-valid surveys as a cost-effective and reliable means for assessing water quality status and trends.

*Why Surveys Are Important*

Statistically-valid surveys are an efficient way to determine the extent to which waters support healthy aquatic communities. Detailed information collected about the health of aquatic communities in a random sample of a specific water body type (streams, coastal waters, lakes, rivers, and wetlands) can be used to make inferences, with documented confidence, about the condition of the larger universe of similar waters—most of which are currently unassessed (only 19% of streams and rivers, 37% of lakes, and less than 2% of wetlands were assessed for the 2002 reporting cycle). This design can be implemented at a national, regional, state, or local level to provide a benchmark about how much of the resource needs protection or restoration.

The short term objective for water quality surveys is to achieve comprehensive assessments of water quality. Over the long term, statistical surveys are a cost-effective means of determining trends over time and evaluating the effectiveness of water quality protection and restoration

efforts. Statistically-valid surveys provide data that serve other water quality management needs ranging from additional information about each monitoring site to contributing to the development of water quality standards. They can be used with other datasets to develop predictive tools that help prioritize site-specific monitoring and identify problem areas.

*Basic Activities for Implementing Statistically-Valid Surveys*

The CWA section 106 monitoring initiative guidelines require states and tribes to collaborate on statistically-valid surveys to assess water condition in coastal waters, streams, lakes, rivers and wetlands. Many states are already implementing or participating in statistically-valid designs for monitoring the condition of coastal waters, rivers and streams, and lakes. EPA intends that these national/regional-scale surveys complement existing state efforts using survey designs and methods that generate comparable assessment results. The collaborative assessments will build upon and continue the success of national, regional, state, tribal, and local partnerships such as the National Coastal Assessment, the Wadeable Streams Assessment and Assessment of Western Rivers and Streams, the National Lake Fish Tissue Study, the Mid-Atlantic Integrated Assessment, and the Southern California Coastal Water Research Project.

The guidelines generally address the roles and responsibilities of EPA, states, and tribes in generating cost-effective comparable assessments of water resources. As EPA, states, and tribes collaborate on the survey for each water resource type, EPA will issue clarifying guidance for the specific activities involved in planning and implementing the survey. The clarifying guidance will contain information on number and location of sampling sites, indicators, quality assurance/quality control (QA/QC) protocols, field data collection and lab methods, timelines for carrying out survey activities, and the funding levels needed for sampling and analyses at each sampling site. The basic activities involved in statistical surveys are described below.

- Monitoring Objectives

The basic objective of these surveys is to generate statistically-valid estimates of the extent of water resources that support healthy aquatic communities and human activities, and to assess the relative importance of key stressors on water quality. The surveys will produce estimates of the condition of various water body types, i.e., coastal waters, streams, lakes, rivers, and wetlands, at both regional and national scales. States are encouraged to leverage these surveys to help support their own state-scale surveys. EPA will host meetings to bring together states and other experts to shape the planning and implementation of each survey, including detailed definitions of the survey objectives, design and indicators, field implementation, and analysis and reporting.

- Statistically-Valid Design

The design, developed in collaboration with states, tribes and other partners, will reflect the input provided through national meetings and other discussions about the definition of the water resources under investigation and the various sub-classes of the resource that need to be characterized by the survey. EPA will generate a statistically-valid representative network design that identifies the primary and alternate random monitoring sites within each eco-region. In addition EPA will provide interested states with a randomized network design for state-scale or finer characterizations.

- Indicators

The indicators used to describe the condition of water resources and extent of waters will vary depending upon the water body type surveyed. EPA will work with states and other experts to identify the core indicators that will be used to evaluate the ecological condition of water resources, the extent of water resources that support human activities, and the key stressors affecting waters. The indicator measurements will be taken using consistent or comparable procedures at all sites to ensure the results can be compared across the country. States and tribes are encouraged to include additional indicators (as described in the *Elements of a State Water Monitoring and Assessment Program*) to address specific questions and to generate more robust assessments.

- Quality Assurance

EPA policy and regulations require documentation and implementation of standard operating procedures (SOPs) and QA/QC protocols for environmental monitoring. After meetings and discussions with states and other experts on the objectives, design and indicators for each survey, EPA will develop a Quality Assurance Project Plan (QAPP) and appropriate SOPs. The QAPP describes the study objectives, the survey design, the data quality objectives it supports, the core indicators or parameters and their related measurement quality objectives, and field and lab protocols including quality control activities, data management, data analysis and reporting. EPA will provide training for field crews and will ensure implementation of the quality control measures defined in the QAPP. States and other partners participating in the survey will either certify that they will implement the EPA QAPP and SOPs or, if the state elects to implement comparable methods, the state will provide its QAPP and SOPs to EPA for review and approval prior to initiating field work.

- Field Data Collection

Field data collection includes site reconnaissance, field data collection, and quality control activities such as repeat sampling. The CWA section 106 grant survey fund will provide resources to states and tribes for the implementation of field data collection activities as well as lab analysis described below. States and other organizations accepting responsibility for site reconnaissance and field data collection will certify that they are adhering to the approved EPA and/or state QAPP and SOPs described above. EPA will provide training in field sampling protocols and oversee implementation of the QA/QC activities.

EPA's intent is that the survey fund can offset the costs of state-scale water quality surveys in addition to contributing to national and regional assessments of the condition of the nation's waters. State and tribal water quality programs may direct these resources a number of ways to accomplish the site reconnaissance and field sampling: Implementing site reconnaissance and field sampling directly; providing the funds to other organizations within the state through interagency agreement; issuing grants and/or contracts; and/or requesting EPA provide in-kind services consisting of EPA contractor support to perform the field data collection activities on behalf of the state.

- Laboratory Analysis

Any laboratory processing the chemical or biological samples collected for the surveys must demonstrate that they can meet the quality standards presented in the QAPP. This includes initial demonstrations of technical capability and performance evaluations. Field samples should be promptly shipped to the approved analytical or processing laboratories as these facilities are generally better geared to properly

hold the samples while they await analyses. At the laboratory, samples will be processed in accordance with the laboratory SOPs, including QA/QC activities. Each participating laboratory must certify that they are adhering to the approved EPA and/or state QAPP and laboratory SOPs. Each laboratory is expected to review their final data for completeness, accuracy, and precision to assure that the basic quality criteria are met prior to submitting their final data report. EPA will oversee implementation of the QA/QC activities.

The CWA section 106 grant survey fund will provide resources to states and tribes for the implementation of laboratory analysis of field samples. State and tribal water quality programs may direct these resources a number of ways to accomplish the laboratory analysis of field samples: Analyzing samples directly; providing the funds to other organizations within the state through interagency agreement; issuing grants and/or contracts; and/or requesting EPA provide in-kind services consisting of EPA contractor support to perform the lab analysis activities on behalf of the state.

- Data Management

EPA will provide support for data management to facilitate rapid access to data and transfer of data into EPA's Water Quality Exchange or STORET-compatible system.

- Data Analysis and Interpretation

EPA will work with states and tribes to develop general protocol(s) to analyze and interpret the survey results. The data analysis protocols will build on existing efforts of states, tribes, EPA, U.S. Geological Survey, and other organizations to develop statistically-valid and environmentally relevant thresholds for interpreting the physical, chemical and biological integrity of water resources, including the Tiered Aquatic Life Use Workgroup's framework for reporting data within a biological condition gradient that is independent of individual state water quality standards. EPA will host national and/or regional meetings to facilitate evaluation and selection of appropriate protocols for data analysis and interpretation.

- Reporting

EPA will work with states and tribes to develop regional and national scale reports that present the results of the surveys and provide information to track the condition of the nation's waters and help guide the setting of national, regional and state priorities for water quality protection and restoration. The reports will describe the extent that the water body type surveyed supports healthy aquatic communities and human activities such as fishing and swimming. The reports will also describe key water quality and habitat characteristics associated with healthy and degraded resources. As states continue to implement state-scale surveys, the report will include these results as well as describe additional insights gained from analyzing additional data that states and tribes add to the analysis. EPA will host national and/or regional meetings to provide input to the reports.

*Using Section 106 Monitoring Initiative Funds for State Activities To Support Surveys of the Nation's Waters*

The distribution of these funds will ensure states and tribes receive the basic level of funding required to implement the surveys at the minimal scale of regional and national reporting. EPA's intent is that this seed money can be leveraged by states to support implementation of state-scale surveys as states are able to incorporate this tool into their monitoring programs.

The initial strategy for distribution of the survey funds is to tailor distribution, based on the water resource type being surveyed, i.e., coastal waters, streams, lakes, rivers, and wetlands, and the number of sample sites identified within each jurisdiction. In the contiguous 48 states, a state or tribe will receive funding for each sampling site falling within its jurisdiction. A separate fund of $450,000 will be used to support survey work in Alaska, Hawaii, Puerto Rico and the trust territories over time.

To ensure the success of the surveys, states and tribes must commit annually, in separate state and tribal section 106 workplans, to undertake activities that will be needed as part of the surveys. Grant commitments will address both the timing and scope of these activities, which are described in the previous section and summarized below:

- Travel to participate in national and/or regional meetings for planning, scoping, data analysis and interpretation and reporting;
- Site reconnaissance to verify that sites meet the definition for inclusion in the survey;
- Sample collection and lab analysis in accordance with EPA approved QAPP and SOPs;
- Participation in QA/QC activities; and
- Provision of final sample results in electronic format.

State and tribal water quality programs may use the CWA section 106 survey funds to accomplish these activities in a number of ways including implementing the survey directly, providing the funds to other organizations within the state through interagency agreement, issuing grants and/or contracts, and/or requesting EPA provide in-kind services consisting of EPA contractor support to perform the survey implementation activities on behalf of the state.

*Schedule for Statistically-Valid Surveys*

See *http://www.epa.gov/owow/monitoring/repguid.html* to view the schedule for statistically-valid surveys.

*Conclusion*

Because numerous and long-standing critiques have identified the need for improved water quality monitoring and analysis at local, state, or national scales, the Administration requested and Congress appropriated an increase to CWA section 106 grant funds specifically targeted for water quality monitoring improvements. States have traditionally monitored only a small percentage of all the nation's waters, and focused their limited monitoring resources on heavily used or problem waters. This targeted monitoring, while providing important site-specific information, does not provide scientifically defensible state or national reports on the extent of waters meeting the fishable and swimmable goals of the CWA. Statistically-valid surveys offer a cost-effective and efficient way to fulfill these requirements, complement traditional monitoring designs, and support a broader range of management decisions. There is widespread acceptance of the use of statistical surveys in reports on the nation's housing, labor, health, agricultural, and other sectors.

To accelerate the use of state-scale statistical surveys as called for in the President's budget requests, EPA is amending the March 29, 2006, *Guidelines for the Award of Monitoring Initiative Funds under Section 106 Grants to States, Interstate Agencies, and Tribes* to incorporate a performance-based standard in the allotment of the section 106 Monitoring Initiative funds. Monitoring Initiative funds will continue to be used for building state monitoring program capacity according to the guidelines as long as states make progress in adopting state-scale statistically-valid surveys as part of their state monitoring programs.

EPA's long-term goal for water quality monitoring is to enhance state and tribal capacity to implement an integrated monitoring framework which uses multiple tools to cost-effectively address the full range of water quality

management decision needs, for all water resource types and uses at appropriate scales. EPA and the states will work together to meet this goal through assessing all waters using sound science, strengthening state monitoring and assessment programs, and employing innovations that implement cost-effective monitoring.

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**IV. Additional Supplementary Information**

The complete text of today's guidelines, located above, is also available at the following EPA Web sites: *http://www.epa.gov/owm/cwfinance/pollutioncontrol.htm* and *http://www.epa.gov/owow/monitoring*.

**V. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. section 601 et seq.) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. Although this action does not generally create new binding legal requirements, where it does, such requirements do not substantially and directly affect tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. section 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. section 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

Dated: July 8, 2008.

**Benjamin H. Grumbles,**

*Assistant Administrator, Office of Water.*

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2006–0130; FRL–8690–3]**

## Protection of Stratospheric Ozone: Notice of Data Availability; Information Concerning the Destruction of Ozone-Depleting Substances in the United States

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

**ACTION:** Notice of data availability and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is making available to the public information concerning the destruction of controlled ozone-depleting substances (ODSs) in the United States. As a Party to the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) and consistent with the requirements of the Clean Air Act (CAA) as amended in 1990, the United States regulates the destruction of ODSs in a manner that prevents (or minimizes) emissions of the substances into the atmosphere, where they deplete the stratospheric ozone layer. Regulations governing the destruction of ODSs in the United States are contained in 40 CFR part 82, subpart A, and include seven permitted destruction technologies, required destruction efficiency, and associated recordkeeping and reporting requirements. In addition to the stratospheric ozone protection regulations under the CAA, a number of other regulations also govern the destruction of ODSs in the United States including, but not limited to, regulations promulgated under the Resource Conservation and Recovery Act (RCRA).

Today, EPA is making available the draft report *Destruction of Ozone-Depleting Substances in the United States*, prepared by ICF International.

The report analyzes ODS destruction practices in the United States and includes data on the types and quantities of ODSs destroyed in the United States in previous years, estimates of future destruction trends, and a review of technologies currently being employed to destroy ODSs. Because EPA plans to use the technical information when developing regulations, EPA wants to provide the public with an opportunity to review the information and submit comments. Specifically, EPA requests comments on the report's characterization of current destruction practices and its estimates of types and quantities of controlled substances available in the future for destruction in the United States. EPA will only consider comments about the information presented in *Destruction of Ozone-Depleting Substances in the United States* and is not soliciting comments on any other topic.

**DATES:** EPA will accept comments on the report through September 15, 2008.

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

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov*.
- Fax comments to (202) 566–1741.
- *Mail:* Submit comments to Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460, and Phone: (202) 566–1742.

*Instructions:* Direct your comments to EDocket ID No. EPA–HQ–OAR–2006–0130. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

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

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0130, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

*Use http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

**FOR FURTHER INFORMATION CONTACT:** Kirsten M. Cappel, by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by courier service or overnight express: 1310 L Street, NW., Room 1047C Washington, DC 20005; by telephone: (202) 343–9556; or by e-mail: *cappel.kirsten@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Outline

1. What is today's action?
2. What information is EPA making available for review and comment?
3. Where can I get the information?
4. How is this action related to the existing regulations to phase out ODSs?
5. What is EPA taking comment on and what supporting documentation do I need to include in my comments?
6. What should I consider as I prepare my comments for EPA?

*1. What is today's action?*

This notice of data availability (NODA) provides for public review and comment the report *Destruction of Ozone-Depleting Substances in the United States*. The report examines data pertaining to the types and quantities of ODSs destroyed in the United States in previous years, and estimates the types and quantities available in the future. In addition, the report presents information about existing technologies being employed domestically to destroy ODSs. The report also includes a summary of regulations promulgated under RCRA and the CAA that govern the destruction of ODSs. The contractor's summary of existing regulations appears in the report purely to provide context for the technical information presented and does not represent EPA guidance or interpretation.

*2. What information is EPA making available for review and comment?*

EPA is making available, for review and comment, a draft report prepared by ICF International under contract to EPA, *Destruction of Ozone-Depleting Substances in the United States*.

*3. Where can I get the information?*

All of the information can be obtained through the Air Docket (see **ADDRESSES** section above for docket contact info). In addition, a link to the report *Destruction of Ozone-Depleting Substances in the United States* will be on the EPA Web site: *http://www.epa.gov/ozone/strathome.html*.

*4. How is this action related to the existing regulations to phase out ODSs?*

EPA is considering amending its regulations governing the import of ODSs listed as either ''Class I'' or ''Class II'' controlled substances under 40 CFR part 82, subpart A in cases where ODSs are being imported for destruction. Over the last several years most developed countries have largely phased out of the most ozone-depleting ODSs, replacing them with substances that damage the ozone layer less or not at all. This transition has resulted in substantial quantities of ODSs that may have reached the end of their usefulness and thus potentially could be destroyed.

EPA recognizes that when importers are importing ODSs for destruction, a set of requirements designed to address this specific situation may be needed to ensure that the material that enters the United States is destroyed effectively. The information contained in the report will assist EPA as it prepares to propose revised regulations for imports of

controlled ODSs for purposes of destruction in the United States.

*5. What is EPA taking comment on and what supporting documentation do I need to include in my comments?*

EPA is only accepting comments on the accuracy and completeness of the information outlined in this NODA and contained in the report *Destruction of Ozone-Depleting Substances in the United States*. Specifically, EPA requests comment on topics contained in this report including but not limited to:

- Current destruction practices, including procedures for collecting and destroying ODSs;
- ODSs destruction costs, including transportation costs, capital costs associated with equipment upgrades (i.e., to prevent corrosion from acid gases), and actual costs of destroying ODSs;
- Estimates of types and quantities of ODSs available in the future for destruction;
- Capacity of destruction facilities in the United States to destroy ODSs currently and in the future;
- The extent to which destruction facilities in the United States and internationally are meeting the technical performance qualifications recommended by the Ozone Secretariat's Technology and Economic Assessment Panel (TEAP) in the April 2002 Report of the Task Force on Destruction Technologies, and whether they are able to demonstrate that they are meeting those recommendations (*i.e.*, providing trial burn data); and
- Types of destruction technologies available internationally to destroy ODSs.

EPA requests that commenters provide corrected information or suggested language, along with the rationale as to why the existing text was incorrect or incomplete. In addition, please provide any published studies or raw data supporting your claim. At this time, EPA is not requesting comments of a general or editorial nature, or unsubstantiated opinion.

*6. What should I consider as I prepare my comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number In the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Dated: July 7, 2008.

**Edward Callahan,**

*Acting Director, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. E8–16384 Filed 7–16–08; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

July 8, 2008.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501—3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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 the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 15, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission, or an e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1022.

*Title:* Sections 101.1403, 101.103(f), 101.1413, 101.1440 and 101.1417, MVDDS and DBS Reporting and Third Party Disclosure Requirements.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 217 respondents; 217 responses.

*Estimated Time per Response:* .50 hours—40 hours.

*Frequency of Response:* On occasion, annual and other reporting requirements and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 10,347 hours.

*Total Annual Cost:* $5,300.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* The Commission is revising this information collection (IC) to consolidate five information collections with five different OMB

Control Numbers into one comprehensive collection (OMB Control Numbers 3060–1022 through 3060–1026). Upon OMB approval, the Commission will eliminate OMB Control Numbers 3060–1023 through 3060–1026 and retain 3060–1022 as the active number for the OMB inventory.

The Commission is not changing any of the reporting or third party disclosure requirements. We are simply modifying this IC to include the other four ICs as mentioned above. The following is a description of each rule section requirement subject to the Paperwork Reduction Act (PRA):

a. Section 101.1403 requires certain Multichannel Video Distribution and Data Service (MVDDS) licensees to comply with the statutory broadcast carriage requirements of 47 U.S.C. 325(b)(1). These MVDDS licensees must obtain the prior express authority of a broadcast station before retransmitting that station's signal.

b. Section 101.103(f) requires MVDDS licensees to provide notice of intent of construction of a proposed antenna to Non-Geostationary Satellite Orbit Fixed Satellite Service (NGSO FSS) licensees operating in the 12.2–12.7 GHz frequency band and to establish and maintain an Internet Web site of all existing transmitting sites and transmitting antenna that are scheduled for operation within one year including the ''in service'' dates.

c. Section 101.1413 requires MVDDS licensees to file a showing of substantial service at five years and ten years into the initial license term. The substantial service requirement is defined as a ''service that is sound, favorable, and substantially above the level of mediocre service which might minimally warrant renewal''. The renewal application of an MVDDS licensee must include the following showings in order to claim a renewal expectancy: (1) A coverage map depicting the served and unserved areas; (2) a corresponding description of current service in terms of geographic coverage and population served or transmitter locations in the served areas; and (3) copies of any Commission Orders finding the licensee to have violated the Communications Act or any Commission rule or policy and a list of any pending proceeding that related to any matter described by the requirements for the renewal expectancy.

d. Section 101.1440 requires MVDDS licensees to collect information and disclose information to third parties. Section 101.1440 requires MVDDS licensees to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all Direct Broadcast Satellite (DBS) customers of record that may potentially be affected by the introduction of its MVDDS service. At least 90 days prior to the planned date of MVDDS commencement of operations, the MVDDS licensee must then provide specific information to the DBS licensee(s). Alternatively, MVDDS licensees may obtain a signed, written agreement from DBS customers of record stating that they are aware of and agree to their DBS system receiving MVDDS signal levels in excess of the appropriate Equivalent Power Flux Density (EPFD) limits. The DBS licensee must thereafter provide the MVDDS licensee with a list of only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification that the DBS licensee believes may receive harmful interference or where the prescribed EPFD limits may be exceeded. If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including fining a new transmitter site.

e. Section 101.1417 requires licensees to file with the Commission two copies of a ''licensee information report'' by March 1st of each year for the preceding calendar year. This report must include the name and address of the licensee; station(s) call letters and primary geographic service area(s); and statistical data for the licensee's station.

The information is used by the Commission to monitor licensee compliance of FCC rules; ensure that prior to operation the MVDDS antenna meet the minimum spacing requirements; to determine whether the licensee is providing substantial service and for whether to apply for a renewal expectancy; to notify third parties of certain information; and to assist the Commission in analyzing trends and competition in the marketplace.

*OMB Control Number:* 3060–0905.

*Title:* Section 18.213, Information to the User (Regulations for RF Lighting Devices).

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit and not-for-profit institutions.

*Number of Respondents:* 3 respondents; 3 responses.

*Estimated Time Per response:* 1 hour.

*Frequency of Response:* Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 3 hours.

*Total Annual Cost:* $75.00 for producing and labeling the equipment = $225.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* The Commission is revising this information collection after this 60 day comment period in order to obtain the full three year clearance from the Office of Management and Budget (OMB).

The Commission is removing section 18.307 from this information collection because it was incorrectly included in the last submission to the OMB. Upon review of the rule section, it was determined that section 18.307 only contained technical standard limits and therefore, not subject to the Paperwork Reduction Act (PRA) and OMB approval.

The Commission is also adjusting the annual cost estimate for this information collection by −$775 due to a mathematical error in the last submission to the OMB.

Section 18.213 (for which the Commission is seeking continued OMB approval) requires information on industrial, scientific and medical equipment shall be provided to the user in the instruction manual or on the packaging of an instruction manual is not provided for any type of ISM equipment. (a) The interference potential of the device or system; (b) maintenance of the system; (c) simple measures that can be taken by the user to correct interference; and (d) manufacturers of RF lighting devices must provide an advisory statement, either on the product packaging or with other user documentation, similar to the following: *This product may cause interference to radio equipment and should not be installed near maritime safety communications equipment or other critical navigation or communication equipment operating between 0.45–30 MHz.* Variations of this language are permitted provided all the points of the statement are addressed and may be presented in any legible font or text style.

The simple warning label with a short advisory statement will be used by the Commission to determine if an RF lighting device is in compliance with the applicable Commission rules and is capable of producing emissions in the 0.45–30 MHz band.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–16321 Filed 7–16–08; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**DATE AND TIME:** Tuesday, July 15, 2008 at 2 p.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary the Commission.*

[FR Doc. E8–16182 Filed 7–16–08; 8:45 am]

**BILLING CODE 6715–01–M**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 1, 2008.

**A. Federal Reserve Bank of Atlanta** (Steve Foley, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

*1. Charles R. Carter, Sr., and George Lamar Weaver*, both of Jackson, Georgia, to acquire voting shares of First Georgia Community Corp., and thereby indirectly acquire voting shares of First Georgia Community Bank, both of Jackson, Georgia.

Board of Governors of the Federal Reserve System, July 14, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–16378 Filed 7–16–08; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 2008.

**A. Federal Reserve Bank of Cleveland** (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

*1. CSB Bancorp, Inc.*, Millersburg, Ohio, to acquire 100 percent of the voting shares of Indian Village Bancorp, Inc., Ghadenhutten, Ohio, and thereby indirectly acquire Indian Village Community Bank, Ghadenhutten, Ohio, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 14, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc.E8–16377 Filed 7–16–08; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act; Notice of Meeting

**TIME AND DATE:** 10 a.m. (Eastern Time), July 21, 2008.

**PLACE:** 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

**STATUS:** Parts will be open to the public and parts closed to the public.

**MATTERS TO BE CONSIDERED:**

**Parts Open to the Public**

1. Approval of the minutes of the June 30, 2008, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Legislative Report.
3. Quarterly Reports.
   a. Investment Performance and Policy Review.
   b. Vendor Financial Reports.
4. Report on Potential Risk of Loss to TSP Assets as a result of the Theoretical Insolvency of Barclays Global Investors.

**Parts Closed to the Public**

5. Confidential Vendor Financial Data.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 14, 2008.

**Thomas K. Emswiler,**

*Secretary, Federal Retirement Thrift Investment Board.*

[FR Doc. 08–1443 Filed 7–15–08; 9:58 am]

**BILLING CODE 6760–01–P**

## GENERAL SERVICES ADMINISTRATION

### 2008 Travel and Relocation Innovation Award

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice.

**SUMMARY:** The General Services Administration (GSA) is announcing an extended nominations entry date for the 2008 Travel and Relocation Innovation Award. This award will recognize masters of travel and/or relocation management.

**FOR FURTHER INFORMATION CONTACT:** Go to GSA's 2008 Travel and Relocation Innovation Award at *www.gsa.gov/travelrelocationaward* or contact Jane Groat, Travel Management Policy, Office of Travel, Transportation, and Asset

Management (MT), General Services Administration, Washington, DC 20405, (202) 501–4318, *jane.groat@gsa.gov*.

**SUPPLEMENTARY INFORMATION:** The Federal Travel Regulation is contained in Title 41 Code of the Federal Regulations (41 CFR Chapters 300 through 304), and implements statutory requirements and Executive branch policies for travel and relocation by Federal civilian employees and others authorized to travel and relocate at Government expense.

GSA announces an award to recognize and honor excellence in Federal travel and relocation. This award, available to all Federal employees, will honor individuals and/or teams. In addition to cash awards, one or more entries may receive honorable mention. Entries must be received no later than August 29, 2008.

Dated: July 10, 2008.

**Patrick McConnell,**

*Acting Director, Travel Management Policy.*

[FR Doc. E8–16355 Filed 7–16–08; 8:45 am]

**BILLING CODE 6820–14–S**

## GENERAL SERVICES ADMINISTRATION

### Federal Travel Regulation (FTR); Reimbursement of Fees Associated with Airport Security Fast Pass Memberships; Notice of GSA Bulletin FTR 08–05

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice of a bulletin.

**SUMMARY:** On June 25, 2008, the General Services Administration (GSA) issued a bulletin to inform agencies that fees for individual employee memberships in registered and/or trusted traveler programs (*i.e.*, FlyClear) are not allowable expenses or reimbursements for purposes of Federal government travel under the Federal Travel Regulation (FTR). That bulletin, FTR Bulletin 08–05, may be found at *www.gsa.gov/bulletins*.

**DATES:** The bulletin announced in this notice is effective June 25, 2008, and is applicable to official Federal travel performed on or after June 25, 2008.

**FOR FURTHER INFORMATION CONTACT** Ms. Jane Groat, Office of Governmentwide Policy (M), Office of Travel, Transportation, and Asset Management (MT), General Services Administration at (202) 501–4318 or via e-mail at *jane.groat@gsa.gov*. Please cite FTR Bulletin 08–05.

Dated: July 10, 2008.

**Patrick McConnell,**

*Acting Director, Travel Management Policy.*

[FR Doc. E8–16356 Filed 7–16–08; 8:45 am]

**BILLING CODE 6820–14–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Health Care Systems for Tracking Colorectal Cancer Screening Tests.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on March 27th, 2008 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. Changes were made to this 30 day notice to account for the electronic patient records review which were not accounted for in the 60 day notice.

**DATES:** Comments on this notice must be received by August 18, 2008.

**ADDRESSES:** Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (*attention:* AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Proposed Project

*Health Care Systems for Tracking Colorectal Cancer Screening Tests*

AHRQ proposes to implement and assess a system redesign intervention to improve colorectal cancer (CRC) screening and follow-up among patients 50–79 years-old. Other goals of the intervention include: (1) Achieving a high level of satisfaction with the intervention among patients, providers, and practice staff, (2) promoting patient-centered care through the intervention, (3) being a cost-effective intervention, and (4) demonstrating the benefits to businesses for implementing the intervention. The research is sponsored by AHRQ under its ACTION (Accelerating Change and Transformation in Organizations and Networks) program, and will be conducted for AHRQ by The CNA Corporation (CNA) and its partners Thomas Jefferson University (TJU) and Lehigh Valley Hospital (LVH).

Colorectal cancer screening is recommended as routine preventive care and this intervention, which is consistent with current CRC screening guidelines, carries no greater risk than that which occurs in usual delivery of healthcare (i.e., screening and follow up done without benefit of this intervention). Nevertheless, as part of standard research practice, the intervention and assessment protocol will be submitted to the Institutional Review Boards (IRB) at both LVH and TJU so that they can review the protocols to ensure that they are consistent with the requirements of human subjects protection as outlined in federal statute, regulations, and guidelines. These approvals will be obtained before the study begins. Additionally, CNA and LVH have a business associate agreement, and all parties involved with the study (CNA, LVH, and TJU) will comply with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 CFR parts 160 and 164. To further protect patient privacy, neither CNA nor TJU will have access to any personally-identifiable data. Only LVH personnel will have access to identifiable data, which they will de-identify before sending to CNA and TJU for analysis. Consistent with this protocol, only LVH staff will have access to patient names and addresses and will conduct all mailings of letters and related material to patients.

The intervention will be implemented in both Family Medicine and General Internal Medicine practices affiliated with the LVH, and will involve 20 intervention practices and 5 control practices (25 practices total). The intervention will consist of inviting and assisting eligible patients of intervention practices to be screened for CRC, providing academic detailing to intervention practice providers

regarding CRC screening and appropriate follow-up for positive screens, and assisting providers to identify and follow up with their patients who have positive screens.

Many of the practices within LVH, are part of four large practice entities—Medical Associates of The Lehigh Valley (MATLV, a large, private group association), Lehigh Valley Physicians Group (LVPG, hospital-owned practices), Lehigh Valley Physician Hospital Organization (LVPHO, a physician hospital organization that provides physician practice services and health insurance products), and practices which jointly use Physician Business Services (PBS) for billing and associated activities. The electronic data used during the records review (claims and billing records, and electronic medical records when available) will be centrally extracted by only four entities (LVPHO, MATLV, LVPG, and PBS). These entities will have access to their own patients' data. LVH study personnel will then merge these data to develop the central patient database for this study. This central patient database will contain information on all intervention practice patients ages 50–79 identified as being potentially eligible for the intervention.

Patient eligibility criteria for the intervention include: Being between the ages of 50–79, having no recent CRC screening test, not having a previous diagnosis of CRC, and not having a family history of CRC before age 60. Eligible patients will be identified through a two step process: (1) An electronic records review to identify potentially eligible patients; and (2) a mailed Screening Eligibility Assessment (SEA) form from their primary care practice to allow potentially eligible patients to confirm or refute their eligibility, and provide selected additional demographic and perceived health status information. Patients will also have the opportunity to opt out of the study on the SEA form.

Patients who are deemed eligible and have not opted out of the study through the SEA form will then receive a mailing from their practice inviting them to be screened for colorectal cancer. The invitation will include a letter on practice letterhead signed by the practice's primary care providers, a brochure that describes the benefits of CRC screening and the alternative screening modalities that are consistent with American Cancer Society guidelines, a stool test kit with an envelope to return it for processing for those patients who want to use that screening modality, and a list of colonoscopists that the practice refers patients to for those patients who prefer colonoscopy to a stool test. In addition to the list of colonoscopists, the accompanying letter from the practice will also include wording to make sure patients are aware they can select other colonoscopists who may not be on the list. As this invitation mailing is part of normal recommended clinical practice and requires no response on the part of the patient other than participating in the clinically recommended screening, it is not considered to be a data collection.

Patient electronic records will be tracked by LVH personnel for evidence of screening. Patients whose records do not indicate they have been screened within a certain amount of time will be sent a reminder letter. As with the invitation mailing, this reminder mailing is part of normal recommended clinical practice and requires no response on the part of the patient other than participating in the clinically recommended screening, and is not considered to be a data collection.

There will be no additional cost to patients for CRC screening beyond that which occurs in the usual delivery of health care. Patients insured through a LVPHO insurance product will be covered for diagnosis and treatment. Patients covered through non-LVPHO plans (public as well as private) will also likely be covered, and such coverage will be documented to determine its impact on the effectiveness of the intervention. Patients who are underinsured or uninsured are eligible to use systems for charity and discounted care available in the Lehigh Valley Hospital and Healthcare Network, including access to hospital clinics and access to financial advisors.

Clinicians and staff of intervention practices will participate in a brief academic detailing session to review the current evidence-based guidelines for CRC screening from the American Cancer Society, to receive information regarding appropriate follow-up to positive screens, and to receive the operational details of the implementation that will affect the practice (including being provided information about the intervention that may be necessary for answering questions from patients). Academic detailing will not be provided to control practices. As educational information is only being provided, this component of the intervention is not a data collection.

**Method of Collection**

Data will be collected through seven modes: (1) Electronic patient records review; (2) a SEA form; (3) focus groups of providers and staff at each intervention and control practice; (4) brief informal interviews with selected providers and staff at each practice; (5) a survey of all clinicians and staff at each practice; (6) patient chart audits; and (7) patient focus groups. The data will be collected to obtain the following types of information needed for determining patient eligibility for the intervention and for conducting an assessment of the intervention: Patient's screening history and eligibility information; patient demographics; patient, provider, and practice satisfaction with the intervention; practice attitudes; practice procedures and systems for screening and tracking results; and patient-perceived barriers and facilitators for following screening and follow-up recommendations.

*Electronic Patient Records Review*

An electronic records review will be used to identify patients who are potentially eligible to participate in this study based on the study's eligibility criteria. The electronic records will be extracted from only four entities—LVPHO, MATLV, LVPG, and PBS. Electronic records review will also be used part way through the intervention period for patients of intervention practices to determine who should receive a follow up reminder letter, and then again at the conclusion of the intervention period for patients of both intervention and control practices to determine which patients have completed a stool test or colonoscopy and whether patients who screened positive received appropriate follow up diagnostic evaluation.

*SEA Form*

Potentially eligible patients identified by electronic records review will receive a SEA form and accompanying letter. This form will ask patients to confirm or refute their eligibility based on all eligibility criteria. The form will also ask patients for additional socio-demographic and perceived health status data, and allow patients to opt out of participation in the intervention if they so choose.

*Practice Focus Groups*

The practice focus groups will be conducted both prior to the intervention and following the intervention at each intervention practice. The pre-intervention focus groups are designed to collect information to establish a baseline. The post-intervention focus groups will be conducted to assess satisfaction with the intervention and to identify changes in attitudes and behaviors regarding screening and

follow-up and changes in management of normal and abnormal screening tests resulting from the intervention. In addition, focus groups at control practices will be conducted late in the intervention period to gather comparison information similar to the baseline information gathered from intervention practices.

*Brief Informal Interviews*

Brief informal interviews with selected intervention practice providers and staff will be conducted as a follow-up to the focus groups to ascertain additional baseline information about procedures and systems for screening results (pre-intervention), and additional information about each practice's experience with the intervention and facilitators and barriers to the intervention's implementation (post-intervention). In addition, similar baseline information will be collected from control practices late in the intervention period.

*Practice Survey*

A pre-intervention practice survey of providers and staff will be administered in the intervention practices to provide a baseline of the current CRC screening environment at each practice. The survey will be administered again post-intervention to ascertain changes in behavior or attitudes resulting from the intervention. In addition, the survey will also be administered in the control practices late in the intervention period to gather comparison information similar to the baseline information gathered from intervention practices.

*Patient Chart Audits*

Study personnel will track patient screening rates and outcomes as well as follow-up rates at intervention and control practices by conducting chart audits on patients whose electronic data are inconclusive, or on patients who are part of practices without electronic medical records (EMR) systems. Chart audits will be performed by LVH study personnel; however, practice staff will be required to identify, locate, and make charts available to study personnel.

*Patient Focus Groups*

Focus groups of patients will be conducted to better understand the intervention from the patient's perspective. Focus groups with the intervention practices will be held at two sites geographically situated across the region. At each site, three focus groups will be conducted for each of the following types of intervention patients: (1) Those who did not get the recommended screening after receiving the invitation packet, (2) those who did get the recommended screening and whose test was negative, and (3) those who did get screened and whose test was positive. For purposes of comparison, two focus groups of patients from control group practices will also be conducted. Participants will be asked about their attitudes and beliefs regarding colorectal cancer screening and what they believe would help them get the screening they need.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours for the respondents to participate in this project. The electronic patient records review will be performed by only four entities (LVPHO, MATLV, LVPG, and PBS) which will each extract approximately 1,875 records, requiring about 68 hours total. The SEA form will be sent to a maximum of 7,500 patients across the 20 intervention practices and will require an average of 10 minutes to complete each. Practice focus groups will be conducted with 10 individuals per practice, and will last approximately 30 minutes each. The pre-intervention and post-intervention practice focus groups will be held with intervention practices only (20 practices). Focus groups will also be held at each of the control practices for comparison purposes (5 practices). Informal interviews will be conducted with three individuals per practice, and will last about 10 minutes each. The pre and post-intervention informal interviews will be conducted among the intervention practices (20 practices). Informal interviews will also be conducted in the control practices for comparison purposes (5 practices). A survey of providers and staff will be conducted with 10 individuals at each practice, and the survey will take approximately 15 minutes to complete. The survey will be administered to the intervention practices during the pre and post-intervention practice focus group (20 practices). The survey will also be administered to the control practices for comparison purposes (5 practices). Patient chart audits will be performed post-intervention at both intervention and control practices as a supplement to the information available through electronic records. Among the 25 practices, about 50 patients from each practice will have their charts audited, which should take about 10 minutes per chart. Patient focus groups will be held post-intervention and will include six groups of 10 patients from the intervention group practice sites, and two groups of 10 patients from the control group practice sites (80 patients total). These focus groups are expected to last about 2 hours. The total burden for all phases of the project is estimated to be 2,046.33 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents' time to participate in the project. The total cost is estimated to be $31,446.73.

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

| Data collection mode | Number of respondents | Number of responses per respondent | Est. time per respondent (in hours) | Total burden hours |
|---|---|---|---|---|
| Electronic patient record review* | 4 | 3 | 5.66 | 68 |
| Screening Eligibility Assessment (SEA) Form | 7,500 | 1 | 10/60 | 1250 |
| Pre-intervention practice focus groups | 20 | 10 | 30/60 | 100 |
| Post-intervention practice focus groups | 20 | 10 | 30/60 | 100 |
| Control practice focus groups | 5 | 10 | 30/60 | 25 |
| Pre-intervention informal interviews with selected providers and staff | 20 | 3 | 10/60 | 10 |
| Post-intervention informal interviews with selected providers and staff | 20 | 3 | 10/60 | 10 |
| Control informal interviews with selected providers and staff | 5 | 3 | 10/60 | 2.5 |
| Pre-intervention survey of clinicians and staff | 20 | 10 | 15/60 | 50 |
| Post-intervention survey of clinicians and staff | 20 | 10 | 15/60 | 50 |
| Control survey of clinicians and staff | 5 | 10 | 15/60 | 12.5 |
| Chart audits | 25 | 50 | 10/60 | 208.33 |
| Patient Focus Groups (post-intervention) | 80 | 1 | 2 | 160 |

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Data collection mode | Number of respondents | Number of responses per respondent | Est. time per respondent (in hours) | Total burden hours |
|---|---|---|---|---|
| Total | 7,744 | | | 2,046.33 |

*In the intervention practices, electronic records review will be conducted pre-intervention, mid-intervention, and post-intervention. Mid-intervention electronic records review will be conducted in order to determine which patients should be sent the Reminder Letter if they have not yet completed a stool test kit or colonoscopy. In the control practices, electronic records review will be conducted pre-intervention and post-intervention. The electronic records review will be performed by administrative assistants (16 of 68 burden hours) and data analysts (52 of 68 burden hours).

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

| Data collection mode | Number of respondents | Total burden hours | Average hourly wage rate* | Total cost burden |
|---|---|---|---|---|
| Electronic patient record review | 4 | 68 | $23.56 | $1,602 |
| Screening Eligibility Assessment (SEA) Form | 7,500 | 1,250 | 12.54 | 15,675 |
| Pre-intervention practice focus groups | 20 | 100 | 28 | 2,800 |
| Post-intervention practice focus groups | 20 | 100 | 28 | 2,800 |
| Control practice focus groups | 5 | 25 | 28 | 700 |
| Pre-intervention informal interviews with selected providers and staff | 20 | 10 | 28 | 280 |
| Post-intervention informal interviews with selected providers and staff | 20 | 10 | 28 | 280 |
| Control informal interviews with selected providers and staff | 5 | 2.5 | 28 | 70 |
| Pre-intervention survey of clinicians and staff | 20 | 50 | 28 | 1,400 |
| Post-intervention survey of clinicians and staff | 20 | 50 | 28 | 1,400 |
| Control survey of clinicians and staff | 5 | 12.5 | 28 | 350 |
| Chart audits | 25 | 208.33 | 10 | 2,083.33 |
| Patient Focus Groups (post-intervention) | 80 | 160 | 12.54 | 2,006.40 |
| Total | 7,744 | 2,046.33 | | 31,446.73 |

* Wage rates were calculated using the following data: (1) For the electronic patient record review the hourly rate is a weighted average for administrative assistants ($14.00 per hour) and data analysts ($26.50 per hour); (2) for the SEA form and patient focus groups the patient average hourly wage was based on the average per capita income of $26,088 (computed into an hourly wage rate of $12.54) in Lehigh Valley, Pennsylvania: ''Demographic Information for the Lehigh Valley'' from the Lehigh Valley Economic Development Corporation 2006; (3) for the practice focus groups, informal interviews, and survey the provider and practice hourly wage was based on an average of the following estimates from LVH—physician = $70/hour; manager = $19/hour; clinical staff = $13/hour; and clerical staff = $10/hour; (4) for the chart audits the practice clerical staff hourly wage was estimated by LVH to be $10/hour (note: practice clerical staff will retrieve the charts to be audited by study personnel; therefore only the time of the practice clerical staff is included in Exhibit 1 and in the Exhibit 2 cost estimate).

**Estimated Annual Costs to the Federal Government**

The estimated total cost to the Federal Government is $271,764.68. The average annualized cost over the two years of the project is $135,882.34 per year. Exhibit 3 shows a breakdown of the costs.

EXHIBIT 3.—ESTIMATED ANNUAL COSTS TO THE FEDERAL GOVERNMENT

| Component | Year 1 | Year 2 | Total |
|---|---|---|---|
| The cost of developing the data collection instruments | $24,765.38 | $0 | $24,765.38 |
| The cost of implementing the data collections | 99,061.52 | 24,601.75 | 123,663.27 |
| The cost of analyzing the data and publishing the results | 49,530.76 | 73,805.26 | 123,336.02 |
| Total | 173,357.66 | 98,407.02 | 271,764.68 |

**Request for Comments**

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 27, 2008.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. E8–15666 Filed 7–16–08; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Correction—Assessing the Impact of the Patient Safety Improvement Corps (PSIC) Training Program

With this correction notice, the Agency for Healthcare Research and Quality (AHRQ) informs the public of changes made to a notice on ''Assessing the Impact of the Patient Safety Improvement Corps (PSIC) Training Program'' published on June 24, 2008, Vol. 73, No. 122, pages 35692–35693 under section **SUPPLEMENTARY INFORMATION.**

The revised subsections below on ''Estimated Annual Respondent Burden, Exhibit 1 and 2'' replace same subsections published on June 24, 2008.

**Estimated Annual Respondent Burden**

Exhibit I shows the estimated annualized burden hours for the respondent's time to participate in the study. Qualitative interviews will be conducted with a maximum of 54 individuals and will last about one hour. The training participant questionnaire is estimated to require 30 minutes to complete and the organizational leader questionnaire is estimated to require 15 minutes to complete, resulting in a total burden of 223 hours.

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Hour per response | Total burden hours |
|---|---|---|---|---|
| Qualitative interview | 54 | 1 | 1 | 54 |
| Training participant questionnaire | 300 | 1 | 30/60 | 150 |
| Organizational leader questionnaire | 75 | 1 | 15/60 | 19 |
| Total | 429 | NA | NA | 223 |

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to participate in the study The total cost burden is estimated to be $7,453.06.

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of respondents | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|---|
| Qualitative interview | 54 | 54 | $35.19 | $1,900.26 |
| Training participant questionnaire | 300 | 150 | 32.18 | 4,827.00 |
| Organizational leader questionnaire | 75 | 19 | 38.20 | 725.80 |
| Total | 429 | 223 | NA | 7,453.06 |

* Based upon the mean of the average wages for health professionals for the training participant questionnaire and for executives, administrators, and managers for the organizational leader questionnaire presented in the National Compensation Survey: Occupational Wages in the United States, June 2005, U.S. Department of Labor, Bureau of Labor Statistics.

Dated: July 3, 2008.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. E8–16062 Filed 7–16–08; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation (Panel A–3), Program Announcement (PAR) 07–231

*Correction:* This notice was published in the **Federal Register** on June 12, 2008, Volume 73, Number 114, pages 33435–33436. The title should read as follows:

*Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP):* CDC Grants for Public Health Research Dissertation (Panel A–1), Program Announcement (PAR) 07–231.

*Contact Person for More Information:* Sheree Marshall Williams, Ph.D., M.Sc., Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone (404) 639–4896.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 9, 2008.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E8–16340 Filed 7–16–08; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Statewide Automated Child Welfare Information System (SACWIS) Assessment Review Guide (SARGE).

*OMB No.:* 0970–0159.

*Description:* HHS cannot fulfill its obligation to effectively serve the

nation's Adoption and Foster Care populations, nor report meaningful and reliable information to Congress about the extent of problems facing these children or the effectiveness of assistance provided to this population, without access to timely and accurate information. Currently, SACWIS support State efforts to meet the following Federal reporting requirements: The Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act; the National Child Abuse and Neglect Data System (NCANDS); Child Abuse Prevention and Treatment Act (CAPTA); and the Chafee Independent Living Program. These systems also support state efforts to provide the information to conduct the Child and Family Service Reviews. Currently, forty-two States and the District of Columbia have developed, or are developing, a SACWIS with Federal financial participation. The purpose of these reviews is to ensure that all aspects of the project, as described in the approved Advance Planning Document, have been adequately completed, and conform to applicable regulations and policies.

To initiate a review, States will submit the completed SACWIS Assessment Review Guide (SARGE) and other documentation at the point that they have completed system development and the system is operational statewide. The additional documents submitted as part of this process should all be readily available to the State as a result of good project management practices.

The information collected in the SACWIS Assessment Review Guide will allow State and Federal officials to determine if the State's SACWIS meets the requirements for title IV–E Federal Financial Participation (FFP) defined at 45 CFR 1355.50. Additionally, other States will be able to use the documentation provided as part of this review process in their own system development efforts.

*Respondents:* State Governments.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of responses | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Review | 1 | 1 | 200 | 200 |

*Estimated Total Annual Burden Hours:* 200.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address:*infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: July 10, 2008.

**Janean Chambers,**

*Reports Clearance Officer.*

[FR Doc. E8–16180 Filed 7–16–08; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Child Care and Development Fund Tribal Plan (Form ACF–118–A).

*OMB No.:* 0970–0198.

*Description:* The Child Care and Development Fund (CCDF) Tribal Plan serves as the agreement between the applicant (Indian Tribes, tribal consortia and tribal organizations) and the Federal Government that describes how tribal applicants will operate CCDF Block Grant programs. The Tribal Plan provides assurances that the CCDF funds will be administered in conformance with legislative requirements, Federal regulations at 45 CFR parts 98 and 99 and other applicable instructions or guidelines issued by the Administration for Children and Families (ACF). Tribes must submit a new CCDF Tribal Plan every two years in accordance with 45 CFR 98.17.

*Respondents:* Tribal CODE programs (259 total).

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| CCDF Tribal Plan | 259 | 1 | 17.5 | 4,532.5 |
| CCDF Tribal Plan Amendments | 259 | 1 | 1.5 | 388.5 |

*Estimated Total Annual Burden Hours:* 4,921.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address:*infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it

within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: July 10, 2008.

**Janean Chambers,**

*Reports Clearance Officer.*

[FR Doc. E8–16183 Filed 7–16–08; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* The OC5E–157 Child Support Enforcement Annual Data Report.

*OMB No.:* 0970–0177.

*Description:* The information obtained from this form will be used to: (1) Report Child Support Enforcement activities to the Congress as required by law; (2) calculate incentive measures performance and performance indicators utilized in the program; and (3) assist the Office of Child Support Enforcement in monitoring and evaluating State Child Support programs.

*Respondents:* State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| OCSE–157 Child Support Annual Data Report | 54 | 1 | 7 | 378. |

*Estimated Total Annual Burden Hours:* 378

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address:*infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: July 10, 2008.

**Janean Chambers,**

*Reports Clearance Officer.*

[FR Doc. E8–16197 Filed 7–16–08; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### [Docket No. FDA–2005–D–0208] (formerly Docket No. 2005D–0438)

### Guidance for Industry: Safety, Efficacy, and Pharmacokinetic Studies to Support Marketing of Immune Globulin Intravenous (Human) as Replacement Therapy for Primary Humoral Immunodeficiency; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Safety, Efficacy, and Pharmacokinetic Studies to Support Marketing of Immune Globulin Intravenous (Human) as Replacement Therapy for Primary Humoral Immunodeficiency,'' dated June 2008. The guidance document provides recommendations for the design of clinical trials to assess the safety, efficacy, and pharmacokinetics of immune globulin intravenous (human) (IGIV) products as replacement therapy in primary humoral immunodeficiency. The guidance announced in this notice finalizes the draft guidance of the same title dated November 2005.

**DATES:** Submit written or electronic comments on agency guidances at any time. Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**ADDRESSES:** Submit written comments on the 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:** Denise Sánchez, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Safety, Efficacy, and Pharmacokinetic Studies to Support Marketing of Immune Globulin Intravenous (Human) as Replacement Therapy for Primary Humoral Immunodeficiency,'' dated June 2008. This guidance provides investigational new drug application (IND) and biologics license application (BLA) sponsors with recommendations for the design of clinical trials to assess the safety, efficacy, and pharmacokinetics of investigational IGIV products when used as replacement therapy in primary humoral immunodeficiency. This

guidance is intended to assist sponsors in the preparation of the clinical/biostatistical and human pharmacokinetic sections of a BLA. This guidance does not address additional sections of a BLA, such as chemistry, manufacturing, and controls and pre-clinical toxicology, for an IGIV product for this indication.

In the **Federal Register** of December 1, 2005 (70 FR 72124), FDA announced the availability of the draft guidance of the same title dated November 2005. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. A summary of changes includes: Recommendations for compliance with the Pediatric Research Equity Act of 2007, refinements to the criteria for diagnosing serious infections, refinements to the recommended safety analyses of adverse experiences temporally related to infusions, and additional guidance on the methodology of pharmacokinetic studies. The guidance announced in this notice finalizes the draft guidance dated November 2005.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. 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. 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 (44 U.S.C. 3501–3520). The collections of information regarding BLAs (21 CFR part 601) have been approved under OMB control number 0910–0338.

## III. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. 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. A copy of the guidance and received comments are available for public examination 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*.

## IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.regulations.gov*.

Dated: July 11, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–16395 Filed 7–16–08; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2003–D–0434] (formerly Docket No. 2003D–0420)**

### Medical Devices: Radiology Devices; Class II Special Controls Guidance Document: Bone Sonometers; Guidance for Industry and Food and Drug Administration Staff

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

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Bone Sonometers.'' The guidance document describes a means by which bone sonometers may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule reclassifying these devices from class III (premarket approval) into class II (special controls).

**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 ''Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Bone Sonometers'' 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:** Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3666.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of February 15, 2006 (71 FR 7894), FDA's Center for Devices and Radiological Health (CDRH) published a proposed rule to reclassify bone sonometers from class III (premarket approval) into class II (special controls) after reviewing current technological and scientific developments. Specifically, CDRH reviewed recent studies addressing performance characteristics of bone sonometers manufactured by different companies and determined that, when combined with mitigation measures to offset the risks of use associated with these devices, special controls would be adequate to assure the safety and effectiveness of bone sonometers. To support the reclassification, CDRH issued a draft class II special controls guidance document entitled ''Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Bone Sonometers'' (71 FR 7976). Interested persons were invited to comment on the proposed rule and guidance by May 16, 2006, and the agency received three comments. The comments FDA received were supportive of the proposed reclassification, but made specific suggestions on the guidance's content. The agency considered the suggestions and made appropriate revisions. FDA is now identifying the guidance document entitled ''Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Bone Sonometers'' as the guidance document that will

serve as the special control for these devices.

The guidance document provides a means by which bone sonometers may comply with the requirement of special controls for class II devices. Following the effective date of the final reclassification rule, any firm submitting a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for bone sonometers will need to address the issues covered in the special controls guidance document. However, the firm need only show that its device meets the recommendation of the guidance document or in some other way provides equivalent assurances of safety and effectiveness.

**II. Significance of the 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 bone sonometers. 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 ''Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Bone Sonometers,'' 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 (1547) 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 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the information collections in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the information collections in 21 CFR parts 1002, 1003, and 1004 have been approved under OMB control number 0910–0025.

**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 2, 2008.

**Daniel G. Schultz,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. E8–16094 Filed 7–16–08; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–1995–N–0054] (formerly Docket No. 1995N–0304)**

### Small Entity Compliance Guide: Final Rule Declaring Dietary Supplements Containing Ephedrine Alkaloids Adulterated Because They Present an Unreasonable Risk; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing theavailability of a small entity compliance guide (SECG) for a final rule published in the **Federal Register** of February 11, 2004 (69 FR 6788), entitled ''Final Rule Declaring Dietary Supplements Containing Ephedrine Alkaloids Adulterated Because They Present an Unreasonable Risk.'' This SECG is intended to set forth in plain language the requirements of the regulation and to help small businesses understand the regulation.

**DATES:** Submit written or electronic comments on the SECG at any time.

**ADDRESSES:** Submit written comments on the SECG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the SECG to *http://www.regulations.gov*. Submit written requests for single copies of the SECG to the Division of Dietary Supplement Programs, Office of Nutrition, Labeling, and Dietary Supplements (HFS–810), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or fax your request to 301–436–2639. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Moore, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of February 11, 2004, FDA issued a final rule declaring dietary supplements containing ephedrine alkaloids adulterated under the Federal Food,

Drug, and Cosmetic Act because they present an unreasonable risk of illness or injury under the conditions of use recommended or suggested in labeling, or if no conditions of use are suggested or recommended in labeling, under ordinary conditions of use. This final rule became effective April 12, 2004.

FDA examined the economic implementation of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–602) and determined that the final rule would have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), FDA is making available this SECG stating in plain language the requirements of the regulation.

FDA is issuing this SECG as a level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the agency's current thinking on this subject. 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 SECG.

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. The SECG and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

## III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/guidance.html*.

Dated: July 10, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–16396 Filed 7–16–08; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0361]**

### Small Entity Compliance Guide: Standard of Identity for White Chocolate; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide (SECG) for a final rule published in the **Federal Register** of October 4, 2002 (67 FR 62171). This SECG entitled ''Standard of Identity for White Chocolate'' is intended to set forth, in plain language, the requirements of the regulation and to help small businesses understand the regulation.

**DATES:** Submit written or electronic comments on the SECG at any time.

**ADDRESSES:** Submit written comments on the SECG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the SECG to *http://www.regulations.gov*. Submit written requests for single copies of the SECG to the Office of Nutrition, Labeling, and Dietary Supplements (HFS–800), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

**FOR FURTHER INFORMATION CONTACT:** Geraldine June, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of October 4, 2002, FDA issued a final rule establishing a standard of identity for white chocolate. That final rule became effective January 1, 2004.

FDA examined the economic implementation of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–602) and determined that the final rule would have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), FDA is making this SECG available by stating, in plain language, the requirements of the regulation.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the agency's current thinking on this subject. 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 SECG. Submit a single copy of electronic comments to 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. The SECG and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

## III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/guidance.html*.

Dated: July 10, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–16394 Filed 7–16–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project**

Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form (OMB No. 0915–0036)—Extension

The HEAL program assures the availability of funds for loans to eligible students who desire to borrow money to pay for their educational costs. HEAL Lenders use the Lenders Application for Insurance Claim to request payment from the Federal Government for federally insured loans lost due to borrowers' death, disability, bankruptcy, or default. The Request for Collection Assistance form issued by HEAL lenders to request federal assistance with the collection of delinquent payments from HEAL borrowers.

The burden estimates are as follows:

| Form | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Lender's Application for Insurance Claim | 17 | 25 | 425 | .5 | 213 |
| Request for Collection Assistance | 17 | 550 | 9,350 | .167 | 1,561 |
| Total | 17 | | 9,775 | | 1,774 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: July 8, 2008.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E8–16358 Filed 7–16–08; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children (ACHDGDNC); Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children.

*Date and Time:* August 7, 2008, 1 p.m.–5 p.m., EDT.

*Place:* Audio Conference Call.

The ACHDNC will meet on Thursday, August 7, from 1 p.m. to 5 p.m., (EDT). The public can join the meeting via conference call by dialing 1–(866) 245–0358 on August 7 and providing the following information:

*Leader's Name:* Carrie Diener.

*Project Code:* 10596001001.

*Pass Code:* 496966.

Participants should call no later than 12:30 p.m. EDT in order for the logistics to be established for participation in the call. Participants also are asked to register for the conference by going to the registration Web site at *http://www.signup4.net/public/ap.aspx?EID=ADVI12E&OID=130.* The registration deadline is Wednesday, August 6, 2008. If there are technical problems gaining access to the call, please contact Tamar R. Shealy, Meetings Manager, Conference and Meetings Management, Altarum Institute, telephone: (202) 828–5100.

*Agenda:* The agenda will include discussion on the ACHDGDNC's evidence review process and to hear discussion from the ACHDGDNC members on condition nomination packages submitted for review by the ACHDGDNC for inclusion on the uniform newborn screening panel. Agenda items are subject to change as priorities dictate. You can also locate the Agenda, presentations and meeting materials at the home page of the Web site at *http://www.signup4.net/public/ap.aspx?EID=ADVI12E&OID=50.*

*Public Comments:* Members of the public can present oral comments during the public comment period of the conference call. Those individuals are required to register online by Wednesday, August 6, 2008, at *http://www.signup4.net/public/ap.aspx?EID=ADVI12E&OID=130.* Requests will contain the name, address, telephone number, and any professional or business affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. Each public commentator will be notified by email of their assigned presentation time.

Members of the public are required to submit written comments that will be distributed to Committee members prior to the conference call. Parties wishing to submit written comments should ensure that the comments are postmarked or emailed no later than July 31, 2008, for consideration. Comments should be submitted to Tamar R. Shealy, Meetings Manager, Conference and Meetings Management, Altarum Institute, 1200 18th Street, NW., Suite 700, Washington, DC 20036, telephone: (202) 828–5100; fax: (202) 785–3083, or e-mail: *Tamar.Shealy@altarum.org.*

*For Further Information Contact:* Anyone requiring information regarding the ACHDNC should contact : Jill F. Shuger, M.S., Maternal and Child Health Bureau, HRSA, Parklawn Building, Room 18A–19, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–1080; fax (301) 594–0878; or e-mail: *jshuger@hrsa.gov.*

*Supplementary Information:* The ACHDNC was chartered originally under Section 1111 of the Public Health Service (PHS) Act, 42 U.S.C. 300b–10 in February 2003 to advise the Secretary of the U.S. Department of Health and Human Services and as amended in the Newborn Screening Saves Lives Act. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App. 2), and 41 CFR part 102–3, which sets forth standards for the formation and use of advisory committees. The ACHDNC is directed to review and report regularly on newborn and childhood screening practices for heritable disorders and to recommend improvements in the national newborn and childhood heritable screening programs.

Dated: July 9, 2008.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E8–16360 Filed 7–16–08; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Office of Urban Indian Health Programs

*Announcement Type:* Competitive Targeted Solicitation.

*Funding Opportunity Number:* HHS–2008–IHS–UIHP–0002.

*Catalog of Federal Domestic Assistance Number:* 93.193.

*Key Dates: Application Deadline Date:* August 8, 2008.

*Review Date:* August 11, 2008.

*Earliest Anticipated Start Date:* September 1, 2008.

**I. Funding Opportunity Description**

The Indian Health Service (IHS), Office of Urban Indian Health Programs (OUIHP) announces an open competition for the 4-in-1 Title V grants responding to an Office of Minority Health, human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) Initiative. This program is authorized under the authority of the Snyder Act and 25 U.S.C. 1652, 1653 of the Indian Health Care Improvement Act, Public Law 94–437, as amended. This program is described at 93.193 in the Catalog of Federal Domestic Assistance (CFDA).

This open competition seeks to expand OUIHP's existing Title V grants to increase the number of American Indian/Alaska Natives (AI/AN) with awareness of his/her HIV status. This will provide routine and/or rapid HIV screening, prevention, pre and post test counseling (when appropriate), and data collection. Enhancement of urban Indian health program HIV/AIDS activities is necessary to reduce the incidence of HIV/AIDS in the urban Indian health communities.

The purpose of the announcement is to respond to the fact that communities of color have been disproportionately affected by HIV and the need exists for access to early testing, diagnosis, treatment and prevention services. Over the past decade, the AI/AN community has developed and maintained a higher rate of HIV than Caucasians. It has also been demonstrated that AI/ANs have a decreased longevity once diagnosed compared to other races/ethnicities. These supplements will be used to enhance HIV testing, including rapid testing and/or standard HIV antibody testing and to provide a more focused effort to address HIV/AIDS prevention, targeting some of the largest urban Indian populations in the United States.

*The nature of these projects will require collaboration with the OUIHP to:* (1) Coordinate activities; (2) participate in projects in other operating divisions of the Department of Health and Human Services (HHS) such as the Centers for Disease Control and Prevention, Substance Abuse and Mental Health Services Administration, Health Resource and Services Administration and the Office of HIV/AIDS Policy; and (3) submit and share data on HIV/AIDS testing, treatment and education.

**II. Award Information**

*Type of Award:* Title V Grant Supplements.

*Estimated Funds Available:* The total amount identified for Fiscal Year (FY) 2008 is fourteen awards totaling $350,000. The award is for one year in duration and the average award, per program is approximately $25,000. Awards under this announcement are subject to the availability of funds.

*Anticipated Number of Awards:* Fourteen grant awards will be made under the Program.

*Project Period:* September 1, 2008–August 31, 2009.

*Award Amount:* $350,000.

*A. Requirements of Recipient Activities*

In FY 2008 each grantee's attempted goal shall include screening as many individuals as possible; however, increasing screening 10% or to a minimum of 200 American Indians/Alaska Natives (AI/AN) tested per program funded adjusted due to variations in size of facility and user population may be required. This does not include counts of re-testing individuals in the same year. Each program shall also collect evidence, as part of the testing process, to potentially address utility and barriers of increased routine HIV screening within this population.

**III. Eligibility Information**

1. *Eligible Applicants:* Urban Indian organizations, as defined by 25 U.S.C. 1603(h), limited to urban Indian organizations which meet the following criteria:

a. Received State certification to conduct HIV rapid testing;

b. Health professionals and staff have been trained in the HIV/AIDS screening tools, education, prevention, counseling, and other interventions for AI/ANs;

c. Attuned to the risk factors driving the HIV/AIDS epidemics among urban AI/ANs;

d. Developed programs to address community and group support to sustain risk reduction skills;

e. Implemented HIV/AIDS quality assurance and improvement programs; and

f. Must provide proof of non-profit status with the application.

2. *Cost Sharing or Matching*—This program does not require matching funds or cost sharing.

3. If the application budget exceeds $25,000 it will not be considered for review.

**IV. Application and Submission Information**

1. *Applicant package may be found in Grants.gov* (*www.grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/gogp_funding.asp*.

Questions regarding the electronic application process may be directed to Michelle G. Bulls at (301) 443–6290.

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.
- Contain a narrative that does not exceed 25 typed pages that includes the other submission requirements below. The 25 page narrative does not include the work plan, standard forms, 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 the exception of Lobbying and Discrimination public policy.

3. *Submission Dates and Times:*

The application from each urban Indian organization must be submitted electronically through Grants.gov by 12 midnight Eastern Standard Time (EST).

If technical challenges arise and the urban Indian organizations are unable to successfully complete the electronic application process, each organization must contact Michelle G. Bulls, Grants Policy Staff (GPS) fifteen days prior to the application deadline and advise of the difficulties that they are experiencing. Each organization must obtain prior approval, in writing (e-mails are acceptable), from Ms. Bulls 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 organizations without review or consideration.

A late application will be returned to the organization without review or consideration.

4. *Intergovernmental Review:* Executive Order 12372 requiring

intergovernmental review is not applicable to this program.

5. *Funding Restrictions:*

A. Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR part 74, all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason any of the urban Indian organizations do not receive an award or if the award to the recipient is less than anticipated.

B. The available funds are inclusive of direct and appropriate indirect costs.

C. Only one grant supplement will be awarded to each organization.

D. IHS will acknowledge receipt of the application.

6. *Other Submission Requirements:*

*Electronic Submission*—Each urban Indian organization must submit 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. Each organization must seek assistance at least fifteen days prior to the application deadline. If each organization doesn't adhere to the timelines for Central Contractor Registry (CCR), Grants.gov registration and request timely assistance with technical issues, paper application submission may not be granted.

To submit an application electronically, please use the Grants.gov Web site. 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 any urban Indian organization has technical problems submitting the application on-line, please contact directly Grants.gov Customer Support at: *http://www.grants.gov/CustomerSupport*.
- Upon contacting Grants.gov, obtain a Grants.gov 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 Grants Policy must be obtained. If any of the organizations are still unable to successfully submit the application on-line, please contact Michelle G. Bulls, GPS at (301) 443–6290 at least fifteen days prior to the application deadline to advise her of the difficulties you have experienced.
- If it is determined that a formal waiver is necessary, each organization must submit a request, in writing (e-mails are acceptable), to *Michelle.Bulls@ihs.gov* providing 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 from Grants.gov, and sent directly to the Division of Grants Operations (DGO), 801 Thompson Avenue, TMP 360, Rockville, MD 20852 by August 8, 2008.
- Upon entering the Grants.gov Web site, there is information available that outlines the requirements to each urban Indian organization regarding electronic submission of application and hours of operation. We strongly encourage that each organization does not wait until the deadline date to begin the application process as the registration process for CCR and Grants.gov could take up to fifteen working days.
- To use Grants.gov, each urban Indian organization must have a Data Universal Numbering System (DUNS) Number and register in the CCR. Each organization should allow a minimum of ten working days to complete CCR registration. See below on how to apply.
- Each organization 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.
- Each organization 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 DGO will retrieve your application from Grants.gov. The DGO will notify each organization that the application has been received.
- You may access the electronic application for this program on Grants.gov.
- You may search for the downloadable application package using either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.
- To receive an application package, each urban Indian organization must provide the Funding Opportunity Number: HHS–2008–IHS–UIHP–0002.

E-mail applications will not be accepted under this announcement.

**DUNS Number**

Applicants are required to have a DUNS number 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.ccr.gov*.

More detailed information regarding these registration processes can be found at Grants.gov.

**V. Application Review Information**

1. Criteria

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative should include the first year of activities; information for multi-year projects should be included as an appendix (see E. ''Categorical Budget and Budget Justification'') at the end of this section for more information. The narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the urban Indian organization. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully.

*A. Understanding of the Need and Necessary Capacity (30 Points)*

1. Understanding of the Problem

a. Define the project target population, identify their unique characteristics, and describe the impact of HIV on the population.

b. Describe the gaps/barriers in HIV testing for the population.

c. Describe the unique cultural or sociological barriers of the target population to adequate access for the described services.

2. Facility Capability

a. Briefly describe your clinic programs and services and how this initiative complements and/or expands existing efforts.

b. Describe your clinic's ability to conduct this initiative through:

- Your clinic's own resources.
- Collaboration with other providers.
- Partnerships established to accept referrals for counseling, testing, and referral and confirmatory blood tests and/or social services for individuals who test HIV positive.
- Partnerships established to refer out of your clinic for specialized treatment, care, confirmatory testing (if applicable) and counseling services.

*B. Work Plan (40 Points)*

1. Project Goal and Objectives

Address all of the following program goals and objectives of the project. The objectives must be specific as well as quantitatively and qualitatively measurable to ensure achievement of goal(s).

- President's Initiative for HIV/AIDS

Explain how the continuation program addresses the President's Initiative for HIV/AIDS objective requiring testing of those who do not know their status. For a more direct and relevant program initiative, this proposal will be enumerated in the development of the new IHS HIV/AIDS Strategic Plan.

- HHS Strategic Plan Support

Describe how implementing, expanding and making routine HIV/AIDS direct service opportunities in your clinic ensures an innovative approach towards achievement of two of the most critical HHS Strategic Plan Objectives relative to the health status of AI/AN:

Objective 3.4—Eliminate racial and ethnic health disparities.

Objective 3.6—Increase access to health services for AI/AN.

- Office of the Secretary Minority AIDS Initiative

Address how the Minority AIDS Initiative Goals/Objectives will be supported. If a goal/objective is not applicable to your program, explain why it is not applicable. Provide quantitative and qualitative objectives for each of the following.

1. Expand Services

a. Increase the number of clients receiving services;

b. Increase the number of clients that receive an HIV test and are provided results and know their status; and

c. Increase the number of clients treated and/or referred into the system for medical care.

2. Build Capacity

a. Identify the number of providers that have expanded their:

- Knowledge of HIV screening methods;
- Knowledge of streamlining procedures; and
- Collaboration with outside entities such as CDC, HRSA, and/or State health departments.

3. Best Practices Models

a. Identify best practice models of implementation of expanded services.

4. Enumerate lessons observed and address barriers to care.

- IHS Strategic Plan Support

Describe how this project integrates with the IRS Strategic Plan which includes concepts surrounding:

1. Building and sustaining healthy communities;
2. Providing accessible, quality health care; and
3. Fostering collaboration and innovation across the Indian health network.

- IHS HIV/AIDS Administrative Work Plan Goals

Describe how the IHS HIV/AIDS Administrative work plan goals will be supported. If a goal is not applicable to your program, explain why it is not applicable.

1. Assist AI/AN in becoming aware of serostatus;
2. Reduce the transmission of HIV through behavior change, prevention education and open discussion;
3. Ensure access (and linkages) to services for those living with HIV/AIDS and those at risk;
4. Provide routine HIV/AIDS services and ensure quality HIV/AIDS care is delivered within the Indian health system;
5. Reduce stigma and discrimination surrounding HIV/AIDS; and
6. Form sustainable collaborations and integrative approaches (*i.e.* Sexually Transmitted Diseases and HIV integration) to build capacity and maximize resources for surveillance, prevention, treatment and mitigation.

- Implementation Plan

1. Identify the proposed program activities and explain how these activities will meet the needs of the target population.

2. Describe any anticipated outcomes that may be achieved from this project plan.

3. Provide a timeline for implementation.

4. Certify that the program identified and agreed to follows the State regulations for HIV testing in their State.

5. Describe how individuals will be selected for testing to identify selection criteria and which group(s)—if any—will you be able, via State regulations to offer testing in an opt-out format.

6. Describe how the program will ensure that clients receive their test results, particularly clients who test positive.

7. Describe how the program will ensure that individuals with initial HIV-positive test results will receive confirmatory tests. If you do not provide confirmatory HIV testing, you must provide a letter of intent or Memorandum of Understanding with an external laboratory documenting the process through which initial HIV-positive test results will be confirmed.

8. Describe the program strategies to linking potential seropositive patients to care.

9. Describe the program quality assurance strategies.

10. Describe how the program will train, support and retain staff providing counseling and testing.

11. Describe how the program will ensure client confidentiality.

12. Describe how the program will ensure that your services are culturally sensitive and relevant.

13. Describe how the program will attempt to streamline procedures so as to reduce the overall cost per test administered.

- Staffing Plan

Describe the existing or proposed positions to be funded and provide names and roles of the key position(s) carrying out this project, their qualifications and how they relate to the organization, with regard to supervision and quality control.

*C. Project Evaluation (10 Points)*

1. Evaluation Plan

The grantee shall provide a plan for monitoring and evaluating the HIV rapid test and/or standard HIV antibody test.

2. Reporting Requirements

The following quantitative and qualitative measures shall be addressed:

- Indicators (Quantitative)

1. Number of tests offered and number of test refusals.

2. Number of clients who refused due to prior knowledge of status.
3. Number of individuals tested with breakdown of rapid versus standard antibody test.
4. Number of negative results.
5. Number of false negatives and/or false positives after confirmatory testing.
6. Number of reactive tests and confirmed seropositive (actual and proportion).
7. Number of individuals receiving their confirmatory test results.
8. Number of clients learning of their serostatus for the first time via this testing initiative.
9. Number of clients linked to care/treatment or referrals for prevention counseling.
10. Number of post-test counseling sessions.
11. Number of pre-test counseling sessions (brief).
12. Number of prevention counseling sessions (more depth) due to higher risk populations.
13. Number of missed follow up after rapid test is reactive.
14. Transmission category (if known).
15. Measures in place to protect confidentiality.

• Qualitative Information

1. Identify Testing Methodology

a. Will testing be rapid or standard?
b. Opt-out format should be utilized. Unless otherwise determined by State regulations—please explain.
c. Is your methodology based on risk-based screening? Based on what risk criteria? Are you offering more routine screening? What are the criteria for offering tests if any?

2. Identify barriers of implementation

• Plan for obtaining knowledge, attitudes, and behavior data.

*D. Organizational Capabilities and Qualifications (10 Points)*

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plan.

1. Describe the organizational structure.
2. Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.
3. Describe what equipment (*i.e.*, phone, Web sites, etc.) and facility space (*i.e.*, office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased throughout the agreement.
4. List key personnel who will work on the project.

• Identify existing personnel and new program staff to be hired.
• In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable.
• Note who will be writing the progress reports.
• If a position is to be filled, indicate that information on the proposed position description.
• If the project requires additional personnel beyond those covered by the supplemental grant (*i.e.*, IT support, volunteers, interviewers, etc.), note these and address how these positions will be filled and, if funds are required, and the source of these funds.
• If personnel are to be only partially funded by this supplemental grant, indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary.

*E. Categorical Budget and Budget Justification (10 Points)*

This section should provide a clear estimate of the project program costs and justification for expenses for the entire grant period. The budget and budget justification should be consistent with the tasks identified in the work plan.

1. Categorical budget (Form SF 424A, Budget Information Non-Construction Programs) completing each of the budget periods requested.
2. Narrative justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of cost allowability.
3. Budget justification should include a brief program narrative for the second and third years.
4. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

2. Review and Selection Process

*In addition to the above criteria/requirements, the application will be considered according to the following:*

A. *The submission deadline:* August 8, 2008. The application submitted in advance of or by the deadline and verified by the postmark will undergo a preliminary review to determine that:

• The applicant is eligible in accordance with this grant announcement.
• The application is not a duplication of a previously funded project.
• The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise, it may be returned.

B. The Objective Review date is August 11, 2008.

The application requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by the Ad Hoc Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on this application. Prior to ORC review, the application will be screened to determine that programs proposed are those which the IHS has the authority to provide, either directly or through funding agreement, and that those programs are designed for the benefit of IHS beneficiaries. If an urban Indian organization does not meet these requirements, the application will not be reviewed. The ORC review will be conducted in accordance with the IHS Objective Review Guidelines. The application 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 and determine the likelihood of success.

3. Anticipated Announcement and Award Dates

Anticipated announcement date is August 8, 2008 with an Award Date of September 1, 2008.

**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 the urban Indian organization. The NoA will be signed by the Grants Management Officer and this is the authorizing document under which funds are dispersed. The NoA, is the legally binding document, will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded for the purpose

of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

2. Administrative Requirements

*Grants are administered in accordance with the following documents:*

- This Program Announcement.
- 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.
- ''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 indirect costs in accordance with HHS Grants Policy Statement, Part 11–27. The 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 awarding office, the award shall include funds for reimbursement of indirect costs. However, the indirect costs portion will remain restricted until the current rate is provided to the DGO.

If an urban Indian organization has questions regarding the indirect costs policy, please contact the DGO at (301) 443–5204.

4. Reporting

A. *Progress Report.* Program progress reports are required semi-annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage (if applicable), 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 period. Standard Form 269 (long form) will be used for financial reporting.

Failure to submit required reports within the time allowed may result in suspension or termination of an active agreement, 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 organization or the individual responsible for preparation of the reports.

Telecommunication for the hearing impaired is available at: TTY 301–443–6394.

## VII. Agency Contacts

For program-related and general information regarding this announcement: Danielle Steward, Health Systems Specialist, Office of Urban Indian Health Programs, 801 Thompson Avenue, Room 200, Rockville, MD 20852, (301) 443–4680 or *danielle.steward@ihs.gov*.

*For specific grant-related and business management information:* Denise Clark, Senior Grants Management Specialist, 801 Thompson Avenue, TMP 360, Rockville, MD 20852, 301–443–5204 or *denise.clark@ihs.gov*.

Dated: July 8, 2008.

**Robert G. McSwain,**

*Director, Indian Health Service.*

[FR Doc. E8–16051 Filed 7–16–08; 8:45 am]

BILLING CODE 4165–16–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Organization, Functions, and Delegations of Authority, Part G, Indian Health Service, Proposed Functional Statement

### Office of Information Technology (OIT) (GAG)

(1) Provides Chief Information Officer (CIO) services and advises the Director, Indian Health Service (IHS), on all aspects of information resource management and technology; (2) ensures Agency compliance with related Federal laws, regulations, and policies; (3) directs the development, implementation, and maintenance of policies, procedures, standards, and architecture for information resource management, technology activities, and services in the IHS; (4) directs strategic planning and budgeting processes for information resources and technology; (5) leads IHS efforts in developing and implementing information resource and technology management initiatives in IHS; (6) directs the design, development, acquisition, implementation, and support of robust information systems and services used in the IHS; (7) directs the activities of the IHS Information Technology Investment Review Board (ITIRB) in assessing, implementing, and reviewing the Agency's information systems; (8) contracts for information resource and technology-related software, equipment, and support services in collaboration with appropriate acquisition authorities; (9) provides project management support for information resource and technology initiatives; (10) directs the development, implementation, and management of the IHS Information Technology Security program to protect the information resources of the IHS; (11) provides information technology (IT) services and support to IHS, Tribal, and Urban Indian Health Programs (UIHP), including the Resource and Patient Management System (RPMS), Electronic Health Record (EHR), and the National Patient Information Reporting System (NPIRS); (12) ensures accessibility to IT services; (13) represents the IHS and enters into IT agreements with Federal, Tribal, State and other organizations; and (14) participates in cross-cutting issues and processes including, but not limited to, emergency preparedness/security, budget formulation, self-determination issues, Tribal shares computations, and resolution of audit findings as may be needed and appropriate.

### Division of Information Technology (GAGA)

(1) Provides Chief Technology Officer IT services and advises the CIO on all aspects of IT; (2) develops clinical and business practice healthcare applications such as the RPMS and the EHR; (3) develops healthcare statistical applications for NPIRS; (4) obtains system and business requirements from stakeholders for system design; (5) provides quality assurance and risk management for software development; (6) develops, implements, and maintains policies, procedures, and standards for system development and technology products and services in the IHS; (7) develops and maintains IT strategic planning documents; (8) develops and maintains the IHS enterprise architecture; (9) develops and implements IT management initiatives in IHS; (10) ensures IHS IT infrastructure resource consolidation and standardization efforts support IHS healthcare delivery and program

administration; (11) represents the IHS to Federal, Tribal, State, and other organizations; and (12) participates in cross-cutting issues and processes that involve IT.

**Division of Program Management and Budget (GAGB)**

(1) Advises the CIO on all business aspects of information resources and project management; (2) develops information resource policies and procedures; (3) develops the IHS IT budget and related documents; (4) provides budget analyses and reports to the CIO; (5) develops strategies for presenting the IHS IT budget to IHS, Tribal, and UIHP; (6) provides technical analyses, guidance, and support for IHS capital planning and investment control activities; (7) manages the IHS portfolio management tool; (8) manages the activities of the IHS ITIRB in assessing, implementing and reviewing the Agency's information systems; (9) develops project management policies and procedures; (10) identifies alternatives among internal and external sources and recommends the best sources to supply information resource and technology products and services to IHS; (11) develops information resource and technology project governance structures to support effective project management; (12) provides project management and related support for IHS developed and acquired information resources and technology products and services; (13) provides contract management support for IT initiatives; (14) provides contract liaison services to appropriate acquisition authorities; (15) participates in cross-cutting issues and processes that involve IT; and (16) represents the IHS to Federal, Tribal, State, and other organizations.

**Division of Information Technology Operations (GAGC)**

(1) Advises the CIO on all aspects of implementing and deploying computer systems including RPMS; (2) installs and maintains enterprise computer systems and associated hardware and operating systems; (3) installs and maintains enterprise application software; (4) furnishes IRS-wide video conferencing solutions and services; (5) delivers desktop and office automation support; (6) provides 24 x 7 helpdesk support for RPMS and office applications; (7) maintains LISTserv capabilities; (8) provides customer relationship management support for IT systems; (9) performs Web monitoring and filtering services; (10) designs and implements Web sites in compliance with Section 508 Accessibility regulations; (11) operates and maintains data centers; (12) installs and supports e-mail, file, and print services; (13) provides Domain Name Services; (14) designs, implements, and maintains IHS's backbone network infrastructure; (15) monitors network infrastructure for anomalies; (16) provides project management support for systems design and deployment to ensure customer satisfaction; (17) represents the IRS to Federal, Tribal, State, and other organizations; and (18) participates in cross-cutting issues and processes that involve information resources and technology project management.

**Division of Information Security (GAGD)**

(1) Advises the CIO on all aspects of information security; (2) develops, implements, and monitors the IHS Information Security program to ensure adequate protection of information; (3) develops and maintains information security policies, procedures, and guidelines to safeguard information and IT systems; (4) develops and reviews IHS IT security plans; (5) assesses the risk and magnitude of harm that could result from unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of IHS; (6) ensures that security and privacy have been incorporated in information system lifecycle plans; (7) conducts vulnerability assessment of IHS's IT infrastructure; (8) coordinates activities with internal and external organizations reviewing the IHS's information resources for fraud, waste, and abuse; (9) develops and implements employee information security awareness training programs; (10) manages the IHS Information Security Incident Response Team; (11) represents the IHS to Federal, Tribal, State, and other organizations regarding information security; and (12) participates in cross-cutting issues and processes that involve information security.

This reorganization shall be effective July 17, 2008.

Dated: July 8, 2008.

**Robert G. McSwain,**

*Director, Indian Health Service*

[FR Doc. E8–16353 Filed 7–16–08; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 29, 2008, 7 a.m. to July 29, 2008, 7 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892, which was published in the **Federal Register** on June 9, 2008, 73 FR 32589–32590.

The meeting title has been changed to ''EPR Shared Instrumentation Study Section.

The meeting is closed to the public.

Dated: July 3, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–15821 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Special Topics in Neural Drug Discovery.

*Date:* July 18, 2008.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mary Custer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 9, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–16146 Filed 7–16–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; ACTS Member Conflicts.

*Date:* July 22, 2008.

*Time:* 9 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Richard J. Bartlett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809, *bartletr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee*: Center for Scientific Review Special Emphasis Panel; PBKD Member Conflict.

*Date:* July 22, 2008.

*Time:* 11 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Shirley Hilden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Family Planning Service Delivery Improvement Research.

*Date:* July 22, 2008.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Estina E. Thompson, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–496–5749, *thompsone@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee*: Center for Scientific Review Special Emphasis Panel; Review of HIV/AIDS Small Business and Other Applications.

*Date:* July 25, 2008.

*Time:* 11:30 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflicts: Musculoskeletal Rehabilitation Sciences.

*Date:* August 4, 2008.

*Time:* 12:30 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* John P. Holden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–496–8551, *holdenjo@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 9, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–16147 Filed 7–16–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special, Emphasis Panel Shared Instrumentation.

*Date:* July 22, 2008.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

*Contact Person:* Jean D. Sipe, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, *sipe@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Complex Genetics and Evolution.

*Date:* July 23–25, 2008.

*Time:* 2 p.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

*Contact Person:* Cheryl M. Corsaro, PhD, Scientific Review Officer, Center for

Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review, Special Emphasis Panel, Member Conflict: Health Risks, Interventions and Outcomes.

*Date:* August 5, 2008.

*Time:* 11 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

*Contact Person:* Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review, Special Emphasis Panel, Diabetes, Obesity, and Energy Balance.

*Date:* August 7–8, 2008.

*Time:* 8 a.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

*Contact Person:* Ann A. Jerkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301–435–4514, *jerkinsa@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 10, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–16333 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Environmental Health Sciences Review Committee; Environmental Health Sciences Core Center Grants.

*Date:* July 22–23, 2008.

*Time:* 8 p.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Chapel Hill, One Europa Drive, Chapel Hill, NC 27517.

*Contact Person:* Linda K. Bass, PhD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 7, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–15823 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Development of an ELISA for Measuring Serum Levels.

*Date:* August 7, 2008.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

*Contact Person:* RoseAnne M. McGee, Associate Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 7, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–15824 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–M

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel Perceived Discrimination and Health Disparities.

*Date:* August 1, 2008.

*Time:* 9 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Bethesda, MD 20814, (301) 402–7703, *rolfj@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 3, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–15825 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Children's Study Advisory Committee.

*Date:* August 7, 2008.

*Time:* 10 a.m. to 3 p.m.

*Agenda:* The National Academy of Sciences (NAS) recently released its review of the National Children's Study (NCS) Research Plan. A NCS Federal Advisory Committee Meeting is being convened to discuss the NAS recommendations and the NCS response. For more information on the NAS review, please go to *http://nationalchildrensstudy.gov/news/e-updates/research_planjeview_may_2008.cfm.*

*Place:* Westat Conference Center, 1600 Research Blvd., 5th Floor—Rooms A & B, Rockville, MD 20850.

*Contact Person:* Jessica Sapjenza, Adjunct Study Program Analyst, National Children's Study, Eunice Kennedy Shriver National Institute, of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5C01, Bethesda, MD 20892, (703) 902–1339, *ncsinfo@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 9, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–16141 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel, Burn Injury Phase III Clinical Trial.

*Date:* August 6, 2008.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Embassy Row, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

*Contact Person:* Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 9, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–16142 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Teleconference Review of the Kraft P01 Application.

*Date:* July 31, 2008.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 9, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–16143 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel GWAS.

*Date:* August 15, 2008.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814. (Telephone Conference Call.)

*Contact Person:* Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 10, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–16336 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Best Pharmaceuticals for Children Act (BPCA) Repository.

*Date:* August 15, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5b01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 11, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–16399 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Metabolism Interdisciplinary Studies.

*Date:* July 31, 2008.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Robert Wellner, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 11, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–16405 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Innovative Therapies and Clinical Studies for Screenable Disorders.''

*Date:* August 12, 2008.

*Time:* 1 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 11, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–16406 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Library of Medicine Special Emphasis Panel; Scholary Work (G13) SEP.

*Date:* September 12, 2008.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Zoe E. Huang, MD, Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, Msc 7968, Bethesda, MD 20892–7968, (301) 594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 9, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–16144 Filed 7–16–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5187–N–44]**

### Multifamily Insurance Benefits Claims Package

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

When the terms of a Multifamily contract are breached or when a mortgagee meets conditions stated within the Multifamily contract for an automatic assignment, the holder of the mortgage may file for insurance benefits. To receive these benefits, the mortgagee must prepare and submit to HUD the Multifamily Insurance Benefits Claims Package. HUD uses the information collection to determine the insurance benefits owed to the mortgagee.

**DATES:** *Comments Due Date:* August 18, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0418) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**This Notice Also Lists the Following Information**

*Title of Proposal:* Multifamily Insurance Benefits Claims Package.

*OMB Approval Number:* 2502–0418.

*Form Numbers:* HUD–2741, HUD–2742, HUD–2744–A, HUD–2744–B, HUD–2744–C, HUD–2744–D, HUD–2744–E, HUD–434, and HUD–1044–D.

*Description of the Need for the Information and its Proposed Use:* When the terms of a Multifamily contract are breached or when a mortgagee meets conditions stated within the Multifamily contract for an automatic assignment, the holder of the mortgage may file for insurance benefits. To receive these benefits, the mortgagee must prepare and submit to HUD the Multifamily Insurance Benefits Claims Package. HUD uses the information collection to determine the insurance benefits owed to the mortgagee.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 150 | 9 | | 0.47 | | 637 |

*Total Estimated Burden Hours:* 637.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 10, 2008.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E8–16325 Filed 7–16–08; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5187–N–42]**

### Certification of Multifamily Housing Compliance With State and Local Housing Codes

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This collection is necessary for HUD to ensure that all properties owned by potential purchasers are in compliance with the state and local housing codes that are in the same locality as the project to be purchased.

**DATES:** *Comments Due Date:* August 18, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0559) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**This Notice Also Lists the Following Information**

*Title of Proposal:* Certification of Multifamily Housing Compliance with State and Local Housing Codes.

*OMB Approval Number:* 2502–0559.

*Form Numbers:* HUD–9840.

*Description of the Need for the Information and its Proposed Use:* This collection is necessary for HUD to ensure that all properties owned by potential purchasers are in compliance with the state and local housing codes that are in the same locality as the project to be purchased.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 14,758 | .0008 | | .25 | | 3 |

*Total Estimated Burden Hours:* 3.

*Status:* Revision of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 10, 2008.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E8–16326 Filed 7–16–08; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5187–N–43]**

### Application for Displacement/ Relocation/Temporary Relocation Assistance for Person

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Application for displacement/ relocation assistance for person (families, individuals, businesses, nonprofit organizations and farms) displaced by certain HUD programs, or for out-of-pocket expenses incurred by persons temporarily relocated for a HUD-assisted program or project. Periodically, HUD reviews a random sample of the Agency files to assure that persons received the relocation payments to which they are entitled.

**DATES:** *Comments Due Date:* August 18, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0016) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a

request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**This Notice Also Lists the Following Information**

*Title of Proposal:* Application for displacement/relocation assistance for person (families, individuals, businesses, nonprofit organizations and farms) displaced by certain HUD programs, or for out-of-pocket expenses incurred by persons temporarily relocated for a HUD-assisted program or project. Periodically, HUD reviews a random sample of the Agency files to assure that persons received the relocation payments to which they are entitled.

*OMB Approval Number:* 2506–0016.

*Form Numbers:* HUD–40030, HUD–40054, HUD–40055, HUD–40056, HUD–40057, HUD–40058, HUD–40061, HUD–40072.

*Description of the Need for the Information and its Proposed Use:* Application for displacement/relocation assistance for person (families, individuals, businesses, nonprofit organizations and farms) displaced by certain HUD programs, or for out-of-pocket expenses incurred by persons temporarily relocated for a HUD-assisted program or project. Periodically, HUD reviews a random sample of the Agency files to assure that persons received the relocation payments to which they are entitled.

*Frequency of Submission:* Recordkeeping.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 37,800 | 1.62 | | 0.90 | | 56,000 |

*Total Estimated Burden Hours:* 56,000.

*Status:* Revision of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 10, 2008.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E8–16327 Filed 7–16–08; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5187–N–41]**

## Land Survey Report for Insured Multifamily Projects

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Borrowers submit a land survey and related information to secure a marketable title and title insurance for multifamily project mortgage insurance. The submission is made at application and at closing.

**DATES:** *Comments Due Date:* August 18, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502–0010) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**This Notice Also Lists the Following Information**

*Title of Proposal:* Land Survey Report for Insured Multifamily Projects.

*OMB Approval Number:* 2502–0010.

*Form Numbers:* HUD–92457.

*Description of the Need for the Information and its Proposed Use:* Borrowers submit a land survey and related information to secure a marketable title and title insurance for multifamily project mortgage insurance. The submission is made at application and at closing.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 800 | 2 | | .5 | | 800 |

*Total Estimated Burden Hours:* 800.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 10, 2008.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E8–16328 Filed 7–16–08; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5130–N–26]**

## Privacy Act; Proposed New Systems of Records, Single Family Mortgage Asset Recovery Technology (SMART/A80H)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Establishment of a new Privacy Act System of Records.

**SUMMARY:** The Department of Housing and Urban Development HUD proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of record is the Single Family Mortgage Asset Recovery Technology (SMART). The SMART system will be used for accounting level detail on forward and reverse mortgages; case-tracking ability; report generating capability; query functions; database management, analyzing, processing, and tracking for FHA Insured and Secretary-held first, second and subordinate note and mortgage loan servicing functions.

**DATES:** *Effective Date:* This action shall be effective without further notice on August 18, 2008 unless comments are received that would result in a contrary determination.

*Comments Due Date:* August 18, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Donna Robinson-Staton, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh St., SW., Room 4178, Washington, DC 20410, Telephone Number (202) 402–8073. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records as identified as the SMART, HUD/HS–58

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records, and require published notice of the existence and character of the system of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' July 25, 1994; 59 FR 37914.

**Authority:** 5 U.S.C. 552a 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: July 10, 2008.

**Joseph M. Milazzo,**

*Chief Information Officer.*

### HUD/HS–58

**SYSTEM NAME:**

Single Family Mortgage Asset Recovery Technology (SMART).

**SYSTEM LOCATION:**

Morris-Griffin Corporation (Sub-Contractor site), Lanham, Maryland; C & L Service Corporation/Morris-Griffin Corporation (Contractor/Sub-Contractor site), Tulsa, Oklahoma (Access for HUD users are through a Citrix Server).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Mortgagors (Secretary-Held First, Second and Subordinate Note and mortgages).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Mortgagor's name, Spouse name, social security number, loan number, date or birth, property address, home telephone, personal email address, telephone number, FHA case number, and income financial data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sec. 204, National Housing Act, 12 U.S.C. 1710(a) in general.

**PURPOSES:**

The information is used to perform a wide range of FHA Insured and Secretary-held first, second and subordinate note and mortgage loan servicing functions. The SMART System is a comprehensive loan servicing system that processes the mortgage transactions for both forward and reverse mortgages, including interest, appreciation, amortization and other agreed calculations for the Secretary-Owned Title II Portfolio.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To the U.S. Treasury—for disbursements and adjustments; and

(b) To the Internal Revenue Service—for reporting payments for mortgage interest, for reporting of discharge indebtedness and real estate taxes.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic files are stored on servers and back up files are stored on tapes. Servers are stored in a secured server room and at an offsite secured facility for disaster contingency.

**RETRIEVABILITY:**

Information can only be retrieved by Mortgagor's name, SSN, FHA Case Number, and home address. Only individuals with rights to the full/limited access can view this type of information.

**SAFEGUARDS:**

The original collateral documents (hard copy) are stored at the Contractors office site for all open loans and the closed documents are stored at a secured offsite document storage facility. All hard copy files are stored within a secured room within the Contractor's secured office suite when not in use. Background screening, limited authorizations and access, with access limited to authorized personnel and technical restraints employed with regard to accessing the records; access to automated systems by authorized users by passwords.

**RETENTION AND DISPOSAL:**

Are in accordance with HUD Records Disposition Schedule 2225.6, Appendix 20.

**SYSTEM MANAGER(S) AND ADDRESS:**

Sharon Lundstrom, Director, Housing, Office of Single Family Asset

Management, Servicing & Loss Mitigation Division (a/k/a National Servicing Center), Tulsa, Oklahoma, Department of Housing and Urban Development, National Servicing Center, Tulsa, Oklahoma, Telephone Number (405) 609–8443.

**NOTIFICATION PROCEDURE:**

For information assistance, or inquiry about existence of records, contact Donna Robinson-Staton, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402–8073.

**RECORD ACCESS PROCEDURES:**

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410.

**CONTESTING RECORD PROCEDURES:**

The procedures for requesting amendment or correction of records appear in 24 CFR part 16. If additional information is needed, contact:

(i) In relation to contesting contents of records, the Departmental Privacy Act Officer at HUD, 451 Seventh Street, SW., Room 2256, Washington, DC 20410; and

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street, SW., Washington, DC 20410.

**RECORD SOURCE CATEGORIES:**

The original information was transferred from an access database program; records were also established using the legal instruments (i.e., mortgage, deed, subordinate mortgage, etc.) received from the mortgagees; and loan balances were taken from F12 (IACS). New loan data is currently loaded via upload of data through a FTR from CHUMS(F17) and IACS(F12), and the legal instruments.

**EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. E8–16339 Filed 7–16–08; 8:45 am]

**BILLING CODE 4210–67–P**

## INTER-AMERICAN FOUNDATION

### Sunshine Act Meetings; Board Meeting

**TIME AND DATE:** July 28, 2008, 9 a.m.–2:30 p.m.

**PLACE:** 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

- Approval of the Minutes of the January 28, 2008, Meeting of the Board of Directors
- President's Report
- Program Update
- Operations Update
- Congressional Affairs Update
- RedEAmérica/Corporate Partnership Update
- Planning for the IAF's 40th Anniversary
- Advisory Council

**PORTIONS TO BE OPEN TO THE PUBLIC:**

- Approval of the Minutes of the January 28, 2008, Meeting of the Board of Directors
- President's Report
- Program Update
- Operations Update
- Congressional Affairs Update
- RedEAmérica/Corporate Partnership Update
- Planning for the IAF's 40th Anniversary
- Advisory Council

**CONTACT PERSON FOR MORE INFORMATION:** Rebecca B. Verreau, (703) 306–4314

Dated: July 14, 2008.

**Rebecca B. Verreau,**

*Attorney.*

[FR Doc. 08–1444 Filed 7–15–08; 3:31 pm]

**BILLING CODE 7025–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R6–R–2008–N0059; 60138–1265–6CCP–S3]**

### Final Comprehensive Conservation Plan for the Laramie Plains National Wildlife Refuges, Wyoming

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) announce that our Final Comprehensive Conservation Plan (Plan) and finding of no significant impact (FONSI) for the Laramie Plains National Wildlife Refuges is available. The Laramie Plains National Wildlife Refuges include Bamforth National Wildlife Refuge (NWR), Hutton Lake NWR, and Mortenson Lake NWR. This Final CCP/EA describes how the Service intends to manage these Refuges for the next 15 years.

**ADDRESSES:** A copy of the Plan may be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225; or by download from *http://mountain-prairie.fws.gov/planning.*

**FOR FURTHER INFORMATION CONTACT:** Toni Griffin, 303–236–4378 (phone); 303–236–4792 (fax); or *Toni_Griffin@fws.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:** The Laramie Plains National Wildlife Refuges include Bamforth National Wildlife Refuge (NWR), Hutton Lake NWR, and Mortenson Lake NWR and are managed by Service staff headquartered at the Arapaho NWR near Walden, Colorado. All three Refuges are located within 15 miles of the town of Laramie, Wyoming.

The town of Laramie, Wyoming, is positioned in a high plains basin ecosystem known as the Laramie Plains Basin. Shallow depressions of the Basin, within the relatively flat topography of the region, support wetland complexes that are unique to the area. These wetland complexes provide resting, nesting, and breeding areas for migratory birds in the semi-arid environment.

Bamforth NWR was established on January 29, 1932, by Executive Order 9321. Consisting of 1,166 acres, the Refuge is located approximately 6 miles northwest of Laramie, Wyoming. The purpose of the Refuge is to provide ''a refuge and breeding ground for birds and wild animals.'' The Refuge is closed to public use.

Hutton Lake NWR was established on January 28, 1932, by Executive Order 5782. Consisting of 1,928 acres, the Refuge is located approximately 10 miles southwest of Laramie, Wyoming. The purpose of the Refuge is to provide ''a refuge and breeding ground for birds and wild animals.'' Current public use opportunities at the Refuge include wildlife observation, wildlife photography, environmental education, and interpretation.

Mortenson Lake NWR was established in 1993 under the Endangered Species Act, to protect the Wyoming toad's last known population. The Wyoming toad was listed as an endangered species in 1984. The population at Mortenson Lake was found in 1987. The purpose of the Refuge is ''to conserve fish or wildlife which are listed as endangered or threatened species.'' The Refuge is closed to public use to prevent potential adverse impacts to the Wyoming toad.

The draft Plan and environmental assessment (EA) was made available to the public for review and comment following the announcement in the **Federal Register** on August 1, 2007 (72 FR 42103–42104). The draft Plan and

EA identified and evaluated three alternatives for managing the Refuges for the next 15 years. Under Alternative A, the No Action alternative, the Service would manage habitats, wildlife, programs, and facilities at current levels as time, staff, and funds allow. Refuge habitats would continue to be managed on a minimal basis and opportunistic schedule that may maintain, or most likely would result in decline in, the diversity of vegetation and water quality and quantity in the wetlands. The Service would not develop any new management, restoration, or education programs at the Refuges.

Alternative B, the Proposed Action, would increase management activities on the Refuges. Upland habitats would be evaluated and managed for the benefit of migratory bird species. Monitoring and management of invasive species on the Refuges would be increased. With additional staffing, the Service would collect in-depth baseline data for wildlife and habitats. Efforts would be increased in the operations and maintenance of natural resources on the Refuges and to maintain and develop partnerships that promote wildlife and habitat research and management. An emphasis on adaptive management, including monitoring the effects of habitat management practices and use of the research results to direct ongoing management, would be a priority.

Under alternative C, Refuge staff would rely on partnerships to achieve Refuge goals and objectives. Refuge management activities would be increased and enhanced through the use of partnerships. Refuge staff would strive to accomplish Refuge work through partnerships with others. An emphasis on adaptive management, including monitoring the effects of habitat management practices and use of the research results to direct ongoing management, would be a priority.

The Service is furnishing this Notice to advise other agencies and the public of the availability of the Final Plan, to provide information on the desired conditions for the Refuges, and to detail how the Service will implement management strategies. Based on the review and evaluation of the information contained in the EA, the Regional Director has determined that implementation of the Final Plan does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act. Therefore, an Environmental Impact Statement will not be prepared.

Dated: February 29, 2008.

**Gary Mowad,**

*Acting Regional Director.*

**Editorial Note:** This document was received in the Office of the Federal Register on July 14, 2008.

[FR Doc. E8–16352 Filed 7–16–08; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### U.S. Geological Survey

### Scientific Earthquake Studies Advisory Committee

**AGENCY:** U.S. Geological Survey.

**ACTION:** Notice of Meeting.

**SUMMARY:** Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its 18th meeting. The meeting location is the U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will receive updates and provide guidance on Earthquake Hazards Program activities and the status of teams supported by the Program.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

**DATES:** July 31, 2008, commencing at 8:30 a.m. and adjourning at Noon on August 1, 2008.

*Contact:* Dr. David Applegate, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6714, *applegate@usgs.gov*.

Dated: July 13, 2008.

**Suzette Kimball,**

*Associate Director for Geology.*

[FR Doc. E8–16043 Filed 7–16–08; 8:45 am]

BILLING CODE 4311–AM–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Final Environmental Impact Statement for the Cowlitz Indian Tribe's Proposed 151.87-Acre Fee-to-Trust Transfer, Reservation Proclamation, and Casino-Resort Project, Clark County, WA

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of extension of the date of issuance of the Record of Decision and reopening of the comment period; Republication and Correction.

**SUMMARY:** The Bureau of Indian Affairs is republishing in its entirety a document it published in the July 10, 2008 **Federal Register** to correct a phone number. The document concerns an extension of the date of issuance of the Record of Decision and reopening the comment period originally announced on May 30, 2008 (73 FR 31143) for the Final Environmental Impact Statement (FEIS) for the Cowlitz Indian Tribe's Proposed 151.87-acre fee-to-trust transfer, reservation proclamation, and casino-resort project, in Clark County, Washington.

**DATES:** The Record of Decision on the proposed action will be issued on or after August 12, 2008. Any comments on the FEIS must arrive by August 11, 2008.

**ADDRESSES:** You may mail or hand carry written comments to Mr. Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, Northwest Region, 911 NE 11th Avenue, Portland, Oregon 97232. Please include your name, return address and the caption, ''FEIS Comments, Cowlitz Indian Tribe Trust Acquisition and Casino Project,'' on the first page of your written comments.

The FEIS will be available for public review at the following Fort Vancouver Public Library branches: La Center Community Library, 1402 East Lockwood Creek Road, La Center, Washington 98629; Ridgefield Community Library, 210 North Main Avenue, Ridgefield, Washington 98642. General information for the Fort Vancouver Public Library system can be obtained by calling (360) 659–1561. The FEIS is also available on the following Web site: *http://www.cowlitzeis.org.*

To obtain copies of the FEIS, please provide your name and address in writing or by voicemail to Dr. B.J. Howerton, Environmental Protection Specialist, at the BIA address above or at the telephone number provided below.

**FOR FURTHER INFORMATION CONTACT:** B.J. Howerton, (503) 231–6749.

**SUPPLEMENTARY INFORMATION:** This notice is a republication of a document BIA published in the **Federal Register** on July 10, 2008 at 73 FR 39715. This republication corrects the phone number contained in the **FOR FURTHER INFORMATION CONTACT** section. The correct phone number is (503) 231–6749. The BIA published its Notice of the Final Environmental Impact

Statement for the Cowlitz Indian Tribe on May 30, 2008, in the **Federal Register** (73 FR 31143). Please refer to that notice for project details.

**Public Comment Availability**

Comments, including names and addresses of respondents, will be available for public review at the mailing addresses shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address or other personal identifying information in your comments, you should be aware that your entire comments—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 11, 2008.

**George T. Skibine,**

*Acting Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs.*

[FR Doc. E8–16398 Filed 7–16–08; 8:45 am]

**BILLING CODE 4310–02–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AA–6686–B; AA–6686–D, AA–6686–F, AA–6686–I, AA–6686–K, AA–6686–L, AA–6686–M, AA–6686–O, AA–6686–A2, AK–964–1410–KC–P]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Kijik Corporation. The lands are in the vicinity of Nondalton, Alaska, and are located in:

U.S. Survey No. 8995, Alaska.

Containing 37.99 acres.

T. 1 N., R. 30 W.,
Secs. 1 and 31.

Containing 30.21 acres.

T. 2 S., R. 30 W.,
Secs. 1, 2 and 3.

Containing 1,919.13 acres.

T. 2 S., R. 31 W.,
Sec. 18.

Containing 551.01 acres.

T. 1 N., R. 32 W.,
Secs. 29 and 30.

Containing 1,277.48 acres.

T. 1 S., R. 32 W.,
Secs. 8, 17, 20, and 23.

Containing 1,930.49 acres.

T. 3 S., R. 32 W.,
Secs. 5 and 8.

Containing 1,181.29 acres.

T. 1 N., R. 33 W.,
Sec. 36.

Containing 640 acres.

T. 1 S., 33 W.,
Secs. 4, 8 and 9;
Secs. 16, 17 and 18.

Containing 3,783.58 acres.

T. 3 S., R. 33 W.,
Secs. 2 and 11.

Containing 1,120 acres.

T. 1 S., R. 34 W.,
Secs. 13 to 16, inclusive.

Containing 2,392.12 acres.

Aggregating 14,863.30 acres.

The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Kijik Corporation. Notice of the decision will also be published four times in the Bristol Bay Times.

**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 18, 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.

**Barbara Walker,**

*Land Law Examiner, Land Transfer Adjudication I (964).*

[FR Doc. E8–16347 Filed 7–16–08; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–020–5105–NX–SF31; 08–08807; TAS: 14X5017]**

### Notice of Temporary Closures and Prohibitions of Certain Activities on Public Lands in Pershing County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Temporary Closure.

**SUMMARY:** Certain lands located in northwestern Nevada partly within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area will be temporarily closed or restricted and certain activities will be temporarily prohibited in and around the Burning Man event site administered by the Bureau of Land Management Winnemucca Field Office. These closures are authorized under the provisions of 43 CFR 8364.1. The specified closures, restrictions and prohibitions are made in the interest of public safety at and around the public lands location of an event known as the Burning Man Festival. This event is authorized on public lands under Special Recreation Permit #NV–025–06–01 and is expected to attract approximately 50,000 participants.

**DATES:** August 8, 2008 to September 15, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dave Cooper, National Conservation Area Manager, Bureau of Land Management, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445–2921, *telephone:* (775) 623–1500.

**SUPPLEMENTARY INFORMATION:** Two areas are proposed for temporary closures during portions of August and September 2008. The smaller of the two areas, the Event Closure Area, is described in Section I and includes about 4,085 acres that will be subject to additional restrictions. During the 38 day period from August 8 through September 15 this area will be closed to public camping, public use, possession of weapons, possession of fireworks, building of fires on the ground, waste water discharge and other restrictions. The second and larger area is the Public

Closure Area as described in Section II and encompasses about 8,750 acres. This area will be closed to camping and discharge of weapons during the same 38 day period. Additional restrictions including public use and aircraft landing will apply during an 11 day period that corresponds to the actual event which is August 22 through September 1, 2008.

I. Event Closure Area: Within the following legally described locations:

**Mount Diablo Meridian, Nevada**

Unsurveyed T. 33 N., R. 24 E.
Secs. 3, 4, 5, and 9; portions within 50 yards of the Event Entrance Road.
Unsurveyed T. 33½ N., R. 24 E.
Sec. 25;
Sec. 26, portions within event perimeter fence and 50 yards outside the fence;
Sec. 34, portions within 50 yards of the Event Entrance Road;
Sec. 35, portions within event perimeter fence, 50 yards outside the fence and within 50 yards of the Event Entrance Road;
Sec. 36, portions within event perimeter fence, 50 yards outside the fence and the Airport tie-down area.
Unsurveyed T. 34 N., R. 24 E.
Secs. 25, 26, 34, 35 and 36, portions within event perimeter fence and 50 yards outside the fence.
Unsurveyed T. 34 N., R. 25 E.
Secs. 21, 27, 28, 33 and 34, portions within event perimeter fence and 50 yards outside the fence.

Between August 8, 2008 to September 15, 2008 inclusive:

A. Aircraft Landing.

Aircraft as defined in Title 18, United States Code, section 31(a)(1) and includes lighter-than-air craft, ultra-light craft, and remotely controlled powered craft are prohibited from landing, taking off, or taxiing. The following exceptions apply:

1. Aircraft operations conducted through the authorized event landing strip and such ultra-light and helicopter take-off and landing areas designated for Burning Man event staff and participants, law enforcement, and emergency medical services.

2. Helicopters providing emergency medical services may land in other locations when required for medical incidents.

3. Landings or take-offs of lighter-than-air craft previously approved by the BLM authorized officer.

B. Alcohol.

1. Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion is prohibited.

2. Possession of alcohol by minors.

(a) The following are prohibited:

(1) Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands.

(2) Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

(b) This section does not apply to the selling, handling, serving or transporting of alcoholic beverages by a person in the course of his lawful employment by a licensed manufacturer, wholesaler or retailer of alcoholic beverages.

3. Operation of a motor vehicle while under the influence.

(a) Title 43 CFR 8341.1(f)3 prohibits the operation of an off-road motor vehicle on public land while under the influence of alcohol, narcotics, or dangerous drugs.

(b) In addition to the prohibition found in 43 CFR 8341.1(f)3, it is prohibited for any person to operate or be in actual physical control of a motor vehicle while:

(1) The operator is under the combined influence of alcohol, a drug, or drugs to a degree that renders the operator incapable of safe operation of that vehicle; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath.

(c) Tests.

(1) At the request or direction of any law enforcement officer authorized by the Department of the Interior to enforce this regulation, who has probable cause to believe that an operator of a motor vehicle has violated a provision of paragraph (a) or (b) of this section the operator shall submit to one or more tests of the blood, breath, saliva, or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) Presumptive levels.

(1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (b)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

4. Definitions:

(a) Open container: any bottle, can, or other container which contains an alcoholic beverage, if that container does not have a closed top or lid for which the seal has not been broken. If the container has been opened one or more times, and the lid or top has been replaced, that container is an open container.

(b) Possession of an open container: includes any open container which is physically possessed by the driver or operator, or which is adjacent to and reachable by, that driver or operator. This includes but is not limited to containers in a cup holder or rack adjacent to the driver or operator, containers on a vehicle floor next to the driver or operator, and containers on a seat or console area next to a driver or operator.

C. Drug Paraphernalia.

1. The possession of drug paraphernalia is prohibited.

2. Definition: Drug paraphernalia means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of any state or federal law, or regulation issued pursuant to law.

D. Eviction of Persons.

1. The Event Closure Area is closed to any person who:

(a) Has been evicted from the event by the permit holder, Black Rock City LLC, (BRC LLC) whether or not such eviction was requested by BLM.

(b) Has been ordered by a BLM law enforcement officer to leave the area of the permitted event.

2. Any person evicted from the event forfeits any privileges to be present within the perimeter fence or anywhere else within the event area even if they possess a ticket to attend the event.

E. Fires.

The ignition of fires on the surface of the Black Rock Playa without a burn blanket or burn pan is prohibited.

F. Fireworks.

The use, sale or possession of personal fireworks is prohibited except for uses of fireworks approved by BRC LLC and used as part of a Burning Man sanctioned art burn event.

G. Motor Vehicles.

1. Motor vehicle use is prohibited, except as provided below.

(a) Motor vehicles may be operated within the event area under these circumstances:

(1) Participant arrival and departure on designated routes;

(2) vehicles operated by BRC LLC staff and displaying appropriate current staff identification;

(3) BLM, medical, law enforcement, and firefighting vehicles;

(4) mutant vehicles, art cars, or other vehicles registered with the Burning Man event organizers and operated within the scope of that registration. Such vehicles must display evidence of registration at all times in such manner that it is visible to the rear of the vehicle while it is in motion;

(5) motorized skateboards or Go-Peds with or without handlebars.

2. Vehicle use that creates a dust plume higher than the top of the vehicle is prohibited.

3. Definitions:

(a) A motor vehicle is any device designed for and capable of travel over land and which is self-propelled by a motor, but does not include any vehicle operated on rails or any motorized wheelchair.

Motorized wheelchair means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion.

H. Public Camping.

Public camping is prohibited. Burning Man event ticket holders who are camped in designated areas provided by BRC LLC and ticket holders who are camped in the authorized ''pilot camp'' and BLM-authorized event management-related camps are exempt from the camping closure. BRC LLC authorized staff, contractors, and other authorized participants are exempt from the camping closure.

I. Public Use.

No person shall be present within the event area unless that person: possesses a valid ticket to attend the event; is an employee or authorized volunteer with the BLM, a law enforcement agency, emergency medical service provider, fire protection provider, or another public agency working at the event and the employee is assigned to the event; or is a person working at or attending the event on behalf of the event organizers, BRC LLC.

J. Waste Water Discharge.

The dumping or discharge to the ground of grey water is prohibited. Grey water is water used for cooking, washing, dishwashing, or bathing and which contains soap, detergent, food scraps, or food residue.

K. Weapons.

1. Weapons.

(a) The possession of any weapon is prohibited;

(b) The discharge of any weapon is prohibited;

(c) The prohibitions above shall not apply to county, state, tribal and federal law enforcement personnel, or any person authorized by federal law to possess a weapon. Additionally ''art projects'' that include weapons and are sanctioned by BRC LLC will be permitted after obtaining authorization from the BLM authorized officer.

2. Definitions:

(a) Weapon means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, cross bow, blowgun, spear gun, hand thrown spear, sling shot, irritant gas device, electric stunning or immobilization device, explosive device, or any implement designed to expel a projectile, and includes any weapon the possession of which is prohibited by state law.

(b) Firearm means any pistol, revolver, rifle, shotgun, or other device which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

(c) Discharge means the expelling of a projectile from a weapon.

II. Public Closure Area: Within the following legally described locations:

**Mount Diablo Meridian, Nevada**

Unsurveyed T. 33 N., R. 24 E.
- Sec. 1, N½, portion west of the east playa road;
- Sec. 2, N½;
- Sec. 3, N½, SW¼, portions outside the Event Area;
- Sec. 4, portion east of Washoe Co. Rd. 34 and outside the Event Area;
- Sec. 5, E½, portion east of Washoe Co. Rd. 34 and outside the Event Area;
- Sec. 8, NE¼;
- Sec. 9, N½, portion outside the Event Area;
- Sec. 10, NW¼.

Unsurveyed T. 33½ N., R. 24 E.
- Secs. 26, portion outside the Event Area;
- Sec. 27;
- Sec. 28, portion east of Washoe Co. Rd. 34;
- Sec. 33, portion east of Washoe Co. Rd. 34;

Secs. 34, 35 and 36, portions outside the Event Area.

Unsurveyed T. 34 N., R. 24 E.
- Sec. 23 & 24, S½;
- Sec. 25 & 26; portions outside the Event Area;
- Sec. 27, SE¼, E½ NE½, E½ SW¼;
- Sec. 33, SE¼, S½ NE¼, NE¼ NE¼;
- Sec. 34 & 35, portions outside the Event Area;

T. 33 N., R. 25 E.
- Sec. 4, Lots 2, 3, 4 and 5, portions west of the east playa road.

Unsurveyed T. 34 N., R. 25 E.
- Sec. 15, SW¼ SW¼;
- Sec. 16, S½;
- Sec. 21, portion outside the Event Area;
- Sec. 22, SW¼, W½ NW¼;
- Sec. 27, W½, portion outside the Event Area;
- Sec. 28, portion outside the Event Area;
- Sec. 33, portion west of the east playa road and outside the Event Area;
- Sec. 34; W½, portion west of the east playa road.

A. Between August 8, 2008 and September 15, 2008 inclusive:

1. Public Camping.

Public camping is prohibited.

2. Discharge of Weapons.

Discharge of weapons as defined in paragraph (K)(2) of Section (I) is prohibited.

B. Between August 22, 2008 and September 1, 2008 inclusive:

1. Aircraft Landing.

Aircraft are prohibited from landing, taking off, or taxiing except as described in paragraph (A) of Section I.

2. Eviction of Persons.

The Public Closure Area is closed to any person who:

(a) Has been evicted from the event by the permit holder, BRC LLC, whether or not such eviction was requested by BLM.

(b) Has been ordered by a BLM law enforcement officer to leave the area of the permitted event.

Any person evicted from the event forfeits any privileges to be present within the public closure area even if they possess a ticket to attend the event.

3. Fireworks.

The use, sale or possession of personal fireworks is prohibited.

4. Public Use.

Public use is prohibited, except for:

(a) Passage through, without stopping, the Public Closure Area on the West or East Playa Roads;

(b) Pedestrians with Burning Man tickets outside the fence.

5. Motor Vehicles.

Motor vehicle use is prohibited, except for passage through, without stopping, the Public Closure Area on the West or East Playa Roads. Vehicles passing through the closure area in this manner are limited to a speed that does not create a dust plume higher than the top of the vehicle. Motor vehicle is defined in paragraph (G)(3) of Section (I).

6. Waste Water Discharge.

The dumping or discharge to the ground of grey water is prohibited. Grey

water is water used for cooking, washing, dishwashing, or bathing and which contains soap, detergent, food scraps, or food residue.

7. Weapons.

The possession of any weapon as defined in paragraph (K)(2) of Section (I) is prohibited except weapons within motor vehicles passing through the closure area, without stopping on the West or East Playa Roads.

*Penalty:* Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

**Authority:** 43 CFR 8364.1.

Dated: July 7, 2008.

**Gail G. Givens,**

*Field Manager.*

[FR Doc. E8–16373 Filed 7–16–08; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service (MMS)

## Outer Continental Shelf (OCS) Western Planning Area (WPA) Gulf of Mexico (GOM) Oil and Gas Lease Sale 207

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Final Notice of Sale (FNOS) 207.

**SUMMARY:** On Wednesday, August 20, 2008, the MMS will open and publicly announce bids received for blocks offered in WPA Oil and Gas Lease Sale 207, pursuant to the OCS Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR Part 256). The Final Notice of Sale 207 Package (FNOS 207 Package) contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the Package.

**DATES:** Public bid reading for the WPA Oil and Gas Lease Sale 207 will begin at 9 a.m., Wednesday, August 20, 2008, at the Royal Sonesta Hotel in the Grand Ballroom, located at 300 Bourbon Street, New Orleans, Louisiana 70130. All times referred to in this document are local New Orleans times, unless otherwise specified.

**ADDRESSES:** Bidders can obtain a FNOS 207 Package containing this Notice of Sale and several supporting and essential documents referenced herein from the MMS Gulf of Mexico Region Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200-GULF or via the MMS GOM Homepage Address on the Internet: *http://www.gomr.mms.gov*.

*Filing of Bids:* Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m. on normal working days, and from 8 a.m. to the Bid Submission Deadline of 10 a.m. on Tuesday, August 19, 2008, the day before the lease sale. If bids are mailed, please address the envelope containing all of the sealed bids as follows:

*Attention:* Supervisor, Sales and Support Unit (MS 5422), Leasing Activities Section, MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Contains Sealed Bids for Oil and Gas Lease Sale 207, Please Deliver to Ms. Nancy Kornrumpf 6th Floor, Immediately.

**Please note:** Bidders mailing their bid(s) are advised to call Ms. Nancy Kornrumpf (504) 736–2726, immediately after putting their bid(s) in the mail. If the RD receives bids later than the time and date specified above, he will return those bids unopened to bidders. Should an unexpected event such as flooding or travel restrictions be significantly disruptive to bid submission, the MMS Gulf of Mexico Region may extend the Bid Submission Deadline. Bidders may call (504) 736–0557 or access our Web site at: *http://www.gomr.mms.gov* for information about the possible extension of the Bid Submission Deadline due to such an event.

*Areas Offered for Leasing:* The MMS is offering for leasing in Western Planning Area OCS Oil and Gas Lease Sale 207, all blocks and partial blocks listed in the document ''List of Blocks Available for Leasing'' included in the FNOS 207 Package. All of these blocks are shown on the following leasing maps and Official Protraction Diagrams (OPD's):

### Outer Continental Shelf Leasing Maps—Texas Map Numbers 1 Through 8

(These 16 maps sell for $2.00 each.)

TX1 South Padre Island Area (revised November 1, 2000)
TX1A South Padre Island Area, East Addition (revised November 1, 2000)
TX2 North Padre Island Area (revised November 1, 2000)
TX2A North Padre Island Area, East Addition (revised November 1, 2000)
TX3 Mustang Island Area (revised November 1, 2000)
TX3A Mustang Island Area, East Addition (revised September 3, 2002)
TX4 Matagorda Island Area (revised November 1, 2000)
TX5 Brazos Area (revised November 1, 2000)
TX5B Brazos Area, South Addition (revised November 1, 2000)
TX6 Galveston Area (revised November 1, 2000)
TX6A Galveston Area, South Addition (revised November 1, 2000)
TX7 High Island Area (revised November 1, 2000)
TX7A High Island Area, East Addition (revised November 1, 2000)
TX7B High Island Area, South Addition (revised November 1, 2000)
TX7C High Island Area, East Addition, South Extension (revised November 1, 2000)
TX8 Sabine Pass Area (revised November 1, 2000)

### Outer Continental Shelf Leasing Maps—Louisiana Map Numbers 1A, 1B, and 12

(These 3 maps sell for $2.00 each.)

LA1A West Cameron Area, West Addition (revised February 28, 2007)
LA1B West Cameron Area, South Addition (revised February 28, 2007)
LA12 Sabine Pass Area (revised February 28, 2007)

### Outer Continental Shelf Official Protraction Diagrams (OPD's)

(These 7 diagrams sell for $2.00 each.)

NG14–03 Corpus Christi (revised November 1, 2000)
NG14–06 Port Isabel (revised November 1, 2000)
NG15–01 East Breaks (revised November 1, 2000)
NG15–02 Garden Banks (revised February 28, 2007)
NG15–04 Alaminos Canyon (revised November 1, 2000)
NG15–05 Keathley Canyon (revised February 28, 2007)
NG15–08 Sigsbee Escarpment (revised February 28, 2007)

**Please note:** A CD–ROM (in ARC/INFO and Acrobat (.pdf) format) containing all of the GOM leasing maps and OPD's, except for those not yet converted to digital format, is available from the MMS Gulf of Mexico Region Public Information Unit for a price of $15. These GOM leasing maps and OPD's are also available for free online in .pdf and .gra format at *http://www.gomr.mms.gov/homepg/lsesale/map_arc.html*. For the current status of all Western GOM leasing maps and OPD's, please refer to 66 FR 28002 (published May 21, 2001), 67 FR 60701 (published September 26, 2002), and 72 FR 27590 (published May 16, 2007). In addition, Supplemental Official OCS Block Diagrams (SOBDs) for these blocks are available for blocks which contain the U.S. 200 Nautical Mile Limit line and the U.S.-Mexico Maritime Boundary line. These SOBDs are also available from the MMS Gulf of Mexico Region Public Information Unit. For additional information, please call Ms. Tara Montgomery (504) 736–5722.

All blocks are shown on these leasing maps and OPD's. The available Federal

acreage of all whole and partial blocks in this lease sale is shown in the document ''List of Blocks Available for Leasing'' included in the FNOS 207 Package. Some of these blocks may be partially leased or deferred, or transected by administrative lines such as the Federal/State jurisdictional line. A bid on a block must include all of the available Federal acreage of that block. Also, information on the unleased portions of such blocks is found in the document ''Western Planning Area, Lease Sale 207, August 20, 2008—Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease or Deferred'' included in the FNOS 207 Package.

*Areas Not Available for Leasing:* The following whole and partial blocks are not offered for lease in this sale:

Whole blocks and portions of blocks which lie within the boundaries of the Flower Garden Banks National Marine Sanctuary at the East and West Flower Garden Banks and Stetson Bank (the following list includes all blocks affected by the Sanctuary boundaries):

*High Island, East Addition, South Extension (Leasing Map TX7C)*
Whole Blocks: A–375, A–398
Portions of Blocks: A–366, A–367, A–374, A–383, A–384, A–385, A–388, A–389, A–397, A–399, A–401

*High Island, South Addition (Leasing Map TX7B)*
Portions of Blocks: A–502, A–513

*Garden Banks (OPD NG15–02)*
Portions of Blocks: 134, 135

Whole blocks and portions which lie within the former Western Gap portion of the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico:

*Keathley Canyon (OPD NG15–05)*
Portions of Blocks: 978 through 980

*Sigsbee Escarpment (OPD NG15–08)*
Whole Blocks: 11, 57, 103, 148, 149, 194
Portions of Blocks: 12 through 14, 58 through 60, 104 through 106, 150

*Statutes and Regulations:* Each lease issued in this lease sale is subject to the OCS Lands Act of August 7, 1953; 43 U.S.C. 1331 *et seq.*, as amended, hereinafter called ''the Act;'' all regulations issued pursuant to the Act and in existence upon the Effective Date of the lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the OCS and the protection of correlative rights therein; and all other applicable statutes and regulations.

*Lease Terms and Conditions:* Initial periods, extensions of initial periods, minimum bonus bid amounts, rental rates, escalating rental rates for leases with an approved extension of the initial 5-year period, royalty rate, minimum royalty, and royalty suspension provisions, if any, applicable to this sale are noted below. Depictions of related areas are shown on the map ''Final, Western Planning Area, Lease Sale 207, August 20, 2008, Lease Terms and Economic Conditions'' for leases resulting from this lease sale.

*Initial Periods:* 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to less than 800 meters (pursuant to 30 CFR 256.37, commencement of an exploratory well is required within the first 5 years of the initial 8-year term to avoid lease cancellation); and 10 years for blocks in water depths of 800 meters or deeper.

*Extensions of Initial Periods:* The 5-year initial period for a lease in water depths of less than 400 meters and issued from this sale may be extended to 8 years if a well, targeting hydrocarbons below 25,000 feet true vertical depth subsea (TVD SS) is spudded within the initial period. The 3-year extension may be granted in cases where the well is drilled to a target below 25,000 TVD SS and also in cases where the well does not reach a depth below 25,000 TVD SS due to mechanical or safety reasons.

In order for the 5-year initial period to be extended to 8 years, the lessee is required to submit to the Regional Supervisor for Production and Development within 30 days after completion of the drilling operation a letter providing the well number, spud date, information demonstrating the target below 25,000 feet TVD SS, and if applicable, safety or mechanical problems encountered that prevented the well from reaching a depth below 25,000 feet TVD SS. The Regional Supervisor must concur in writing that the conditions have been met to extend the lease term 3 years. The Regional Supervisor will provide written confirmation of any lease extension within 30 days of receipt of the letter provided.

For any lease that has a well spudded in the first 5 years of the initial period with a hydrocarbon target below 25,000 feet TVD SS, the regulations found at 30 CFR 250.175(a), (b), and (c) *will* not be applicable at the end of the 5th year.

For any lease that does not have a well spudded in the first 5 years of the initial period which targets hydrocarbons below 25,000 feet TVD SS, the regulations found at 30 CFR 250.175(a), (b), and (c) will be applicable, but the 3-year extension will not be available.

At the end of the 8th year, the lessee is free to use all lease term extension provisions under the regulations.

*Minimum Bonus Bid Amounts:* A bonus bid will not be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof for blocks in water depths of less than 400 meters or $37.50 or more per acre or fraction thereof for blocks in water depths of 400 meters or deeper; to confirm the exact calculation of the minimum bonus bid amount for each block, see ''List of Blocks Available for Leasing'' contained in the FNOS 207 Package. Please note that bonus bids must be in whole dollar amounts (i.e., any cents will be disregarded by the MMS).

*Rental Rates:* Subject to the one set of exceptions below, $6.25 per acre or fraction thereof for blocks in water depths of less than 200 meters, and $9.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, to be paid on or before the 1st day of each lease year until determination of well producibility is made, then at the expiration of each lease year until the start of royalty-bearing production. An exception to the rental rate requirement for blocks in water depths up to 400 meters will be escalating rental rates in the 6th, 7th, and 8th year for leases with an approved extension of the 5-year initial period, as noted in the following paragraph of this document.

*Escalating Rental Rates for leases with an approved extension of the 5-year initial period*: Any lease in water depths less than 400 meters and granted a 3-year extension beyond the 5-year initial period as provided above will pay an escalating rental rate as set out in the following table, to be paid on or before the 1st day of each lease year until determination of well producibility is made, then at the expiration of each lease year until the start of royalty-bearing production. However, the escalating rental rates after the 5th year for blocks in up to 400 meters will become fixed and no longer escalate if another well is spudded during the 3-year extended term of the lease that targets hydrocarbons below 25,000 feet TVD SS, and MMS concurs that this has occurred. In this case the rental rate will become fixed at the rental rate in effect during the lease year in which the additional well was spudded.

| Extended lease year No. | Escalating annual rental rate for a lease in: Less than a 200-meter water depth | Escalating annual rental rate for a lease in a: 200- to less than 400-meter water depth |
|---|---|---|
| 6 | $12.50 per acre or fraction thereof | $19.00 per acre or fraction thereof. |
| 7 | $18.75 per acre or fraction thereof | $28.50 per acre or fraction thereof. |
| 8 | $25.00 per acre or fraction thereof | $38.00 per acre or fraction thereof. |

*Royalty Rate*: 18.75 percent royalty rate for blocks in all water depths, except during periods of royalty suspension, to be paid monthly on the last day of the month following the month during which the production is obtained.

*Minimum Royalty*: $6.25 per acre or fraction thereof per year for blocks in water depths of less than 200 meters and $9.50 per acre or fraction thereof per year for blocks in water depths of 200 meters or deeper, to be paid at the expiration of each lease year beginning in the year in which royalty bearing production commences, and continuing thereafter regardless of either the lease year or whether any royalty suspension may apply. A credit will be applied for any actual royalty paid on the lease during the lease year in which minimum royalty is owed on the lease. If the actual royalty paid on the lease for a given lease year exceeds the minimum royalty otherwise owed, then no minimum royalty payment is due.

*Royalty Suspension Provisions*: Leases with royalty suspension volumes (RSV) are authorized under existing MMS rules at 30 CFR Part 260. There are no circumstances under which a single lease could receive a royalty suspension both for deep gas production and for deepwater production.

Section 344 of the Energy Policy Act of 2005 (EPAct05) extends existing deep gas incentives in two ways. First, it mandates a RSV of at least 35 billion cubic feet of natural gas for certain wells completed in a drilling depth category (20,000 feet TVD SS or deeper) for leases in 0–400 meters of water. Second, section 344 directs that the same incentives prescribed in MMS's 2004 rule for wells completed between 15,000 feet and 20,000 feet TVD SS on leases in 0–200 meters of water be applied to leases in 200–400 meters of water. Section 345 of the EPAct05 directs continuation of the MMS deepwater incentive program utilized since 2001 in the Gulf of Mexico for leases issued between August 8, 2005, and August 8, 2010, and provides for an increase in RSV from 12 million barrels of oil equivalent (MMBOE) to 16 MMBOE for leases in water depths greater than 2,000 meters.

**Deep Gas Royalty Suspensions**

A lease issued as a result of this sale may be eligible for royalty relief. The MMS published a proposed rule on May 18, 2007, and will publish a final rule (Incentives for Natural Gas Production from Deep Wells in the Shallow Waters of the Gulf of Mexico) implementing Section 344 of EPAct05. If a lease is eligible, it will be subject to the provisions of that final rule, including any price threshold provisions. Please refer to the Royalty Suspension Provisions cited below.

A. *The following Royalty Suspension Provisions apply to qualifying deep wells on leases at least partly in water depths up to 200 meters*:

Such wells require a perforated interval the top of which is from 15,000 to less than 20,000 feet TVD SS. Suspension volumes, conditions, and requirements prescribed in 30 CFR 203.41 through 203.47 and any amendments or successor regulations apply to deep gas production from a lease in this water depth range issued as a result of this sale. Definitions that apply to this category of royalty relief are found in 30 CFR 203.0. To receive this category of royalty relief, production from a qualified well or drilling of a certified unsuccessful well must commence before May 3, 2009.

B. *The following Royalty Suspension Provisions apply to qualifying deep wells on leases entirely in water depths more than 200 but less than 400 meters:*

Such wells require a perforated interval, the top of which is from 15,000 to less than 20,000 feet TVD SS. The EPAct05 requires the Secretary to issue regulations granting RSV to leases entirely in water depths more than 200 but less than 400 meters that will be calculated using the same methodology as is currently employed for leases at least partly in water depth up to 200 meters. Deep wells on leases in the 200–400 meter water depth range issued in Sale 207 will be eligible for royalty relief prescribed in the final rule implementing Section 344 of the EPAct05.

C. *The following Royalty Suspension Provisions apply to qualifying ultra deep wells on leases entirely in water depths less than 400 meters*:

Ultra deep wells i.e., wells completed with a perforated interval, the top of which is 20,000 feet TVD SS or deeper) on leases entirely in water depths less than 400 meters issued in Sale 207 will be eligible for the royalty relief prescribed in a final rule implementing section 344 of the EPAct05.

**Deepwater Royalty Suspensions**

*The following Royalty Suspension Provisions apply to deepwater oil and gas production:*

A lease issued as a result of this sale may be eligible for royalty relief. The following Royalty Suspension Provisions for deepwater oil and gas production apply to a lease issued as a result of this sale. These provisions are similar to, and mean the same as, the language used in recent sales except for some clarifying text and updated examples. In addition to these provisions, and the EPAct05, refer to 30 CFR 218.151 and applicable provisions of sections 260.120–260.124 for regulations on how royalty suspensions relate to field assignment, product types, rental obligations, and supplemental royalty relief.

1. A lease in water depths of 400 meters or more will receive a royalty suspension as follows, according to the water depth range in which the lease is located:

400 meters to less than 800 meters: 5 MMBOE;
800 meters to less than 1600 meters: 9 MMBOE;
1600 meters to 2000 meters: 12 MMBOE;
Greater than 2000 meters: 16 MMBOE.

2. In any calendar year during which the arithmetic average of the daily closing prices for the nearby delivery month on the New York Mercantile Exchange (NYMEX) for the applicable product exceeds the adjusted product price threshold, the lessee must pay royalty on production that would otherwise receive royalty relief under 30 CFR Part 260 or supplemental relief under 30 CFR Part 203, and such production will count towards the royalty suspension volume.

(a) The base level price threshold for light sweet crude oil is $36.39 per barrel in 2007. The adjusted oil price threshold in any subsequent calendar year is computed by changing the price threshold applicable in the immediately preceding calendar year by the

percentage by which the implicit price deflator for the gross domestic product has changed during the calendar year.

(b) The base level price threshold for natural gas is $4.55 per million British thermal units (MMBTU) in 2007. The adjusted gas price threshold in any subsequent calendar year is computed by changing the price threshold applicable in the immediately preceding calendar year by the percentage by which the implicit price deflator for the gross domestic product has changed during the calendar year.

(c) As an example, if the implicit price deflator indicates that inflation is 3 percent in 2008, then the price threshold in calendar year 2008 would become $37.48 per barrel for oil and $4.69 for gas. Therefore, royalty on oil production in calendar year 2008 would be due if the average of the daily closing prices for the nearby delivery month on the NYMEX in 2008 exceeds $37.48 per barrel and royalty on gas production in calendar year 2008 would be due if the average of the daily closing prices for the nearby delivery month on the NYMEX in 2008 exceeds $4.69 per MMBTU.

(d) The MMS provides notice in March of each year when adjusted price thresholds for the preceding year were exceeded. Once this determination is made, based on the then-most recent implicit price deflator information, it will not be revised regardless of any subsequent adjustments in the implicit price deflator published by the U.S. Government for the preceding year. Information on price thresholds is available at the MMS Web site *http://www.mms.gov/econ.*

(e) In cases where the actual average price for the product exceeds the adjusted price threshold in any calendar year, royalties must be paid no later than 90 days after the end of the year (see 30 CFR 260.122(b)(2) for more detail) and royalties must be paid provisionally in the following calendar year (See 30 CFR 260.122(c) for more detail).

(f) Full royalties are owed on all production from a lease after the RSV is exhausted, beginning on the first day of the month following the month in which the RSV is exhausted.

*Lease Stipulations:* The map ''Final, Western Planning Area, Lease Sale 207, August 20, 2008, Stipulations and Deferred Blocks'' depicts those blocks on which one or more of five lease stipulations apply: (1) Topographic Features; (2) Military Areas; (3) Operations in the Naval Mine and Anti-Submarine Warfare Area; (4) Law of the Sea Convention Royalty Payment; and (5) Protected Species.

The texts of the stipulations are contained in the document ''Lease Stipulations, Western Planning Area, Oil and Gas Lease Sale 207, Final Notice of Sale'' included in the FNOS 207 Package. In addition, the ''List of Blocks Available for Leasing,'' contained in this FNOS 207 Package identifies for each block listed the lease stipulations applicable to that block.

*Information to Lessees:* The FNOS 207 Package contains an ''Information To Lessees'' document that provides detailed information on certain specific issues pertaining to this proposed oil and gas lease sale.

*Method of Bidding:* For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 207, not to be opened until 9 a.m., Wednesday, August 20, 2008.'' The submitting company's name, its company number, the map name/number, and block number should be clearly identified on the outside of the envelope.

Please refer to the sample bid envelope included within the FNOS 207 Package. The total amount of the bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the FNOS 207 Package. A blank bid form has been provided for your convenience which may be copied and filled in.

Please also refer to the Telephone Numbers/Addresses of Bidders Form included within the FNOS 207 Package. We are requesting that you provide this information in the format suggested for each lease sale. Please provide this information prior to or at the time of bid submission. Do not enclose this form inside the sealed bid envelope.

The MMS published in the **Federal Register** a list of restricted joint bidders, which applies to this lease sale, at 73 FR 36556, on June 27, 2008. Please also refer to joint bidding provisions at 30 CFR 256.41 for additional information. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Region Adjudication Office. Signatories must be authorized to bind their respective legal business entities (e.g., a corporation, partnership, or LLC) and must have an incumbency certificate setting forth the authorized signatories on file with the MMS GOM Region Adjudication Office. Bidders submitting joint bids must include on the bid form the proportionate interest of each participating bidder, stated as a percentage, using a maximum of five decimal places (e.g., 33.33333 percent). The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including payment of the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (see the document ''Bid Form and Envelope'' contained in the FNOS 207 Package).

*Withdrawal of Bids:* Once submitted, bid(s) may not be withdrawn unless the RD receives a written request for withdrawal from the company who submitted the bid(s), prior to 10 a.m. on Tuesday, August 19, 2008. This request must be typed on company letterhead and must contain the submitting company's name, its company number, the map name/number and block number of the bid(s) to be withdrawn. The request must be in conformance with signatory authorizations on file in the MMS Gulf of Mexico Region Adjudication Office. Signatories must be authorized to bind their respective legal business entities (e.g., a corporation, partnership, or LLC) and must have an incumbency certificate setting forth the authorized signatories on file with the MMS GOM Region Adjudication Office. The name and title of said signatory must be typed under the signature block on the withdrawal letter. Upon the RD's, or his designee's, approval of such requests, he will indicate his approval by affixing his signature and date to the submitting company's request for withdrawal.

*Rounding:* The following procedure must be used to calculate the minimum bonus bid, annual rental, and minimum royalty: Round up to the next whole acre if the block acreage contains a decimal figure prior to calculating the minimum bonus bid, annual rental, and minimum royalty amounts. The appropriate rate per acre is applied to the whole (rounded up) acreage. The bonus bid must be in whole dollar amounts (i.e., any cents will be disregarded by the MMS) and greater than or equal to the minimum bonus bid. The appropriate minimum bid per acre rate is applied to the whole (rounded up) acreage and the resultant calculation is rounded up to the next whole dollar amount if the calculation results in any cents. The minimum bonus bid calculation, including all rounding, is shown in the document

''List of Blocks Available for Leasing'' included in the FNOS 207 Package.

*Bonus Bid Deposit:* Each bidder submitting an apparent high bid must submit a bonus bid deposit to the MMS equal to one-fifth of the bonus bid amount for each such bid. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account information provided in the Electronic Funds Transfer (EFT) instructions) by 11 a.m. Eastern Time the day following bid reading. Under the authority granted by 30 CFR 256.46(b), the MMS requires bidders to use electronic funds transfer procedures for payment of one-fifth bonus bid deposits for Lease Sale 207, following the detailed instructions contained in the document ''Instructions for Making EFT Bonus Payments,'' which can be found on the MMS Web site at *http://www.gomr.mms.gov/homepg/lsesale/207/wgom207.html.* Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, however, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

**Please note:** Certain bid submitters (i.e., those that are NOT currently an OCS mineral lease record title holder or designated operator OR those that have ever defaulted on a one-fifth bonus bid payment (EFT or otherwise)) are required to guarantee (secure) their one-fifth bonus bid payment prior to the submission of bids. For those who must secure the EFT one-fifth bonus bid payment, one of the following options may be used: (1) Provide a third-party guarantee; (2) amend bond coverage; (3) provide a letter of credit; or (4) provide a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

*Withdrawal of Blocks:* The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

*Acceptance, Rejection, or Return of Bids:* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated FNOS 207 Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the Act, and other applicable regulations may be returned to the bidder submitting that bid by the RD and not considered for acceptance. The Attorney General may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. To ensure that the Government receives a fair return for the conveyance of lease rights for this lease sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of current procedures, ''Modifications to the Bid Adequacy Procedures'' at 64 FR 37560 on July 12, 1999, can be obtained from the MMS Gulf of Mexico Region Public Information Unit or via the MMS Gulf of Mexico Region Internet Web site at: *http://www.gomr.mms.gov/homepg/lsesale/bidadeq.html.*

*Successful Bidders:* As required by the MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155; and satisfy the bonding requirements of 30 CFR 256, subpart I, as amended.

Also, in accordance with regulations at 2 CFR Parts 180 and 1400, the lessee shall comply with the U.S. Department of the Interior's nonprocurement debarment and suspension requirements, and agrees to communicate this requirement to comply with these regulations to persons with whom the lessee does business as it relates to this lease by including this term as a condition to enter into their contracts and other transactions.

*Affirmative Action:* The MMS requests that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the MMS Gulf of Mexico Region Adjudication Unit. This certification is required by 41 CFR Part 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. In any event, prior to the execution of any lease contract, both forms are required to be on file in the MMS Gulf of Mexico Region Adjudication Unit.

*Geophysical Data and Information Statement:* Pursuant to 30 CFR 251.12, the MMS has a right to access geophysical data and information collected under a permit in the OCS.

Every bidder submitting a bid on a block in Sale 207, or participating as a joint bidder in such a bid, must submit a Geophysical Data and Information Statement (GDIS) identifying any enhanced or reprocessed geophysical data and information generated or used as part of the decision to bid or participate in a bid on the block. The data identified in the GDIS should clearly identify whether the data or information are non-exclusive data sets available from geophysical contractors or exclusive data specially processed for or by bidders. In addition, the GDIS should clearly identify the data type (2–D or 3–D, pre-stack or post-stack and time or depth); data extent (i.e., number of line miles for 2D or number of blocks for 3D) and migration algorithm of the data and information. The statement must also include the name and phone number of a contact person, and an alternate, who are both knowledgeable about the information and data listed and available for 30 days post-sale, the processing company, date processing completed, owner of the original data, original data survey name and permit number. The MMS reserves the right to query about alternate data sets and to quality check and compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process.

The statement must also identify each block upon which a bidder bid, or participated in a bid, but for which it did not use processed or reprocessed pre- or post-stack depth migrated geophysical data and information as part of the decision to bid or to participate in the bid. The GDIS must be submitted, even if no enhanced geophysical data and information were used for bid preparation of the tract.

In the event your company supplies any type of data to the MMS, in order to get reimbursed, your company must be registered with the Central Contractor Registration (CCR) at *http://www.ccr.gov.* This is a requirement that was implemented on October 1, 2003, and requires all entities doing business with the Government to complete a business profile in CCR and update it annually. Payments are made electronically based on the information contained in CCR. Therefore, if your company is not actively registered in CCR, the MMS will not be able to reimburse or pay your company for any data supplied.

Please also refer to the FNOS 207 Package for more detail concerning submission of the GDIS, making the data available to the MMS following the lease sale, preferred format, reimbursement for costs, and confidentiality.

*Force Majeure:* The RD of the MMS Gulf of Mexico Region has the

discretion to change any date, time, and/or location specified in the Final Notice of Sale package in case of a force majeure which the RD deems may interfere with the carrying out of a fair and proper lease sale process. Such events may include, but are not limited to, natural disasters (earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, bidders should call (504) 736–0557 or access our Web site at *www.gomr.mms.gov* for information about any changes.

Date: July 9, 2008.

**Randall B. Luthi,**

*Director, Minerals Management Service.*

[FR Doc. E8–16324 Filed 7–16–08; 8:45 am]

**BILLING CODE 4310–MR–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–417 and 731–TA–953, 954, 957–959, 961, and 962 (Review)]**

### Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

**Determinations**

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty order on carbon and certain alloy steel wire rod from Brazil, and the antidumping duty orders on carbon and certain alloy steel wire rod from Brazil, Indonesia, Mexico,[2] Moldova, Trinidad and Tobago,[3] and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines that revocation of the antidumping duty order on carbon and certain alloy steel wire rod from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

**Background**

The Commission instituted these reviews on September 4, 2007 (72 FR 50696) and determined on December 10, 2007, that it would conduct full reviews (72 FR 73880, December 28, 2007). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 14, 2008 (73 FR 2273). The hearing was held in Washington, DC, on April 17, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on June 17, 2008. The views of the Commission are contained in USITC Publication 4014 (June 2008), entitled *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Investigation Nos. 701–TA–417 and 731–TA–953, 954, 957–959, 961, and 962 (Review).*

By order of the Commission.

Issued: June 25, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–16287 Filed 7–16–08; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–633]**

### In the Matter of Certain Acetic Acid; Notice of Determination Not To Review an Initial Determination Granting Complainant's Motion To Terminate the Investigation Based on Withdrawal of the Complaint

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 6) issued by the presiding administrative law judge (''ALJ'') granting complainant's motion to terminate the investigation in its entirety based on withdrawal of the complaint.

**FOR FURTHER INFORMATION CONTACT:** Michelle Walters, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on March 5, 2008, based on a complaint filed by Celanese International Corporation (''Celanese''). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain acetic acid that allegedly infringes certain claims of United States Patent No. 6,303,813. The complaint named Jiangsu Sopo Corporation (Group) Ltd., a/k/a Jiangsu Sopo (Group) Corp., a/k/a Jiangsu Sopo (Group) Co. Ltd. of Shanghai, China, and Jiangsu Sopo Group, Shanghai Limited Company of Shanghai, China as respondents.

On May 23, 2008, Celanese filed a motion to terminate the investigation in its entirety based on withdrawal of the complaint. Respondents did not oppose complainant's motion, but requested that their pending motion to declassify portions of a deposition transcript (Motion No. 633–1) be ruled upon first. The Commission investigative attorney argued that complainant's motion to withdraw the complaint should be granted, without the imposition of any terms or conditions.

On June 18, 2008, the ALJ issued the subject ID, granting complainant's motion to terminate the investigation. No petitions for review were filed.

The Commission has determined not to review the ID. The investigation is terminated.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Daniel R. Pearson dissenting with respect to Mexico.

[3] Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun dissenting with respect to Trinidad and Tobago.

[4] Commissioners Charlotte R. Lane and Dean A. Pinkert dissenting with respect to Canada.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: July 11, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–16280 Filed 7–16–08; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–647]**

### In the Matter of Certain Hand-Held Meat Tenderizers; Notice of Decision Not To Review an Initial Determination Correcting the Name of a Respondent

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 4) issued by the presiding administrative law judge (''ALJ'') correcting the name of a respondent in this investigation.

**FOR FURTHER INFORMATION CONTACT:** Mark B. Rees, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On May 8, 2008, the Commission instituted this investigation based on the complaint, as supplemented, of Jaccard Corporation of Orchard Park, New York, alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hand-held meat tenderizers by reason of infringement of U.S. Trademark Registration No. 1,172,879 (the JACCARD® word mark) and also by reason of infringement of trade dress. 73 FR 27846 (May 14, 2008). The notice of investigation, tracking the complaint, named Keystone Manufacturing, Inc. of Buffalo, New York and Chefmaster/Mr. Bar-B-Q Inc. of Old Bethpage, New York as respondents.

On May 22, 2008, the ALJ *sua sponte* issued the subject ID (Order No. 4) amending the notice of investigation so that ''Chefmaster/Mr. Bar-B-Q Inc.'' instead reads ''Mr. Bar-B-Q-, Inc.'', which he found is this respondent's correct name. No petitions for review of this ID were filed. The Commission has determined not to review this ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: July 11, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–16281 Filed 7–15–08; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–641]**

### In the Matter of Certain Variable Speed Wind Turbines and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Unopposed Motion To Amend the Complaint and Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 7) issued by the presiding administrative law judge (''ALJ'') granting complainant's motion to amend the complaint and notice of investigation.

**FOR FURTHER INFORMATION CONTACT:** Michelle Walters, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on March 31, 2008, based on a complaint filed by General Electric Company (''GE''). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain variable speed wind turbines and components thereof that allegedly infringe certain claims of United States Patent Nos. 5,083,039 and 6,921,985. The complaint named Mitsubishi Heavy Industries, Ltd. of Tokyo, Japan, Mitsubishi Heavy Industries of America, Inc. of New York, New York, and Mitsubishi Power Systems, Inc. of Lake Mary, Florida.

On September 16, 2007, GE filed a motion to amend the complaint and notice of investigation to correct two clerical errors: (1) An incorrect figure expressed in Confidential Exhibit 30, and (2) a respondent identified by a former name rather than its current name. The motion was not opposed.

On June 18, 2008, the ALJ granted GE's motion, finding that, it is in the best interest of the parties and the public interest for the complaint and notice of investigation to be corrected. No petitions for review of this ID were filed.

The Commission has determined not to review the ALJ's ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: July 11, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–16279 Filed 7–16–08; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 27, 2008, a proposed Consent Decree in *United States and State of Oklahoma* v. *Albert Investment, et al.*, Civil Action No. 5:08–cv–637, was lodged with the United States District Court for the Western District of Oklahoma.

In this action the United States, on behalf of the United States Environmental Protection Agency (''EPA''), sought to recover from certain parties response costs that it incurred in response to releases and threatened releases of hazardous substances from the Double Eagle Refinery Superfund Site (the ''Site'') located in Oklahoma City, Oklahoma. The proposed Consent Decree resolves claims alleged by the United States, on behalf of the United States Environmental Protection Agency (''EPA''), and the United States Department of the Interior (''DOI''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* The proposed Consent Decree provides that the Settling Defendants, which sent waste oil containing hazardous substances to the Site for disposal, will pay the United States and the State of Oklahoma approximately $6.48 million in response costs and natural resource damages.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, and either e-mailed to *pubcommentees.enrd@usdoj.gov* or mailed to P.O. Box 7611, NW., Washington, DC 20044–7611, and should refer to *United States and State of Oklahoma* v. *Albert Investment, et al.*, DOJ. Ref. 90–11–2–857/2.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Oklahoma, 210 Park Ave., Suite 400, Oklahoma City, OK 72102, and at the offices of EPA, Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. During the public comment period, the Consent 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 Consent 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 $18.75 (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.

**Thomas A. Mariani, Jr.,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E8–16392 Filed 7–16–08; 8:45 am]

BILLING CODE 4410–15–P

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States of America v. Signature Flight Support Corporation and Hawker Beechcraft Services, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 5 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate and Preservation of Assets Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Signature Flight Support Corporation and Hawker Beechcraft Services, Inc.,* Civil Action No. 1:08–cv–01164–RWR.

On July 3, 2008, the United States filed a Complaint alleging that the proposed acquisition by Signature Flight Support Corporation (''Signature'') of the fixed base operations (''FB'') of Hawker Beechcraft Services, Inc. (''Hawker Beechcraft'') at the Indianapolis International Airport (''IND'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the acquisition would combine the only providers of FBO services at IND, resulting in higher prices and reduced services. The proposed Final Judgment requires the parties to divest either Signature's or Hawker Beechcraft's FBO assets at IND.

Copies of the Complaint, proposed Final Judgment, Hold Separate and Preservation of Assets Stipulation and Order, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, Room 1010, 450 5th Street, NW., Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, Suite 4100, 450 5th Street, NW., Washington, DC 20530 (telephone: 202–307–6410).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

### United States District Court for the District of Columbia

*United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530, Plaintiff,* v. *Signature Flight Support Corporation, Signature Plaza, 201 South Orange Avenue, Suite 1100, Orlando, Florida 32801, and Hawker Beechcraft Services, Inc., 10511 East Central, Wichita, Kansas 67206, Defendants*

Civil Action No.:

Filed:

Case: 1:08–cv–01164.

Assigned To: Roberts, Richard W.

Assign. Date: 7/3/2008.

Description: Antitrust.

### Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed acquisition by Signature Flight Support Corporation (''Signature'') of fixed base operations of Hawker Beechcraft Services, Inc. (''Hawker Beechcraft'') and to obtain

equitable and other relief. The United States alleges as follows:

**I. Nature of the Action**

1. On February 21, 2008, Signature and Hawker Beechcraft signed a definitive agreement for Signature to acquire Hawker Beechcraft's United States' fixed base operations (''FBO'') for $128.5 million. FBOs provide flight support services—including fueling, hangar rentals, office space rentals, and other services—to general aviation customers. Signature is the largest fixed base operator in the world and operates FBOs at more than forty-five around the country. Hawker Beechcraft operates FBOs at seven airports in the United States. Both Signature and Hawker Beechcraft operate FBOs at the Indianapolis International Airport (''IND'').

2. Signature and Hawker Beechcraft are the only two FBOs operating at IND Airport. They compete directly on price and quality of FBO services to general aviation customers. The acquisition would eliminate this competition, creating an FBO monopoly at IND. The acquisition would give Signature the ability to raise prices and lower the quality services at IND for general aviation customers. Unless the transaction is enjoined, the proposed acquisition is likely to lessen competition substantially in the market for FBO services at IND in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

**II. Jurisdiction and Venue**

3. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

4. The defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. Signature and Hawker Beechcraft provide FBO services to aircraft landing throughout the United States. This Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. 22 and 25, and 28 U.S.C. 1331, 1337(a), and 1345.

5. Venue is proper in this district as Signature and Hawker Beechcraft have consented to venue and personal jurisdiction in this judicial district.

**III. Defendants and the Proposed Transaction**

6. Signature is a wholly owned subsidiary of BBA Aviation PLC, a supplier of aviation machinery, support, and repair. Signature is a Delaware corporation with its principal place of business in Orlando, Florida. Signature owns and operates more than sixty FBO facilities in the United States, including its FBO operation at IND.

7. Hawker Beechcraft is a Kansas corporation with its principal place of business in Wichita, Kansas. Hawker Beechcraft owns and operates seven FBO facilities in the United States, including its FBO operation at the IND Airport.

8. On February 21, 2008, Signature and Hawker Beechcraft executed a Sale of Line Service Business Asset Purchase Agreement under which Signature will acquire all of Hawker Beechcraft's FBO assets for approximately $128.5 million.

**IV. Trade and Commerce**

*The Relevant Market*

9. FBO services include the sale of jet aviation fuel (''Jet A fuel'') and aviation gasoline (''avgas''), as well as related support services, to general aviation customers. FBOs usually do not charge separately for services such as conference rooms, pilot lounges, flight planning, and transportation. Instead, they recover the cost of these ancillary services in the price that they charge for fuel. FBOs charge separately for hangar and office rentals, aircraft storage, tie-down and ground services, deicing, and catering.

10. The largest source of revenue for an FBO is fuel sales. FBOs sell Jet A fuel for jet aircraft, turboprops and helicopters, and avgas for smaller, piston-operated planes. At IND, Signature and Hawker Beechcraft sold approximately $17 million of fuel in 2007, and obtained additional revenues of approximately $3 million for other FBO-related services.

11. General aviation customers cannot obtain fuel, hangar, ramp and related services at IND except through the FBOs authorized to sell such products and services by the local airport authority, leaving general aviation customers landing at IND no alternatives to the Signature and Hawker Beechcraft FBOs for these services. Obtaining FBO services at another airport would not provide an economically practical alternative for general aviation customers who currently use IND. A small but significant post-acquisition increase in the prices for fuel, hangar space, and other FBO services would not cause general aviation customers to switch to other airports in sufficient quantities to make such a price increase unprofitable.

12. Thus, the provision of FBO services to general aviation customers is a relevant product market and IND is a relevant geographic market (i.e., a line of commerce and a section of the country) under Section 7 of the Clayton Act, 15 U.S.C. 18.

*Anticompetitive Effects*

13. The market for FBO services at IND is highly concentrated, with only two providers—Signature and Hawker Beechcraft. If Signature acquires the Hawker Beechcraft FBO facility, it will have a monopoly in the market for FBO services at IND. Currently, based on fuel sales, Signature has 46 percent of the IND FBO market, and Hawker Beechcraft has 54 percent.

14. Competition between Signature's and Hawker Beechcraft's FBO facilities currently limits the ability of each to raise prices for FBO services. The proposed acquisition would eliminate the competitive constraint each imposes upon the other. This would to lead to a monopoly, resulting in higher prices for FBO services, as well as lower quality of service, at IND in violation of Section 7 of the Clayton Act.

15. Successful entry into the provision of FBO services at IND would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Timely entry sufficient to replace the market impact of Hawker Beechcraft would be difficult for several reasons. The entrant would need to get the approval of the airport authority, obtain permits, and construct facilities, all of which require extensive lead time to complete. Successful entry would be unlikely to occur in response to a small but significant and non-transitory post-merger price increase.

**V. Violation Alleged**

16. The United States hereby incorporates paragraphs 1 through 15.

17. Unless restrained, Signature's proposed acquisition of Hawker Beechcraft's FBO facility at IND is likely to tend to create a monopoly in the market for FBO services at IND in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in the following ways:

a. Actual and potential competition between Signature and Hawker Beechcraft in the market for FBO services at IND will be eliminated;

b. Competition in the provision of FBO services at IND will be eliminated; and

c. Prices for FBO services to general aviation customers at IND will likely increase and quality of service will likely decrease.

**VI. Request for Relief**

18. The United States requests that:

a. Signature's proposed acquisition of Hawker Beechcraft's FBO facility at IND be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Defendants and all persons acting on their behalf be preliminarily and permanently enjoined and restrained from consummating the proposed transaction or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Signature's and Hawker Beechcraft's FBO operations at IND;

c. The United States be awarded its costs for this action; and d. the United States receive such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ James J. O'Connell, Jr.
James J. O'Connell, Jr.
*Acting Assistant Attorney General, DC Bar #464109*
/s/ Patricia A. Brink
Patricia A. Brink
*Deputy Director, Office of Operations*
/s/ Donna N. Kooperstein
Donna N. Kooperstein
*Chief, Transportation, Energy & Agriculture Section*
/s/ William H. Stallings
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*Trial Attorneys,* U.S. Department of Justice, Transportation, Energy & Antitrust Division, Transportation, Energy & Agriculture Section, 450 Fifth Street, NW, Room 4100, Washington, DC 20530, Telephone: (202) 307–6410, Facsimile: (202) 307–2784.
Dated: July 3, 2008.

**United States District Court for the District Of Columbia**

*United States of America, Plaintiff v. Signature Flight Support Corporation and Hawker Beechcraft Services, Inc., Defendants*

Civil Action No.: I :08–cv–O1164.

Description: Antitrust.

Judge: Roberts, Richard W.

Date Stamp: 7/3/08.

**Proposed Final Judgment**

*Whereas,* plaintiff, the United States of America (''United States''), filed its complaint on July ___, 2008, the United States and defendants, Signature Flight Support Corporation (''Signature'') and Hawker Beechcraft Services, Inc. (''Hawker Beechcraft''), by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of law or fact;

*And whereas,* defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And whereas,* the essence of this Final Judgment is prompt and certain divestiture of certain assets by the defendants to assure that competition is not substantially lessened;

*And whereas,* the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

*And whereas,* defendants have represented to the United States that the divestitures required below can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

*Now, therefore,* before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby *ordered, adjudged, and decreed:*

**I. Jurisdiction**

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

**II. Definitions**

As used in this Final Judgment:

A. ''Acquirer'' means the entity to whom defendants divest the Divestiture Assets.

B. ''Signature'' means defendant Signature Flight Support Corporation, a Delaware corporation with its headquarters in Orlando, Florida, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Hawker Beechcraft'' means defendant Hawker Beechcraft Services, Inc., a Kansas corporation headquartered in Wichita, Kansas, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''IND'' means Indianapolis International Airport, located in the Indianapolis, Indiana metropolitan area.

E. ''IND FBO Services'' means any or all services related to providing fixed base operator services to general aviation customers at IND, including, but not limited to, selling fuel, leasing hangar, ramp, and office space, providing flight support services, providing access to terminal facilities, or arranging for ancillary services such as rental cars or hotels.

F. ''FBO Facility'' means any and all tangible and intangible assets that comprise the business of providing IND FBO Services, including, but not limited to, all personal property, inventory, office furniture, materials, supplies, terminal space, hangars, ramps, general aviation fuel tank farms for jet aviation fuel and aviation gas, and related fueling equipment, and other tangible property and all assets used in connection with the business of providing IND FBO Services; all licenses, permits, registrations, and authorizations issued by any governmental organization relating to the business of providing IND FBO Services subject to licensor's approval or consent; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the business of providing IND FBO Services, including supply agreements; all customer lists, contracts, accounts, and credit records; all other records relating to the business of providing IND FBO Services, all intangible assets used in the development, production, servicing, and sale of IND FBO Services, including, but not limited to, all licenses and sublicenses, technical information, computer software and related documentation, know-how, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, and safety procedures for the handling of materials and substances.

G. ''Divestiture Assets'' means either of the following:

1. All rights, titles and interests, including all fee, leasehold and real property rights, in Hawker Beechcraft's existing and future FBO Facilities at IND that Signature acquires in the Proposed Transaction; or

2. All rights, titles and interests, including all fee, leasehold and real property rights, that Signature possesses in its FBO Facility at IND.

H. ''Proposed Transaction'' means Signature's proposed acquisition of certain assets from Hawker Beechcraft pursuant to the Sale of Line Service Business By Hawker Beechcraft Services, Inc. to Signature Flight Support Corporation Asset Purchase Agreement Dated February 21, 2008 that

is the subject of the Hart-Scott-Rodino Premerger Notification Filing 2008–0879.

**III. Applicability**

A. This Final Judgment applies to Signature and Hawker Beechcraft, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV or V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirer of the assets divested pursuant to this Final Judgment.

**IV. Divestitures**

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter or after five (5) calendar days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. If pending state or local regulatory approval is the only remaining matter precluding a divestiture after the 90-day period, the United States will not withhold its agreement to an extension of the period. Defendants agree to use their best efforts to complete the required divestiture as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents regarding the Divestiture Assets customarily provided in a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrine. The documents provided to prospective Acquirers shall include (1) The Land and Special Facilities Lease Agreement By and Between Hawker Beechcraft Services, Inc. and The Indianapolis Airport Authority dated February 2008; (2) the Sublease between Hawker Beechcraft Services, Inc. and Signature Flight Support Corporation and the Addendum thereto; and (3) the agreement entitled Sale of Line Service Business By Hawker Beechcraft Services, Inc. to Signature Flight Support Corporation Asset Purchase Agreement Dated February 21, 2008 and all attachments and exhibits relating to IND. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation, management, and sale of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the operation, management, and sale of the Divestiture Assets.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of the physical facilities of the Divestiture Assets and to examine the blueprints and other plans relating to any physical facilities of the Divestiture Assets under construction or proposed for construction; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of the Divestiture Assets that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer of the Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by a trustee appointed pursuant to Section V, of this Final Judgment, shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in providing IND FBO Services. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment: (I) shall be made to an Acquirer that in the United States's sole judgment has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of IND FBO Services; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants gives defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

**V. Appointment of Trustee**

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A) of this Final Judgment, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the judgment of the trustee to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such

terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Divestiture Assets, including the blueprints and other plans relating to any physical facilities of the Divestiture Assets under construction or proposed for construction, and defendants shall develop financial or other information relevant to the Divestiture Assets as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth that trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment for a period requested by the United States.

**VI. Notice of Proposed Divestiture**

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If a trustee is responsible, the trustee shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered. expressed an interest in or a desire to acquire any ownership interest in the Divestiture Assets together with full details of same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendant's limited right to object to the sales under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, the divestiture proposed under Section IV or V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

**VII. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

**VIII. Hold Separate**

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

**IX. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by the defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes

in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on going basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after the divestiture has been completed.

**X. Compliance Inspection**

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division (''DOJ''), including consultants and other persons retained by the United States, shall upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants be permitted:

1. Access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

**XI. No Reacquisition**

Defendant Signature may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

**XII. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**XIII. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

**XIV. Public Interest Determination**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

*United States District Judge.*

**United States District Court for the District of Columbia**

*United States of America, Plaintiff, v. Signature Flight Support Corporation and HAWKER BEECHCRAFT SERVICES, INC., Defendants.*

Civil Action No.: 1:08–cv–O1164.
Description: Antitrust.
Judge: Roberts, Richard W.
Date Stamped: 7/3/08.

**Competitive Impact Statement**

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. Nature and Purpose of the Proceeding**

Defendant Signature Flight Support Corporation (''Signature'') and Defendant Hawker Beechcraft Services, Inc. (''Hawker Beechcraft'') entered into an agreement, dated February 21, 2008, pursuant to which Signature would acquire the fixed base operations (FBO) of Hawker Beechcraft. The United States filed a civil antitrust complaint on July __, 2008, seeking to enjoin the proposed acquisition. The Complaint alleges that the effect of this acquisition would be to combine the only providers of FBO services at Indianapolis International Airport (''IND''), creating a monopoly and violating Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States also filed a Hold Separate and Preservation of Assets Stipulation and Order (''Stipulation and Order'') and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, the defendants are required to sell either the Signature or Hawker Beechcraft FBO assets at IND to a purchaser who has the capability to compete effectively in the provision of FBO services to general aviation customers at that airport.

Until the divestiture of either the Signature or Hawker Beechcraft FBO assets at IND, the Stipulation and Order requires the defendants to take all steps necessary to preserve both companies' FBO assets at IND and ensure that Hawker Beechcraft's FBO business operates as an independent, ongoing, economically viable, competitive business at IND held entirely separate, distinct and apart from Signature's IND FBO business. Further, until the

required divestiture is accomplished, the defendants must take all steps necessary to ensure that Hawker Beechcraft's FBO business at IND will be maintained and operated as an ongoing, economically viable and active line of business; that competition between Signature and Hawker Beechcraft in the provision of FBO services at IND is maintained during the pendency of the ordered divestiture; and that the defendants preserve and maintain their IND FBO assets. The Stipulation and Order thus ensures that competition is protected pending completion of the required divestitures and that the assets are preserved so that relief will be effective.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## II. Description of the Events Giving Rise to the Alleged Violation

### *A. The Defendants and the Proposed Transaction*

Signature is a wholly-owned subsidiary of BBA Aviation PLC, a supplier of aviation machinery, support, and repair. Signature is a Delaware corporation with its principal place of business in Orlando, Florida. Signature is the world's largest FBO operator and operates more than forty-five FBO facilities in the United States. Signature's 2007 revenues from its United States FBO operations were approximately $600 million.

Hawker Beechcraft is a Kansas corporation with its principal place of business in Wichita, Kansas. Hawker Beechcraft is a manufacturer of business, special-mission, and trainer aircraft, and designs, markets and supports aviation products and services for businesses, governments, and individuals. The company also operates FBO facilities at seven airports in the United States including IND. Hawker Beechcraft's 2007 revenues from its FBO operations were approximately $73 million.

By an agreement dated February 21, 2008, Signature proposes to acquire Hawker Beechcraft's FBO assets at seven airports in the United States for $128.5 million. IND is the only airport at which both companies compete in the provision of FBO services.

### *B. The Competitive Effects of the Transaction on the FBO Services Market*

#### 1. The Relevant Market

The Complaint alleges that the proposed transaction would eliminate competition in the provision of FBO services at IND in violation of Section 7 of the Clayton Act. FBOs are facilities located at airports that provide fuel and related support services to general aviation customers. General aviation customers include charter, private, and corporate aircraft operators, as distinguished from scheduled commercial airlines.

Fuel sales are the largest source of FBO revenues. FBOs usually do not charge for services such as conference rooms, pilot lounges, flight planning, and transportation. Instead, they recover the cost of these services in the price that they charge for fuel. FBOs also derive income from hangar and office rentals, aircraft storage, tie-down and ground services, deicing, and catering services.

General aviation customers cannot obtain fuel, hangar, ramp, and related services at IND except through an FBO authorized to sell such services by the local airport authority, leaving general aviation customers departing from or landing at IND no alternatives to Signature and Hawker Beechcraft FBOs for these services. Obtaining FBO services at other airports in the Indianapolis region would not provide an economically practical alternative for these general aviation customers. Many general aviation customers select IND over other airports in the area for the available hangar space, as well as the necessary safety features of a control tower and longer runway length and the airport's proximity to downtown Indianapolis. General aviation customers at IND would not switch to other airports in the Indianapolis region in sufficient numbers to prevent anticompetitive price increases for fuel and other FBO services at IND.

#### 2. The Proposed Merger Would Produce Anticompetitive Effects

Signature and Hawker Beechcraft are the only two competitors in the provision of FBO services at IND. Competition between them currently limits the ability of each to raise prices for FBO services. The proposed acquisition would eliminate the competitive constraint each imposes upon the other. This would lead to a monopoly at IND, resulting in higher prices for FBO services and lower quality of service in violation of Section 7 of the Clayton Act.

Successful entry would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Timely entry sufficient to replace the market impact of Hawker Beechcraft would be difficult for several reasons. The entrant would need to get the approval of the airport authority, obtain permits, and construct facilities, all of which require extensive lead time to complete. Successful entry would be unlikely to occur in response to a small but significant and non-transitory post-merger price increase.

## III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the market for FBO services provided to general aviation customers at IND by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires the Defendants to divest, as a viable ongoing business, either the Signature or the Hawker Beechcraft FBO assets at IND.

Hawker Beechcraft currently has a long-term lease with the IND airport authority under which it has rights to use several buildings and other assets, including fuel storage facilities, to provide both FBO and non-FBO maintenance for planes manufactured by the company. Signature also operates its FBO business at IND under a long-term lease with the airport authority. Under the transaction agreement, Signature will obtain rights equivalent to Hawker Beechcraft's rights with respect to the FBO assets it uses to provide FBO services at IND. If Signature chooses to divest the Hawker Beechcraft FBO assets at IND, the acquiring company will acquire all interests and rights that Signature will acquire under its agreement with Hawker Beechcraft. This not only includes rights to use all buildings that Hawker Beechcraft currently uses to provide FBO services at IND, but also includes, when Hawker Beechcraft completes construction of a new facility at IND next year, the exclusive rights to use all the new buildings Hawker Beechcraft will build for the provision of FBO services at IND. Thus, a purchaser of either the Hawker Beechcraft Divestiture Assets or the Signature Divestiture Assets will have the same ability to compete in the IND FBO market as Hawker Beechcraft or Signature had prior to the acquisition.

In antitrust cases involving acquisitions in which the United States seeks a divestiture remedy, the United States seeks to require completion of the

divestiture within the shortest period of time reasonable under the circumstances. A quick divestiture has the benefits of restoring competition lost in the acquisition and reducing the possibility that the value of the assets will be diminished. Section IV(A) of the proposed Final Judgment requires the defendants to complete the divestiture within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later.[1]

The assets must be divested so as to satisfy the United States, in its sole discretion, that the operations can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that the Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture of either the Signature or Hawker Beechcraft Divestiture Assets. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the provision of FBO services at IND.

[1] The proposed Final Judgment also provides that this time period may be extended one or more times by the United States in its sole discretion for a period not to exceed sixty (60) calendar days, and that the Court will receive notice of any such extension. The proposed Final Judgment provides that if pending state or local regulatory approval is the only remaining matter precluding a divestiture after the 90-day period, the United States will not withhold its agreement to an extension of the period.

## IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

## V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, 450 5th Street, NW., Suite 4100, Washington, DC 20530.

## VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Signature's acquisition of Hawker Beechcraft's FBO assets. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of FBO services at IND. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States could have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

## VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(l)(A)&(B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F.Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[2]

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to

Continued

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns*, 489 F. Supp. 2d at 11.[4]

**VIII. Determinative Documents**

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 3, 2008.

Respectfully submitted,

____/s/____

Angela L. Hughes (DC Bar #30342 10),
Michelle Livingston (DC Bar #461268),
*Trial Attorneys*

U.S. Department of Justice Antitrust Division Transportation, Energy, and Agriculture, 450 5th Street, NW., Suite 4100 Washington, DC 20530.

[FR Doc. E8–16254 Filed 7–16–08; 8:45 am]

**BILLING CODE 4410–11–M**

consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e)(2004), with 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[3] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[4] See *United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully, consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

## DEPARTMENT OF LABOR

### Information Collection Request for Extension (Without Changes) of the Prisoner Reentry Initiative Reporting System; Comment Request

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce

paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the extension of the currently approved reporting and recordkeeping system to support the Prisoner Reentry Initiative (PRI).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

**DATES:** Written comments must be submitted to the office listed in the addressee's section below on or before September 15, 2008.

**ADDRESSES:** Submit written comments to the Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Gregg Weltz, Telephone number: 202–693–3030 (this is not a toll-free number). Fax: 202–693–3861. E-mail: *weltz.greg@dol.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In applying for the Prisoner Reentry Initiative grants, Faith-based and Community Organization grantees agree to submit participant data and quarterly aggregate reports for individuals who receive services through PRI programs and their partnerships with One-Stop Centers, local Workforce Investment Boards, employment providers, the criminal justice system, and local housing authorities. The reports include aggregate data on demographic characteristics, types of services received, placements, outcomes, and follow-up status. Specifically, they summarize data on participants who received employment and placement services, housing assistance, mentoring, and other services essential to reintegrating ex-offenders through PRI programs.

This requests an extension of the currently approved information collection to meet the reporting and recordkeeping requirements of the Prisoner Reentry Initiative through an ETA-provided, web-based Management Information System (MIS). In addition to reporting participant information and performance-related outcomes, PRI grantees demonstrate their ability to establish effective partnerships with the criminal justice system, local Workforce Investment Boards, local housing authorities, and other partner agencies. They also document the cost effectiveness of their projects. The MIS reporting and recordkeeping system incorporates each of these aspects necessary for program evaluation.

Five outcome measures are used to measure success in the PRI grants: Entered employment rate, employment retention rate, attainment of a degree or certificate, average six-month postprogram earnings, and recidivism rate. Several of these conform to the common performance measures implemented across federal job training programs as of July 1, 2005. By standardizing the reporting and performance requirements of different programs, the common measures give ETA the ability to compare across programs the core goals of the workforce system—how many people entered jobs; how many stayed employed; and how many successfully completed an educational program. Although the common measures are an integral part of ETA's performance accountability system, these measures provide only part of the information necessary to effectively oversee the workforce investment system. ETA also collects data from PRI grantees on program activities, participants, and outcomes that are necessary for program management and for conveying full and accurate information on the performance of PRI programs to policymakers and stakeholders.

This information collection maintains a reporting and record-keeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold PRI grantees appropriately accountable for the Federal funds they receive, including common performance measures, and to allow the Department to fulfill its oversight and management responsibilities.

## II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

## III. Current Actions

*Type of Review:* Extension without revisions of a currently approved information collection.

*Agency:* Employment and Training Administration.

*Title:* Prisoner Reentry Initiative (PRI) Reporting System.

*OMB Number:* 1205–0455.

*Affected Public:* Faith-Based and Community Organization grantees.

*Total Respondents:* 74 grantees.

*Frequency:* Quarterly.

ESTIMATED TOTAL BURDEN HOURS

| Form/activity | Total respondents | Frequency | Total annual response | Average time per response (hours) | Total annual burden hours |
|---|---|---|---|---|---|
| Participant Data Collection | 74 | Continual | 6,610 | 1.8 | 11,898 |
| Quarterly narrative progress report | 74 | Quarterly | 296 | 16 | 4,736 |
| Quarterly performance report | 74 | Quarterly | 296 | 16 | 4,736 |
| Totals | 74 | | 7,202 | | 21,370 |

Comments submitted in response to this comment request will be summarized in the request for Office of Management and Budget approval of the information collection request and will become a matter of public record.

Dated: July 10, 2008.

**Gay M. Gilbert,**

*Administrator, Office of Workforce Investment, Employment and Training Administration.*

[FR Doc. E8–16318 Filed 7–16–08; 8:45 am]

**BILLING CODE 4510–FT–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

July 11, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/*e-mail: king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816/Fax: 202–395–6974 (these are not toll-free numbers), *E-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Agency:* Mine Safety and Health Administration.

*Type of Review:* Extension without change of currently approved collection.

*Title of Collection:* Permissible Equipment Testing.

*OMB Control Number:* 1219–0066.

*Form Number:* MSHA 2000–38.

*Estimated Number of Respondents:* 262.

*Estimated Total Annual Burden Hours:* 4,302.

*Estimated Total Annual Cost Burden:* $1,671,381.

*Affected Public:* Business or other for profits (Mines).

*Description:* This OMB Control Number pertains to the information collection requirements associated with the procedures by which manufacturers may apply for, and have equipment approved as permissible for use in mines. For additional information, see related notice published on April 21, 2008 at 73 FR 21377.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. E8–16323 Filed 7–16–08; 8:45 am]

**BILLING CODE 4510–43–P**

## MISSISSIPPI RIVER COMMISSION

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETINGS:** Mississippi River Commission.

**TIME AND DATE:** 9 a.m., August 11, 2008.

**PLACE:** On board MISSISSIPPI V at Levee Park, Red Wing, MN.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Paul District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

**TIME AND DATE:** 9 am., August 13, 2008.

**PLACE:** On board MISSISSIPPI V at Oneida Landing, Davenport, IA.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Rock Island District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

**TIME AND DATE:** 1:30 p.m., August 14, 2008.

**PLACE:** On board MISSISSIPPI V at City Front, Hannibal, MO.

**STATUS:** Open to the public for observation but not for participation.

**MATTERS TO BE CONSIDERED:** The Commission will consider the Upper Mississippi Illinois River Comprehensive Plan.

**TIME AND DATE:** 9 a.m., August 15, 2008.

**PLACE:** On board MISSISSIPPI V at Melvin Price Lock & Dam, Alton, IL.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis District and; (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

**TIME AND DATE:** 9 a.m., August 18, 2008.

**PLACE:** On board MISSISSIPPI V at City Front, New Madrid, MO.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District

Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

**TIME AND DATE:** 9 a.m., August 19, 2008.

**PLACE:** On board MISSISSIPPI V at Mud Island River Park, Memphis, TN.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

**TIME AND DATE:** 9 a.m., August 20, 2008.

**PLACE:** On board MISSISSIPPI V at City Front, Greenville, MS.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

**TIME AND DATE:** 9 a.m., August 22, 2008.

**PLACE:** On board MISSISSIPPI V at Cenac Towing Co. Dock, Houma, LA.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Stephen Gambrell, telephone 601–634–5766.

**Timothy S. Gambrell,**

*Executive Director, Mississippi River Commission.*

[FR Doc. E8–15776 Filed 7–16–08; 8:45 am]

**BILLING CODE 3710–GX–M**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting; Agenda

**TIME AND DATE:** 1:30 p.m., July 22, 2008.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTER TO BE CONSIDERED:** 7907B Marine Accident Report—Grounding of the U.S. Passenger Vessel Empress of the North, 20 miles Southwest of Juneau, Alaska, on May 14, 2007.

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, July 18, 2008.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

**FOR MORE INFORMATION CONTACT:** Vicky D'Onofrio, (202) 314–6410.

Dated: July 11, 2008.

**Vicky D'Onofrio,**

*Federal Register Liason Officer.*

[FR Doc. E8–16322 Filed 7–16–08; 8:45 am]

**BILLING CODE 7533–01–M**

## NUCLEAR REGULATORY COMMISSION

### Office of New Reactors; Notice of Availability of the Final Interim Staff Guidance DC/COL–ISG–05 on the Use of the GALE86 Code for Calculation of Routine Radioactive Releases in Gaseous and Liquid Effluents

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of availability.

**SUMMARY:** The NRC is issuing its Final Interim Staff Guidance (ISG) DC/COL–ISG–05 (ADAMS Accession No. ML081710264). This interim staff guidance supplements the guidance provided to the staff in Chapter 11, ''Radioactive Waste Management,'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' concerning the review of radioactive releases in gaseous and liquid effluents (GALE) to support design certification (DC) and combined license (COL) applications. This guidance provides a clarification on the use of a newer version of the boiling-water reactor and pressurized-water reactors GALE codes that is not referenced in the current NRC guidance.

The NRC staff issues DC/COL–ISGs to facilitate timely implementation of the current staff guidance and to facilitate activities associated with review of applications for DC and COLs by the Office of New Reactors. The NRC staff will also incorporate the approved DC/COL–ISGs into the next revision to the review guidance documents for applications for new reactors, RG 1.206 and RG 1.112.

*Disposition:* On March 19, 2008, the staff issued the proposed ISG ''Use of the GALE86 Code for Calculation of Routine Radioactive Releases in Gaseous and Liquid Effluents to Support Design Certification and Combined License Applications,'' (COL/DC–ISG–005) (ADAMS Accession No. ML080650651) to solicit public and industry comment. The staff did not receive any comments on the draft ISG. Therefore, the ISG is now being issued for use.

**ADDRESSES:** The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy J. Frye, Chief, Health Physics Branch, Division of Construction, Inspection, & Operational Programs, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–3900 or e-mail at *timothy.frye@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The agency posts its issued staff guidance on the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 10th day of July 2008.

For the Nuclear Regulatory Commission,

**William D. Reckley,**

*Branch Chief, Rulemaking, Guidance and Advanced Reactors Branch, Division of New Reactor Licensing Office of New Reactors.*

[FR Doc. E8–16364 Filed 7–16–08; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[IA–07–069]**

## In the Matter of Mr. Anthony Fortuna; Confirmatory Order (Effective Immediately)

**I**

Mr. Anthony Fortuna was formerly employed as a contract electrician by General Electric Company at Southern Nuclear Company's Hatch Nuclear Plant from February 16 though March 27, 2006.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) session conducted on June 6, 2008.

**II**

An investigation was initiated by the NRC Office of Investigations (OI) on September 27, 2006, to determine whether Mr. Fortuna willfully provided materially inaccurate information to the Hatch Nuclear Plant in order to gain unescorted access to the Plant. Based on the evidence developed during the investigation, the NRC staff concluded that on February 6, 2006, in his response to a Personal History Questionnaire, Mr. Fortuna deliberately failed to disclose that he had previously tested positive on an employer's drug test. As a result, he gained unescorted access to the protected area of the Hatch Nuclear Plant from February 16 through March 27, 2006.

In a letter dated March 13, 2008, the NRC staff advised Mr. Fortuna that his actions, as described above, constituted an apparent violation of 10 CFR 50.5, ''Deliberate misconduct.'' This regulation states, in relevant part, that an employee of a contractor for a licensee who provides goods or services that relate to a licensee's activities conducted under 10 CFR part 50, may not deliberately submit to a licensee or a licensee's contractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The failure to disclose the prior, positive drug test was material because it prevented the licensee (Southern Nuclear Company) from taking the information from this disclosure into consideration when determining Mr. Fortuna's trustworthiness and reliability prior to granting him access to the Hatch Nuclear Plant. The letter also informed Mr. Fortuna that he could address the apparent violation by requesting a predecisional enforcement conference, submitting a response in writing or by requesting Alternative Dispute Resolution (ADR) with the NRC. Mr. Fortuna requested ADR.

**III**

On June 6, 2008, the NRC and Mr. Fortuna met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consist of the following:

1. Mr. Fortuna agrees that his actions, as described above, were in violation of 10 CFR 50.5, and he acknowledges the seriousness of this matter and the potential impact his actions had on the ability of NRC licensees to establish and maintain an effective access authorization program.

2. Should he become involved in licensed activities in the future, Mr. Fortuna agrees to comply with all licensee and regulatory requirements, including the requirement to accurately complete documentation associated with gaining access authorization to NRC licensed facilities.

3. Although Mr. Fortuna acknowledges that his failure to disclose the prior positive drug test was a deliberate act undertaken for the purpose of obtaining employment at the Hatch plant, he also agrees to seek all necessary assistance in gaining clarification of questions contained in access authorization and other licensee supplied documentation required to be completed for employment at the licensee's facility, should he become involved in licensed activities in the future.

4. The NRC and Mr. Fortuna agree that the above elements will be incorporated into a Confirmatory Order.

5. In consideration of the above, the NRC agrees to exercise enforcement discretion to forego issuance of a Notice of Violation to Mr. Fortuna (IA–07–069).

On June 6, 2008, Mr. Fortuna consented to issuance of this Order with the commitments, as described in Section V below. Mr. Fortuna further agreed that this Order is to be effective upon issuance and that he has waived his right to a hearing.

**IV**

Since Mr. Fortuna has agreed to take actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that Mr. Fortuna's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Mr. Fortuna's commitments be confirmed by this Order. Based on the above and Mr. Fortuna's consent, this Order is immediately effective upon issuance.

**V**

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered, effective immediately:*

a. Should he become involved in licensed activities in the future, Mr. Fortuna agrees to comply with all licensee and regulatory requirements, including the requirement to accurately complete documentation associated with gaining access authorization to NRC licensed facilities.

b. Although Mr. Fortuna acknowledges that his failure to disclose the prior positive drug test was a deliberate act undertaken for the purpose of obtaining employment at the Hatch plant, he also agrees to seek all necessary assistance in gaining clarification of questions contained in access authorization and other licensee supplied documentation required to be completed for employment at the licensee's facility, should he become involved in licensed activities in the future.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Fortuna of good cause.

**VI**

Any person adversely affected by this Confirmatory Order, other than Mr. Fortuna, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

0001, and include a statement of good cause for the extension.

If a person other than Mr. Fortuna 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) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person adversely affected by this Order may, within 20 days of the issuance of this order, in addition to requesting a hearing, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error. The motion must state with particularity the reasons why the Order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on.

A request for a hearing or to set aside the immediate effectiveness of this Order must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August 28, 2007 (72 FR 49139) and was codified in pertinent part at 10 CFR part 2, subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

## VII

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 3rd day of July, 2008.

For the Nuclear Regulatory Commission.

**Luis A. Reyes,**

*Regional Administrator.*

[FR Doc. E8–16365 Filed 7–16–08; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 52–017]**

## Virginia Electric And Power Company, D/B/A Dominion Virginia Power, and Old Dominion Electric Cooperative North Anna Nuclear Station Unit 3 Combined License Application; Correction and Supplement to Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Correction and Supplement.

**SUMMARY:** This document corrects and supplements a Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process (regarding an application for a combined license) published in the **Federal Register** on March 13, 2008 (73 FR 13589). This action is necessary: (1) To correctly identify the document the Nuclear Regulatory Commission (NRC) staff intends to prepare, the applicants for the combined license (COL) and the matters that the scoping process is intended to accomplish, (2) to inform the public and other scoping participants that alternative sites will not be considered in the review of the staff of the U.S. Nuclear Regulatory Commission (NRC or Commission) or in the environmental impact statement (EIS) prepared in connection with the COL application, and (3) to reopen the scoping comment period so as to provide the public with an opportunity to participate in the environmental scoping process, as described in 10 CFR 51.29, in regard to the correctly identified matters that the scoping process is intended to accomplish. With respect to item (3), this action provides thirty (30) days from the date of this Notice for the submission of written comments on the scope of the North Anna Unit 3 COL application environmental review. Comments should be submitted in accordance with the procedures specified in the **ADDRESSES** section.

**DATES:** The scoping comment period is reopened for thirty (30) days and closes on August 15, 2008.

**SUPPLEMENTARY INFORMATION:** This document corrects a notice published on March 13, 2008 (73 FR 13589). The Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process is corrected as follows:

(1) On page 13589, second column, the heading is corrected to read, ''Virginia Electric and Power Company d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative; North Anna Power Station Combined License Application; Notice of Intent to Prepare a Supplement to the Early Site Permit Environmental Impact Statement.''

(2) On page 13589, second column, the first complete paragraph, the first two lines, replace ''Dominion Nuclear Power, LLC (Dominion)'' with ''Virginia Electric and Power Company, doing business as Dominion Virginia Power (DVP or Dominion), and Old Dominion Electric Cooperative (ODEC).''

(3) On page 13590, in the first column, the second complete paragraph through paragraph i are removed, and replaced with the following:

On November 27, 2007, the U.S. Nuclear Regulatory Commission (NRC) issued ESP–003 to Dominion Nuclear North Anna, LLC, for the North Anna ESP Site (the site of proposed Unit 3), located in Louisa County, near Lake Anna, approximately 40 miles north northwest of Richmond, Virginia. An early site permit (ESP) is an NRC approval of a site as suitable for construction and operation of one or more new nuclear units. The NRC's detailed review of the environmental impacts of constructing and operating the proposed North Anna Unit 3 is documented in NUREG–1811, ''Environmental Impact Statement for an Early Site Permit at the North Anna ESP Site,'' dated December 2006. Pursuant to NRC regulations in 10 CFR 51.50(c)(1), a COL applicant referencing an ESP need not submit information or analyses regarding environmental issues that were resolved in the ESP EIS, except to the extent the COL applicant has identified new and significant information regarding such issues. Pursuant to 10 CFR 52.39, matters resolved in the ESP proceedings are considered to be resolved in any subsequent proceedings, absent identification of new and significant information.

The application dated November 27, 2007, for a COL for North Anna Unit 3 submitted by Virginia Electric and Power Company d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative (Applicants) references the ESP for the North Anna ESP site, ESP–003. For a COL application that references an ESP, the NRC staff, pursuant to 10 CFR 51.75(c), prepares a supplement to the ESP EIS in accordance with 10 CFR 51.92(e). Accordingly, the purpose of this notice is to inform the public that the NRC staff will be preparing a supplement to NUREG–1811, the ESP Final EIS, in support of the review of the COL application for North Anna Unit 3 at the North Anna ESP site described in ESP–003 referenced in the COL application, and to provide the public an opportunity to participate in the environmental scoping process, as described in 10 CFR 51.29.

In accordance with 10 CFR 51.45 and 10 CFR 51.50(c)(1), the Applicants submitted an environmental report (ER) as part of the COL application, which need not contain information or analysis submitted in the ER for the ESP stage or resolved in the final EIS for the ESP stage. The ER for the COL stage, in addition to the environmental information and analyses otherwise required must provide:

a. Information to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the ESP;

b. Information to resolve any significant environmental issue that was not resolved in the ESP;

c. New and significant information related to impacts of construction and operation that were resolved in the ESP;

d. A description of the process used to identify new and significant information regarding the NRC's conclusions in the EIS for the ESP; and

e. A demonstration that all environmental terms and conditions that have been included in the ESP will be satisfied by the date of issuance of the combined license.

**ADDRESSES:** The COL ER is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Electronic Reading Room (ERR) link. The accession number in ADAMS for the ER is ML073321238.

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at (800) 397–4209 or (301) 415–4737, or by sending an e-mail to *pdr.resource@nrc.gov.* The application may also be viewed on the Internet at: *http://www.nrc.gov/reactors/new-licensing/col/north-anna.html.* In addition, the Jefferson-Madison Regional Library in Mineral, Virginia; Hanover Branch Library in Hanover, Virginia; Orange County Library in Orange, Virginia; Salem Church Library in Fredericksburg, Virginia; and C. Melvin Snow Memorial Branch Library

in Spotsylvania, Virginia have agreed to make the ER available for public inspection.

The following key reference documents related to the COL application and the NRC staff's review process are available through the NRC's Web site at *http://www.nrc.gov:*

a. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,

b. 10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants,

c. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants,

d. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process,

e. Fact Sheet on Nuclear Power Plant Licensing Process,

f. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations,

g. Regulatory Guide 1.206, Combined License Applications for Nuclear Power Plants,

h. NRR Office Instruction LIC–203, Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues, and

i. NUREG–1811, Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP Site (Dec. 2006).

The regulations, NUREG-series documents, regulatory guides, and fact sheet can be found under Document Collections in the Electronic Reading Room on the NRC Web page.

Finally, Office Instruction LIC–203 can be found in ADAMS in two parts under accession numbers ML011710073 (main text) and ML011780314 (charts and figures).

This notice advises the public that the NRC intends to gather the information necessary to prepare a supplement to the ESP EIS related to the review of the application for a COL at the North Anna COL site in accordance with 10 CFR 51.92(e).

This notice is being published in accordance with the National Environmental Policy Act (NEPA) and NRC regulations found in 10 CFR part 51. The NRC will first conduct a scoping process for the supplement to the ESP EIS and, as soon as practicable thereafter, will prepare a draft supplement for the ESP EIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. Pursuant to NRC regulations in 10 CFR 51.92(e), the scoping process for the supplemental EIS to the ESP Final EIS will be used to accomplish the following:

a. Identification of the economic, technical, and other benefits and costs of the proposed action, to the extent that the EIS for the ESP did not include an assessment of these benefits and costs;

b. Identification of other energy alternatives, to the extent that the EIS for the ESP did not include an assessment of energy alternatives;

c. Identification of the issues related to the impacts of construction and operation of the facility that were not resolved in the ESP proceeding; and

d. Identification of the issues related to the impacts of construction and operation that were resolved in the ESP proceeding but where new and significant information exists, including but not limited to, new and significant information demonstrating that the design of the facility falls outside the site characteristics and design parameters specified in the ESP.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Dominion;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who has submitted a petition for leave to intervene.

In light of the above information, the NRC staff has determined to reopen the scoping comment period for thirty (30) days to enhance the ability of members of the public to participate in the scoping process. Members of the public may send written comments on the environmental scope of the North Anna COL application review to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and should cite the publication date and page number of this **Federal Register** notice. Written comments should be postmarked by August 15, 2008. Comments may also be delivered to Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m., during Federal workdays. Electronic comments may be sent via e-mail to *NORTHANNA.COLAEIS@nrc.gov.* To be considered in the scoping process, comments should be received by the end of the scoping comment period, which is August 15, 2008. The NRC staff is considering all comments submitted in response to the March 13, 2008, notice, and members of the public need not resubmit any comments previously submitted. In addition, participation in the scoping process for the supplement to the ESP EIS does not entitle participants to become parties to the proceeding to which the supplement to the EIS relates.

The NRC staff will prepare and issue for comment the draft supplemental EIS, which will be the subject of separate notices and a public meeting. A copy of the draft supplement to the ESP EIS will be available for public inspection at the above-mentioned address, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC staff will prepare a final supplement to the ESP EIS, which will also be available for public inspection.

Information about the scoping process and development of the supplement to ESP EIS may be obtained from Ms. Alicia Williamson, Environmental Project Manager, by phone at (301) 415–1878 or via e-mail at *Alicia.Williamson@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of July, 2008.

For the U.S. Nuclear Regulatory Commission.

**Scott C. Flanders,**

*Director, Division of Site and Environmental Reviews, Office of New Reactors.*

[FR Doc. E8–16444 Filed 7–16–08; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of an Existing Information Collection: Court Orders Affecting Retirement Benefits

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of an existing information collection. The regulations describe how former spouses give us written notice of a court order requiring us to pay benefits to the

former spouse. Specific information is needed before OPM can make court-ordered benefit payments.

Approximately 19,000 former spouses apply for benefits based on court orders annually. We estimate it takes approximately 30 minutes to collect the information. The annual burden is 9,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and

Brenda Aguilar, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

*For Information Regarding Administrative Coordination—Contact:* Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management,

**Howard Weizmann,**

*Deputy Director.*

[FR Doc. E8–16257 Filed 7–16–08; 8:45 am]

**BILLING CODE 6325–38–P**

## POSTAL SERVICE

### Privacy Act of 1974; System of Records

**AGENCY:** Postal Service™.

**ACTION:** Notice of modification to an existing system of records.

**SUMMARY:** The Postal Service proposes to revise the existing system of records entitled ''Emergency Management Records 500.300.'' The modifications amend an existing routine use to further clarify how records relating to USPS employees and individuals responding to, or affected by, natural disasters or manmade hazards are disclosed to government agencies or disaster relief organizations.

**DATES:** The revision will become effective without further notice on August 18, 2008 unless comments received on or before that date result in a contrary determination.

**ADDRESSES:** Comments may be mailed or delivered to the Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., Room 5821, Washington, DC 20260–2200. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Jane Eyre, Manager, Records Office, 202–268–2608.

**SUPPLEMENTARY INFORMATION:** This notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. The Postal Service has reviewed its systems of records and has determined that the Emergency Management Records system should be revised to modify existing routine uses of records maintained in the system, including categories of individuals, categories of records in the system, and the purposes of such uses. Routine use for categories of individuals covered by the system will be revised to provide clarification on how the information is disclosed during natural disasters and manmade hazards.

The Postal Service does not expect this amended notice to have any adverse effect on individual privacy rights.

''Privacy Act System of Records USPS 500.300'' was originally published in the **Federal Register** on April 29, 2005 (70 FR 22518).

The Postal Service proposes amending the system as shown below:

**USPS 500.300 Emergency Management Records**

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM; CATEGORIES OF RECORDS IN THE SYSTEM; PURPOSES; ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES, RETENTION AND DISPOSAL, SYSTEM MANAGER(S) AND ADDRESS, NOTIFICATION PROCEDURE, AND RECORD SOURCE CATEGORIES:**

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

* * * * *

*[Renumber existing item 2 as 3, add a new item 2 and 4 to read as follows:]*

2. Household member of USPS employees and other individuals having emergency management responsibilities officially designated by the Postal Service to mitigate, prepare for, respond to, or recover from any natural disaster or manmade hazard.

4. Individuals whose names have been provided to the Postal Service by government agencies or disaster relief organizations as a result of a disaster or manmade hazard.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

* * * * *

*[Revise items 2 and 4 to read as follows:]*

2. Medical fitness and surveillance information: Records related to medical documentation such as receipt of prophylaxis, tests, including determinations of fitness to wear protective equipment, and surveillance for exposure to hazards.

* * * * *

4. Evacuee information: Records of individuals who are impacted by natural disasters or manmade hazard, such as name; postal assignment information (if USPS employee); home, work, and emergency contact information; home and work address; location in facility and activities prior to evacuation; route of exit from facility; rallying point; and emergency medical treatment administered to evacuees.

**PURPOSE(S):**

*[Revise to read as follows:]*

1. To permit collaboration among officially designated individuals who are responsible for mitigation of, preparation for, response to, and recovery from any natural disaster or manmade hazard involving the Postal Service.

2. To satisfy federal requirements for the training, fitness testing, and medical surveillance of individuals in response to a natural disaster or manmade hazard involving the Postal Service.

3. To test for the exposure of individuals to hazards.

* * * * *

5. To assess the likelihood of an individual's exposure to a hazard and to contact the individual with important health-related information.

*[Insert new item 6 as follows:]*

6. To provide information about disaster recovery programs and services to individuals affected by a natural disaster or manmade hazard.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Standard routine uses 1 through 9 apply.

*[Revise to read as follows:]*

a. Medical records may be disclosed to an individual's private treating physician, to medical personnel retained by USPS, and to public health agencies to provide medical examinations, medications, or treatment to individuals covered by this system of records.

* * * * *

**RETENTION AND DISPOSAL:**

* * * * *

*[Revise to read as follows:]*

2. Medical documentation including fitness and medical surveillance information is retained 30 years from the date of collection.

3. Evacuee information is retained 5 years from the date of collection.

**THE SYSTEM MANAGER(S) AND ADDRESS:**

*[Add the following entries:]*

Chief Postal Inspector, United States Postal Inspection Service, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

Senior Vice President, Intelligent Mail and Address Quality, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

Manager, Safety, Security, Emergency Planning, United States Postal Service Office of Inspector General, 1735 N. Lynn Street, Arlington, VA 22209.

*[Delete the following entry:]*

The Vice President, Emergency Preparedness.

**NOTIFICATION PROCEDURE:**

*[Revise to read as follows:]*

Current and former employees and contractors wanting to know if information about them is maintained in this system of records must address inquiries to the facility head where currently or last employed. Headquarters employees or contractors must submit inquiries to the chief postal inspector. Requests must include full name, Social Security Number or Employee Identification Number, and employment or contract dates. Individuals from whom evacuee information may have been collected must address inquiries to head of the facility from which they were evacuated. Household members of current or former field employees and other individuals having emergency management responsibilities officially designated by the Postal Service must address inquiries to the facility head where the postal employee in their household is currently or was last employed. Household members of current or former Headquarters employees and other individuals having emergency management responsibilities officially designated by the Postal Service must submit inquiries to the Chief Postal Inspector.

**THE RECORD SOURCE CATEGORIES:**

*[Revise to read as follows:]*

Employees; contractors; medical staff of the Postal Service; designated contractors; public health agencies; emergency response agencies, providers, and first responders; individuals who are evacuated in the event of a natural disaster or manmade hazard; and household members of USPS employees and other individuals having emergency management responsibilities officially designated by the Postal Service.

* * * * *

**Neva R. Watson,**

*Attorney, Government Relations, FOIA, and Privacy.*

[FR Doc. E8–16286 Filed 7–16–08; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Privacy Act of 1974; System of Records

**AGENCY:** Postal Service ™.

**ACTION:** Notice of modification to an existing system of records.

**SUMMARY:** The Postal Service proposes to revise the existing system of records entitled, ''Address Change, Mail Forwarding, and Related Services, 800.000.'' The modification clarifies the existing routine use relating to disclosure of customers' temporary changes of address to mailers; disclosure of changes of address to the American Red Cross; obtaining and sharing lists of individuals affected by disasters from other government agencies; disclosure of changes of address for domestic violence shelters; and allowances for alternative methods of customer authentication for the submission of change-of-address (COA) requests in times of emergencies as well as in the regular course of business.

*Background:* The basic function of the United States Postal Service® at all times, and especially during an emergency, is to bind the nation together through the delivery of postal services to the American public. The severity and magnitude of past catastrophic events have led to an evaluation of our records management policies. After careful review, the Postal Service believes that revisions to certain policies regarding disclosure of temporary changes of address to mailers, as well as disclosure of address information to the American Red Cross and other government agencies would be helpful, promote clarity and improve the provision of services to persons displaced by catastrophic events. Modifications to the system of records will be reflected in Categories of Individuals Covered by the System; Categories of Records in the System; Purposes of Such Uses; and Storage, Retention, and Disposal. The record source(s) for this system has also been amended to include commercially available source(s) of customer dates of birth. Date of birth information may be collected and used for verification purposes in the event credit/debit card information is not available for electronically submitted changes of address, and only in the event of a natural or manmade disaster as determined by the Postal Service. As a form of verification, credit/debit card information is currently required for both Internet and telephone COA submissions. As a way to accommodate the customer in times of disaster, and to maintain a level of protection for Postal Service customers from fraudulent submission, an alternative method (providing date of birth) was developed as a form of identification and verification.

In addition, the Postal Service continues to encourage the use of USPS.com® for secure and convenient online change-of-address submissions. The Postal Service currently requires a valid credit/debit card to authenticate a customer and to complete a change-of-address request online. We have found that many customers wish to use our online service; however, they are unable to because they do not possess the appropriate credit/debit card required for the authentication process. In order to accommodate those customers, the Postal Service plans to pilot test an alternative authentication option for online change-of-address submissions. The objective of the test is to determine, if given a choice, which types of identification customers prefer to provide as a method of authentication. For this test, customers will be offered a choice of authentication methods. They may continue to provide a credit/debit card OR as an alternative, they may choose to provide their driver's state and license number and their date of birth. If customers choose the latter, the customers' driver's state and license number and date of birth, along with their name and previous address, will be validated through the use of an authorized commercial database.

The test will be conducted for a limited period of time and will include a small sample set of customers requesting to change their address on USPS.com. At the completion of the test period, results will be analyzed to determine if the objectives have been met. If the test is determined to be successful, this process may be implemented nationally.

The privacy and security of the mail, including the change-of-address process is the core of the Postal Service brand. Over the course of its history, the Postal Service has built a trusted brand with the public. New technology and

processes continue to be developed that bring added value and improved customer service to our networks. As always, the Postal Service will only use technology, or adapt technology, in a way that ensures that the privacy and security of the mail and its customers are maintained at the highest levels. The current proposal for change-of-address authentication is no exception. The USPS has carefully analyzed the need, usage, and benefits of an alternative authentication method, while establishing procedures that would properly address privacy and security needs.

The Postal Service has considered and incorporated privacy and security features regarding use of commercial source(s) for the collection and verification of driver's license information and date of birth. The Postal Service has limited the type and amount of data provided to the commercial source(s) to only name, previous address, date of birth, driver's state and license number (for non-emergency) and telephone number. The commercial source(s) will purge all personal information once the transaction is completed and will limit the data returned. No personal information will be returned; output fields will only contain confirmation of authentication.

In emergency situations, the Postal Service automated system will permit customers to enter their name and date of birth and will confirm this information. The customers' entry will be securely transmitted to the commercial database for verification. Strict limitations have also been placed around the use of the data by the Postal Service, as well as how data are provided to the commercial source(s).

When customers enter their information online at USPS.com to request either an emergency change of address or for the alternative authentication test, which are both covered by the Privacy Act, they will be provided details on how their information is protected through the Privacy Act Statement. If customers do not have a credit/debit card number to use as a form of identification/verification, they will be asked for their date of birth as an alternative in an emergency, or both driver's state and license number and date of birth as an additional authentication method in non-emergency situations. Customers may decline to provide this information and submit their change-of-address request via hard copy mail.

Two other revisions are also included in this notice. First, online user information for Internet change-of-address requests (to include Internet Protocol (IP) address, domain name, operating system versions, browser version, date and time of connection, and geographic location) is listed as a new record category. This information may be disclosed to law enforcement personnel in order to aid the United States Postal Inspection Service to investigate cases of fraudulent online activity.

Second, the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796, requires the Postal Service to ''secure the confidentiality of domestic violence shelters and abused persons' addresses.'' To further provide protection for address changes for domestic violence shelters and Court Ordered Protected Individuals (COPI), the Postal Service will revise routine uses ''a'' and ''b'' to clarify that domestic violence shelters may limit disclosure of their change-of-address information.

**DATES:** The revision will become effective without further notice on August 18, 2008 unless comments received on or before that date result in a contrary determination.

**ADDRESSES:** Comments may be mailed or delivered to the Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., Room 5821, Washington, DC 20260–2200. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Jane Eyre, Manager, Records Office, 202–268–2608.

**SUPPLEMENTARY INFORMATION:** This notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. The Postal Service has reviewed its systems of records and has determined that the Address Change, Mail Forwarding, and Related Services system should be revised to modify existing routine uses of records maintained in the system, including system location; categories of individuals covered by the system; categories of records in the system; purposes of such uses; storage, retention, and disposal; system manager(s) and address; and record source categories. Routine use for categories of users and the purposes of such uses covered by the system will be revised to provide clarification on how the information is disclosed during natural disasters and manmade hazards.

The Postal Service does not expect this amended notice to have any adverse effect on individual privacy rights.

''Privacy Act System of Records USPS 800.000'' was originally published in the **Federal Register** on April 29, 2005 (70 FR 22517).

The Postal Service proposes amending the system as shown below:

**USPS 800.000, Address Change, Mail Forwarding and Related Services**

**SYSTEM LOCATION:**

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM; CATEGORIES OF RECORDS IN THE SYSTEM; PURPOSES; ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES; STORAGE, RETENTION AND DISPOSAL; SYSTEM MANAGER(S); AND ADDRESS AND RECORD SOURCE CATEGORIES:**

* * * * *

**SYSTEM LOCATION:**

[Revise to read as follows:]

USPS National Customer Support Center (NCSC), Computerized Forwarding System (CFS) sites, Post Offices, USPS Processing and Distribution Centers, USPS IT Eagan Host Computing Services Center, and contractor sites.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

[Revise to read as follows:]

Customers requesting change of address, mail forwarding, or other related services either electronically, in writing, or via telephone. Customers who are victims of a natural disaster who request mail forwarding services through the Postal Service or the American Red Cross.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Item 2

[Revise item 2 to read as follows, renumber existing item 8 as item 9, and add new item number 8 as follows:]

* * * * *

2. Verification and payment information: Credit and/or debit card number, type, and expiration date; or date of birth and driver's state and license number; information for identity verification; and billing information. Customers who are victims of a natural disaster who request mail forwarding service electronically may be required to provide date of birth for verification if credit and/or debit card information is unavailable.

8. Online user information: Internet Protocol (IP) address, domain name, operating system versions, browser version, date and time of connection, and geographic location.

9. Protective Orders.

**PURPOSE(S):**

* * * * *

[Revise item 3 to read as follows:]

3. To provide address information to the American Red Cross or other disaster relief organization about a customer who has been relocated because of disaster.

* * * * *

[Add item 5 to read as follows:]

5. To support investigations related to law enforcement for fraudulent transactions.

**ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

[Revise to read as follows:]

Standard routine uses 1 through 7, 10, and 11 apply. In addition:

a. Disclosure upon request. The new address of a specific business or organization that has filed a permanent change-of-address order may be furnished to any individual on request. (**Note:** The new address of an individual or family will not be furnished pursuant to this routine use, unless authorized by one of the standard routine uses listed above or one of the specific routine uses listed below.) If a domestic violence shelter has filed a letter on official letterhead from a domestic violence coalition stating (i) that such domestic violence coalition meets the requirements of 42 U.S.C. 10410 and (ii) that the organization filing the change of address is a domestic violence shelter, the new address shall not be released except pursuant to routine use d, e, or f pursuant to the order of a court of competent jurisdiction.

b. Disclosure for Address Correction. Disclosure of any customer's new permanent address may be made to a mailer, only if the mailer is in possession of the name and old address: From the National Change-of-Address Linkage (NCOA$^{Link®}$) file if the mailer is seeking corrected addresses for a mailing list; from the Computerized Forwarding System (CFS), from the Postal Automated Redirection System (PARS) if a mailpiece is undeliverable as addressed, or from the Locatable Address Conversion System if an address designation has been changed or assigned. Copies of change-of-address orders may not be furnished. In the event of a disaster or manmade hazard, temporary address changes may be disclosed to a mailer when, in the sole determination of the Postal Service, such disclosure serves the primary interest of the customer, for example, to enable a mailer to send medicines directly to the customer's temporary address, and only if the mailer is in possession of the customer's name and permanent address. If a domestic violence shelter has filed a letter on official letterhead from a domestic violence coalition stating (i) that such domestic violence coalition meets the requirements of 42 U.S.C. 10410 and (ii) that the organization filing the change of address is a domestic violence shelter, the new address shall not be released except pursuant to routine use d, e, or f pursuant to the order of a court of competent jurisdiction.

* * * * *

[Add item i as follows:]

i. Disclosure to a disaster relief organization. Any customer's permanent or temporary change of address may be disclosed to the American Red Cross or other disaster relief organizations, if that address has been impacted by disaster or manmade hazard.

**STORAGE:**

[Revise to read as follows:]

Records generated from the source document are recorded on the Forwarding Control System file server and on tapes at CFS units. Electronic change-of-address records and related service records are also stored on disk and/or magnetic tape in a secured environment. Change-of-address records are consolidated in a national change-of-address (NCOA) file at the USPS IT Eagan Host Computing Services Center. Selected extracts of NCOA are provided in the secure data format represented by the NCOA$^{Link}$ product to a limited number of firms under contract or license agreement with USPS. Records pertaining to move-related services are also transmitted to specific service providers, including government agencies and private companies under contract to USPS.

**RETENTION AND DISPOSAL:**

[Revise to read as follows:]

1. National change of address and mail forwarding records are retained 4 years from the effective date.

2. Delivery units access COA records from the change-of-address Reporting System database, which retains 2 years of information from the COA effective date. The physical change-of-address order is retained in the CFS unit for 30 days if it was scanned, or 18 months if it was manually entered into the national database.

3. Online user information may be retained for 12 months. Records existing on paper are destroyed by shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

**SYSTEM MANAGER(S) AND ADDRESS:**

[Revise to read as follows:]

Vice President, Retail Operations, United States Postal Service, 475 L'Enfant Plaza, SW., Washington DC 20260.

**RECORD SOURCE CATEGORIES:**

[Revise to read as follows:]

Customers, personnel, service providers, and, for call center operations, commercially available sources of names, addresses, telephone numbers. For emergency change-of-addresses only, commercially available sources of names, previous addresses, and dates of birth. For alternative authentication sources of names, previous and new addresses, dates of birth, and driver's state and license number.

* * * * *

**Neva R. Watson,**

*Attorney, Government Relations, FOIA and Privacy.*

[FR Doc. E8–16343 Filed 7–16–08; 8:45 am]

BILLING CODE 7710–12–P

## RAILROAD RETIREMENT BOARD

### Correction to Agency Forms Submitted for OMB Review, Request for Comments

**SUMMARY:** In the document appearing on pages 734059 & 734060, FR Doc. E8–13431, Agency Forms Submitted for OMB Review, Request for Comments dated June 16, 2008, the Railroad Retirement Board is making a correction to add omitted language to the **SUMMARY** section that states the respondents' obligation to respond to RRB Form(s) UI–38, UI Claimant's Report of Efforts to Find Work, UI–38s, School Attendance and Availability Questionnaire, and ID–8k, Letter to Union Representative.

*Correction of Publication:* The RRB adds the following language to the end of the **SUMMARY** section, ''Completion of Form(s) UI–38, UI Claimant's Report of Efforts to Find Work and UI–38s, School Attendance and Availability Questionnaire is required to obtain or retain benefits. Completion of Form ID–8k, Letter to Union Representative, is voluntary''.

**Charles Mierzwa,**

*Clearance Officer.*

[FR Doc. E8–16335 Filed 7–16–08; 8:45 am]

BILLING CODE 7905–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release Nos. 33–8942; 34–58146; File No. 265–24]**

## Advisory Committee on Improvements to Financial Reporting

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of Meeting of SEC Advisory Committee on Improvements to Financial Reporting.

**SUMMARY:** The Securities and Exchange Commission Advisory Committee on Improvements to Financial Reporting is providing notice that it will hold a public telephone conference meeting on Thursday, July 31, 2008 beginning at 1 p.m. Members of the public may take part in the meeting by listening to the Webcast accessible on the Commission's Web site at *http://www.sec.gov* or by calling telephone number (888) 285–4585 and using code number 578070. Persons needing special accommodations to take part because of a disability should notify a contact person listed below.

The agenda for the meeting includes adoption of the Committee's final report to the Commission. The Committee may also discuss written statements received and other matters of concern. The public is invited to submit written statements for the meeting, including any comments on the draft final report discussed at the Committee's July 11, 2008 open meeting available at *http://www.sec.gov/about/offices/oca/acifr.shtml.*

**DATES:** Written statements should be received on or before July 22, 2008.

**ADDRESSES:** Written statements may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet submission form *(http://www.sec.gov/rules/other.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 265–24 on the subject line.

*Paper Comments*

- Send paper statements in triplicate to Florence E. Harmon, Acting Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–24. This file number should be included on the subject line if e-mail is used. To help us process and review your statements more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (*http://www.sec.gov/about/offices/oca/acifr.shtml*). Statements and comments also will be 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 statements 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:** James L. Kroeker, Deputy Chief Accountant, or Shelly C. Luisi, Senior Associate Chief Accountant, at (202) 551–5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6561.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, § 10(a), James L. Kroeker, Designated Federal Officer of the Committee, has approved publication of this notice.

Dated: July 11, 2008.

**Florence E. Harmon,**

*Acting Committee Management Officer.*

[FR Doc. E8–16351 Filed 7–16–08; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58131; File No. SR–BSE–2008–37]**

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program for Quarterly Options Series on the Boston Options Exchange Facility

July 9, 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 8, 2008, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by 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 is proposing to extend until July 10, 2009, the current pilot program applicable to the Quarterly Options Series (''Pilot Program'') on the Boston Options Exchange (''BOX'') facility. The text of the proposed rule change is available on the Exchange's Web site (*http://www.bostonstock.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to extend through July 10, 2009, the Pilot Program on BOX to list options series that expire at the close of business on the last business day of a calendar quarter (''Quarterly Options Series'').[5] The Pilot Program is currently set to expire on July 10, 2008. Under the Pilot Program, BOX may open Quarterly Options Series on up to five (5) currently listed options classes that are either index options or options on exchange traded funds (or ''Exchange-Traded Fund Shares'').[6] BOX also may list Quarterly Options Series on any options classes that are selected

[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. 56086 (July 17, 2007), 72 FR 40182 (July 23, 2007) (SR–BSE–2007–36).

[6] *See* Section 3 of Chapter IV of the BOX Rules pertaining to Exchange-Traded Fund Shares.

by other securities exchanges that employ a similar pilot program under their respective rules.

The Exchange has selected the following five options classes to participate in the Pilot Program: the Standard & Poor's Depositary Receipts® (SPY); Powershares® QQQ Trust Series 1 (QQQQ); Diamonds® Trust Series 1 (DIA); iShares Russell 2000® Index Fund (IWM); and Select Sector SPDR®—Energy (XLE). The Exchange believes the Pilot Program has been successful and well received by its Participants and the investing public. Thus, the Exchange proposes to extend the Pilot Program through July 10, 2009.

In support of this proposed rule change, and as stipulated in the original Pilot Program proposal, the Exchange submitted to the Commission a report (''BOX Pilot Report'') under separate cover, along with a request for confidential treatment under the Freedom of Information Act, detailing the Exchange's experience with the Pilot Program.[7] The Exchange also submitted, in an addendum to its Report (''Addendum''), data required by the recent amendment to the Pilot Program permitting the listing of additional ETF Quarterly Option Series.[8] Specifically, the BOX Pilot Report contains data and written analysis regarding the five options classes included in the Pilot Program.

The Exchange represents that the Report and Addendum clearly demonstrate the extension of the Pilot Program for one year, through July 10, 2009, is warranted. The Exchange believes that there is sufficient investor interest and demand as reflected by strong trading volume. The Report and Addendum establish that the Pilot Program has provided investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the introduction of the Pilot Program. Finally, the Report and Addendum establish that the Pilot Program has not created capacity problems, nor should the proposed extension have an adverse impact on capacity.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[9] in general, and Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that an extension of the Pilot Program will result in a continuing benefit to investors, by allowing them to more closely tailor their investment decisions, and will allow the Exchange to further study investor interest in quarterly options.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has 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[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

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 the Exchange to continue the existing Pilot Program without interruption.[13] 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,

[7] As set forth in SR–BSE–2007–36, if the Exchange were to propose an extension, an expansion, or permanent approval of the Pilot Program, it would submit, along with any filing proposing such amendments to the Pilot Program, a report providing an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect, and would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Quarterly Option Series were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of BOX, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how BOX addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how BOX addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The report must be submitted to the Commission at least sixty (60) days prior to the expiration date of the Pilot Program.

[8] *See* Securities Exchange Act Release No. 57598 (April 1, 2008), 73 FR 18828 (April 7, 2008) (SR–BSE–2008–17) (notice of filing and immediate effectiveness of proposed rule change to amend Quarterly Options Series pilot program to permit the listing of additional series). In connection with any renewal or permanent approval of the Pilot Program, the Commission required the Exchange to include in its report an analysis of (1) the impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain Quarterly Options Series strikes that were otherwise eligible for delisting.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[13] 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).

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–BSE–2008–37 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–BSE–2008–37. 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–BSE–2008–37 and should be submitted on or before August 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–16348 Filed 7–16–08; 8:45 am]

**BILLING CODE 8010–01–P**

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58127; File No. SR–CBOE–2008–68]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Fees Schedule

July 9, 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 June 30, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule to establish fees for transactions in binary options on broad-based indexes and to amend its marketing fee program. The Exchange also proposes to make a technical amendment by deleting all references to the obsolete term ''RMM'' from its Fees Schedule. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.cboe.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has substantially 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

*Establish Transaction Fees for Binary Options*

The Exchange recently received approval to list and trade binary options on broad-based indexes, and the purpose of this rule change is to establish transaction fees for binary options on broad-based indexes.[5] The Exchange proposes to extend the existing fees for transactions in traditional index options to binary options on broad-based indexes. To affect the current proposal, the Exchange proposes to add a reference to ''binary options'' in Footnotes 1 and 6 in the CBOE Fees Schedule.

The amount of the transactions fees for binary options on broad-based indexes would be as follows:

- $0.20 per contract for Market-Maker, Designated Primary Market-Maker and Remote Market-Maker transactions;
- $0.20 per contract for member firm proprietary transactions;

The fees for broker-dealer transactions are as follows:

- $0.25 per contract for manually executed transactions other than OEX, XEO and SPX;
- $0.30 per contract for OEX or XEO;
- $0.40 per contract for SPX;
- $0.45 per contract for electronically executed transactions other than OEX, XEO and SPX (*i.e.*, broker-dealer orders that are automatically executed on the CBOE Hybrid Trading System);[6]

The fees for customer transactions shall be as follows:

- $0.18 per contract for transactions other than OEX, XEO, SPX, DXL and Volatility Indexes;
- $0.30 per contract for OEX or XEO;
- $0.35 per contract for SPX, premium < $1;
- $0.40 per contract for DXL and Volatility Indexes;
- $0.45 per contract for SPX, premium > or = $1;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 57850 (May 22, 2008), 73 FR 31169 (May 30, 2008) (SR–CBOE–2006–105).

[6] Broker-dealer manual and electronic transaction fees would apply to broker-dealer orders (orders with ''B'' origin code), non-member market-maker orders (orders with ''N'' origin code) and orders from specialists in the underlying security (orders with ''Y'' origin code).

• $0.30 per contract for Linkage Orders; and

• $0.10 per contract CFLEX surcharge fee.

In addition, a surcharge fee of $0.06 would apply to non-public customer transactions in binary options on OEX, XEO, SPX, and Volatility Indexes, and a surcharge fee of $0.10 would apply to non-public customer transactions in binary options on DJX, DXL, MNX, NDX, and RUT. These surcharge fees help the Exchange recoup license fees the Exchange pays to the different reporting authorities in order to list options on the respective broad-based indexes.

The Exchange's Liquidity Provider Sliding Scale [7] would apply to transaction fees in binary options, but the Exchange's marketing fee [8] would not apply. The Exchange believes the rule change would further the Exchange's goal of introducing new products to the marketplace that are competitively priced. In order to promote the launch of binary options on broad-based indexes, the Exchange proposes to waive the applicable transactions fees beginning with the launch of trading on July 1, 2008 through October 1, 2008.

*Amend Exchange's Marketing Fee Program*

CBOE also proposes to amend its marketing fee program to assess the fee in XSP options at the rate of $0.10 per contract. XSP options are options based on the S&P 500® Index and have 1/10th the value of the S&P 500 index options. CBOE currently assesses its marketing fee at the rate of $0.10 per contract in SPY options, which are options on the SPDR exchange-traded fund (ETF) which is designed to track the performance of the S&P 500® Index. CBOE believes that assessing the marketing fee in XSP will allow CBOE Market-Makers, e-DPMs, or DPMs to compete better for order flow in XSP options class if it assessed the marketing fee in it, just as it assesses the fee in SPY options. CBOE proposes to implement this change to the marketing fee program beginning on July 1, 2008. CBOE is not amending its marketing fee program in any other respects.

*Technical Change—Delete All References to ''RMM''*

CBOE also proposes to make a technical amendment throughout its Fees Schedule. Specifically, CBOE proposes to delete all references to ''RMM,'' in light of the recent approval of SR–CBOE–2007–120, which filing deleted reference to RMM in CBOE's rules among other changes.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@gov.* Please include File Number SR–CBOE–2008–68 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–2008–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–68 and should be submitted on or before August 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–16345 Filed 7–16–08; 8:45 am]

**BILLING CODE 8010–01–P**

[7] *See* Footnote 10 of the CBOE Fees Schedule.

[8] *See* Footnote 6 of the CBOE Fees Schedule.

[9] *See* Securities Exchange Act Release No. 57615 (April 3, 2008), 73 FR 19537 (April 10, 2008) (SR–CBOE–2007–120).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58139; File No. SR–ISE–2008–54]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 2 Thereto Relating to Changes to the Fee Schedule

July 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. On July 9, 2008, the ISE filed Amendment No. 1 to the proposed rule change. On July 9, 2008, the ISE withdrew Amendment No. 1 and filed Amendment No. 2 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

The ISE is proposing to amend its Schedule of Fees to extend two fee waivers and to remove reference to two expiring fee pilots. The amendment also simplifies the fee schedule by imbedding the ''comparison'' fee into the ''execution'' fee. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.ise.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

*Purpose*—The purpose of this proposed rule change is to extend the pilot fee waivers for Premium Products and Second Market options, adopt a new pilot fee waiver related to FX options, and remove reference to expiring pilot fee discounts. The Exchange also proposes to simplify the way in which certain current fees are stated in the fee schedule. These changes will be operative on July 1, 2008.

1. Pilot Extensions

First, ISE currently waives most customer transaction fees, with such waiver scheduled to expire on June 30, 2008.[3] In order to remain competitive in the market place, we propose to extend this waiver through June 30, 2009.

Second, pursuant to a pilot program, ISE offers a fee discount for certain orders of 7,500 contracts or more that are executed in the Exchange's Facilitation Mechanism.[4] Specifically, ISE waives (1) the execution and comparison fee on incremental volume above 7,500 contracts for Firm Proprietary orders, Non-ISE Market Maker orders, and Customer orders in Premium Products, and (2) the execution fee on incremental volume above 7,500 contracts for Customer orders in Second Market options.[5] The number of contracts at or under the threshold are charged as per the Exchange's Schedule of Fees. ISE believes that extending a fee cap for large-sized orders executed in its Facilitation Mechanism will help strengthen its competitive position and encourage members to use the Exchange's Facilitation Mechanism.

The current pilot program is set to expire on June 30, 2008. The Exchange proposes to extend the fee cap for another year, until June 30, 2009.

With regards to the two fee pilots that are being extended, the Exchange notes that it is making no substantive changes to the way the two fee pilots currently operate, other than to extend the date of operation through June 30, 2009.

2. New Pilot Fee Waiver for FX Options

The Exchange proposes to adopt a fee cap for large-size foreign currency (''FX'') options orders. Specifically, the Exchange proposes, for a one-year pilot expiring on June 30, 2009, to waive the transaction fee on incremental volume above 5,000 for single-sized FX options orders of at least 5,000 contracts. The number of contracts at or under the threshold are charged the constituent's prescribed execution fee. This waiver is for both Public Customer orders and Firm Proprietary orders. The ISE believes that that this fee cap for large-sized orders in FX options will encourage members to execute large-sized orders on the Exchange.

3. Pilot Expirations

The Exchange also proposes to amend its Schedule of Fees to remove from that schedule references to two pilot programs that will terminate on June 30, 2008 and that the Exchange is not extending. Pursuant to those pilots, the Exchange (1) capped and waived fees when a firm reached certain volume thresholds in options on the NASDAQ–100 Index Tracking Stock® (''QQQQ®'') and the iShares Russell 2000® Index Fund (''IWM''), and (2) capped and waived fees for members that achieved certain threshold levels in the Exchange's Facilitation Mechanism. In light of the Exchange's increase market share in QQQQ and IWM and the level of trading in its Facilitation Mechanism, achieved in large part due to these fee pilot programs, ISE does not believe there is a need to continue to provide a fee discount as an incentive to members.

4. Consolidation of Execution and Comparison Fees

Currently on the fee schedule, the Exchange separately itemizes execution fees and a comparison fee. The Exchange proposes to eliminate the comparison fee as a separate line item and instead imbed the fee into the execution fee. Historically, the Exchange has waived comparison fees in parallel with execution fees. Therefore, this change will not change the actual amount being charged to any members, but will simplify the fee schedule so that total transaction costs are more easily understood.

*Statutory Basis*—The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the fee changes proposed by this filing are reasonable in that, with regards to the fee waivers, the proposed rule change waives most fees for customer transactions and for certain

[3] *See* Securities Exchange Act Release No. 56055 (June 12, 2007), 72 FR 39648 (June 19, 2007) (SR–ISE–2007–52).

[4] *See* Securities Exchange Act Release No. 57129 (January 10, 2008), 73 FR 2963 (January 16, 2008) (SR–ISE–2008–1).

[5] The Exchange notes that there is no comparison fee for orders in Second Market options.

trades in FX Options; with regards to the fee pilot terminations, the Exchange believes there is no longer a need to provide an incentive to trade in those products or in the Exchange's Facilitation Mechanism; with regards to the fee consolidation, the proposed rule change will simplify the fee schedule. The Exchange notes that the fee changes are also equitably allocated in that they equally apply to all members of the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [6] and Rule 19b–4(f)(2) [7] thereunder because it establishes or changes a due, fee, or other charge imposed on members by ISE. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

**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–ISE–2008–54 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–54. 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 publicly available. All submissions should refer to File Number SR–ISE–2008–54 and should be submitted on or before August 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–16363 Filed 7–16–08; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

[8] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 9, 2008, the date on which the ISE submitted Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58145; File No. SR–NASDAQ–2008–016]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish Fees for Nasdaq Market Pathfinders Service

July 11, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq is filing with the Commission a proposed rule change to establish fees to make Nasdaq Market Pathfinders service available via either a Web-based data product or via a data feed that will provide aggregated market activity of certain market participants referred to as ''Pathfinders.''

The text of the proposed rule change is below. All text is new.

**7044. Nasdaq Market Pathfinders Service**

(a) The Nasdaq Market Pathfinders Service will allow participating subscribers to view a real time data product that tracks the aggregated market activity of certain market participants who are aggressively buying and/or selling.

(b) Standard Charge.

(1) 30-Day Free-Trial Offer. Nasdaq shall offer all new and potential new Nasdaq Market Pathfinders subscribers a 30-day waiver of the user fees for the service. This waiver may be provided only once to a specific new subscriber or potential subscriber.

(2) The following charges shall apply to Nasdaq Market Pathfinders subscribers and to new subscribers after the conclusion of the 30-day waiver period:

(A) Professional subscriber access to view and print the Web reports shall be available for a fee of $50/month;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(B) Non-professional subscriber access to view and print the Web reports shall be available for a fee of $10/month; and

(C) Access to the data feed shall be available to any subscriber for a fee of $2,500/month. Subsequent subscriber licenses will cost the fees set forth in (b)(1) and (2), above.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq proposes to establish fees for a new data service that tracks the aggregated buying and selling patterns of market participants, or ''Pathfinders,'' that are aggressively buying or selling stocks traded on Nasdaq transaction systems. Nasdaq has created the new product to address what it perceives to be a demand for a Nasdaq product that provides a real time indication of how aggressively thse market participants are buying or selling a particular stock.

To determine Pathfinders, Nasdaq identifies market participants that are taking a position (bullishly lengthening their position or bearishly shortening their position) over an extended period of time. The Nasdaq Market Pathfinders product will capture the aggregate sentiment of this well informed group by indicating the number of Pathfinders bullish versus bearish in a particular stock and the ratio of shares bought versus sold by Pathfinders.

The Nasdaq Market Pathfinders information will be updated periodically for every issue traded by Nasdaq. At each update, Nasdaq will identify Pathfinders over several time periods such as: the past five minutes, the past one hour, and the past two hours. Net trading activity is calculated for all market participants over such time periods and those that have been consistently lengthening or shortening their position in a stock over that time period are identified as Pathfinders.

Pathfinders are kept anonymous and the aggregation of their buy versus sell shares is used to determine whether this group is bullish or bearish on a particular security. Pathfinder information will be used in an aggregate manner that does not directly or indirectly identify a particular Pathfinder as the source of the information.

To calculate the Pathfinder statistics, Nasdaq begins by determining which market participants to designate as Pathfinders. To do this Nasdaq calculates the total shares bought and sold by each market participant in each security. Nasdaq then compares the number bought and sold, for example 9,000 shares bought and 1,000 shares sold (a buy-sell ratio of 9:1). A Pathfinder is a market participant that has an extreme buy-sell ratio, for example having a buy-sell ratio of 9:1 or 1:9. Any market participant meeting that standard will be considered to be a Pathfinder.

In the second stage, Nasdaq will calculate the aggregate buy-sell ratio for all the Pathfinders as a group. There must be a minimum of three Pathfinders identified in a stock for a time period. If fewer than three are identified, then Nasdaq will not distribute Pathfinders data because it could compromise the identity and buying and selling behavior of an individual market participant.

The aggregate buy-sell ratio for Pathfinders is expressed in two ways. The first is the ratio of the number of Pathfinders predominantly buying compared to Pathfinders predominantly selling. The second is the ratio of shares bought to shares sold by Pathfinders as a group. For example, if only one Pathfinder is buying and five are selling then the buy-sell ratio is 1:5 in the count of Pathfinders buying to selling. If the one Pathfinder buying has bought 100,000 shares while the five selling have sold only 10,000 shares total, then the ratio is 10:1 in the volume of Pathfinder buying to selling.

The Nasdaq Market Pathfinders service will provide subscribers with the ability to detect changes in market sentiment in stocks traded on Nasdaq transaction systems, and thereby to gauge market sentiment based on those buying and selling patterns. The information will be disseminated in a data feed that provides the current Pathfinders' situation for each stock over multiple time periods. In some stocks and time periods there will not be any market participants that qualify as Pathfinders. In those cases, the Nasdaq Market Pathfinders product will indicate a neutral situation.

There will be two main areas in which this service will be deployed. The first level of service will enable users to access the product through the web with a graphical user interface linked to the data. A single subscriber will be able to construct a variety of custom queries and view and print this data. The second level of service will allow a subscriber to gain direct access to the raw data via the Nasdaq Market Pathfinders data feed.

Given the purely voluntary nature of this service, Nasdaq anticipates that this filing will not be contentious in that no firm or individual will be forced to purchase the product or pay a fee to which they object. Further, the 30-day free-trial period will allow the subscriber community to assess the business use and value of the new service prior to making a decision whether or not to purchase the product for a longer period.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] 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 it does not unfairly discriminate between customers, issuers, brokers or dealers. Use of Pathfinders service is voluntary and the subscription fees will be imposed on all purchasers equally based on the professional/non-professional status of issuers and/or the level of service selected. The proposed fees will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and administering the service, among other things.

### *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, as amended.

### *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.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

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 No. SR–NASDAQ–2008–016 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2008–016 and should be submitted on or before August 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–16346 Filed 7–16–08; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58137; File No. SR–NYSE–2008–55]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 17 To Address Issues Related to Vendor Liability

July 10, 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 7, 2008, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE 17 to address issues related to vendor liability. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend NYSE Rule 17 to address issues related to vendor liability.

Background

Currently, NYSE Rule 17(a) provides:

> The Exchange shall not be liable for any damages sustained by a member, allied member or member organization growing out of the use or enjoyment by such member, allied member or member organization of the facilities afforded by the Exchange, except as provided in the rules.[5]

NYSE Rule 17 does not specifically address liability for any loss sustained by a member or member organization arising from use of any systems, services or facilities provided by a vendor to the Exchange.

Due to the highly diversified nature of the Exchange business and trading operations, the Exchange retains the services of various vendors in its regular course of business. Through this amendment, the Exchange proposes to amend NYSE Rule 17 to permit the Exchange to expressly provide in the contract with any vendor that it and/or its subcontractors of electronic systems, services or facilities are not liable for any loss sustained by a member or member organization arising from use of the vendor and/or subcontractor systems, services or facilities. The proposed amendment to NYSE Rule 17 would further require members and member organizations to indemnify the Exchange and its vendors and/or subcontractors.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* NYSE Rule 18 (Compensation in Relation to Exchange System Failure), which provides for compensation by the Exchange to members and member organizations for a loss sustained as a result of an NYSE systems failure, as defined by the Rule.

Proposed Amendment to NYSE Rule 17

In recent years, especially since the adoption of Regulation National Market System (''Reg. NMS''),[6] customers have demanded, and thus exchanges have prioritized, the delivery of faster and increasingly more innovative products for order entry and execution and the dissemination of market information. In order to provide this service, exchanges have made significant investments in technology, including an increase in the use of third-party facilities and services. Exchanges have increasingly come to rely on third-party vendors to provide additional facilities or services. Third-party vendors often provide similar facilities or services directly to broker-dealers and other customers under contracts that limit or indemnify the vendor's liability for use of its facilities or services. The use of vendors enables exchanges to increase their capacity to deliver faster and more efficient trading tools to market, with the ultimate beneficiaries being the investing public. In order for exchanges to remain competitive and provide a marketplace that removes impediments to, and perfects the mechanism of, a free and open market, it is imperative to have the ability to use third-party vendor services.

The Exchange believes that, where vendors provide the facilities and services directly to an exchange and not directly to the actual users, *i.e.*, the exchange members, vendors may find themselves exposed to a greater risk of liability from exchange members. The possibility of liability to end-users with whom they have no contractual relationship could result in vendors being unwilling to enter into agreements to provide their services to exchanges.

The Exchange therefore proposes to amend NYSE Rule 17 to incorporate as paragraph (b) of the Rule the provisions of American Stock Exchange (''Amex'') Rule 60—AEMI[7] (''Vendor Liability Disclaimer''), which provides as follows:

In connection with member or member organization use of any electronic system, service, or facility provided by the Exchange to members for the conduct of their business on the Exchange (i) the Exchange may expressly provide in the contract with any vendor providing all or part of such electronic system, service, or facility to the Exchange, that such vendor and its subcontractors shall not be liable to the member or member organization for any damages sustained by a member or member organization growing out of the use or enjoyment thereof by the member or member organization, and (ii) members and member organizations shall indemnify the Exchange and any vendor and subcontractor covered by subsection (i) above (and their directors, officers, employees and agents) with regard to any and all judgments, damages, costs, or losses of any kind (including reasonable attorneys' fees and expenses), as a result of any claim, action, or proceeding that arises out of or relates to the member or member organization's use of such electronic system, service, or facility.[8]

The Exchange believes that the proposed amendment to NYSE Rule 17 will allow the Exchange to continue to improve its services to its investors by allowing the Exchange to contract the services of premiere third-party vendors.

The Exchange also proposes to make a stylistic change to paragraph (a) of NYSE Rule 17 dealing with Exchange Liability. Specifically, the Exchange seeks to replace the reference to ''the rules'' with ''NYSE Rule 18,'' which directly addresses the issue of Exchange Liability.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule promotes just and equitable principles of trade and protects investors and the public interest. Furthermore, the proposed vendor liability rule removes impediments to and perfects the mechanism of a free and open market by providing disclaimer liability to vendors that assist the Exchange in providing faster delivery and increasingly more innovative facilities and services to Exchange customers. The Exchange believes that the provision of liability protection to third-party vendors and subcontractors of electronic systems, services, or facilities from liability for any damages sustained by a member or member organization arising from use of their systems will allow the Exchange to provide faster delivery and increasingly more innovative facilities and services to Exchange customers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Because this filing proposes vendor liability provisions substantively identical to an Amex rule that has previously been approved by

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

[7] Amex Rule 60, Commentary.03 sets forth the original Vendor Liability Disclaimer language that has been incorporated into Amex Rule 60—AEMI. AEMI (''Auction & Electronic Market Integration'') is Amex's Hybrid Market Structure for equities and exchange-traded funds. The Exchange notes that on January 17, 2008, it announced that it had entered into a definitive agreement to acquire the Amex. On June 17, 2008, the Exchange and the Amex announced that members of the Amex Membership Corporation \ (''AMC'') approved the adoption of the merger agreement between AMC and NYSE Euronext and certain of their subsidiaries. *See* NYSE News Release, January 17, 2008; *see also* NYSE News Release, June 17, 2008.

[8] Amex Rule 60–AEMI.

[9] U.S.C. 78f(b).

[10] U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b–4(f)(6)(iii).

the Commission,[14] the proposal does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–55 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–NYSE–2008–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–55 and should be submitted on or before August 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–16349 Filed 7–16–08; 8:45 am]

BILLING CODE 8010–01–P

[14] *See supra,* note 8.

[15] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58142; File No. SR–NYSEArca–2008–70]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Generic Listing Standard for Equity Index-Linked Securities

July 11, 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 June 27, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Exchange's generic listing standard for equity index-linked securities (''Equity Index-Linked Securities'') to: (1) Eliminate initial and continued listing capitalization weighted and modified capitalization weighted index requirements; and (2) to adjust certain equity index weighting criteria and adopt notional volume traded per month to both initial listing standards and continued listing standards. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Arca proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Exchange's generic listing standard for Equity Index-Linked Securities. Specifically, the Exchange proposes to: (1) Eliminate initial and continued listing capitalization weighted and modified capitalization weighted index requirements; and (2) to adjust certain equity index weighting criteria and adopt notional volume traded per month to both the initial listing standards and continued listing standards.

For Equity Index-Linked Securities, the Exchange proposes to eliminate NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(iii), the current initial listing requirement that, in the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest dollar weighted component securities in the index or the highest dollar weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, must have an average monthly trading volume of at least 2,000,000 shares over the previous six months. The Exchange also proposes to eliminate NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(iii),[3] the current

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] E-mail from Timothy J. Malinowski, Director, NYSE Euornext, to Michou H.M. Nguyen, Special Counsel, and Steve Varholik, Attorney-Advisor,

Continued

continued listing requirement, that in the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest dollar weighted component securities in the index or the highest dollar weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have an average monthly trading volume of at least 1,000,000 shares over the previous six months.

The Exchange does not believe that it is consistent or justified to impose specific trading volume requirements applicable only to capitalization weighted or modified capitalization weighted indexes, since both of these index methodologies do not raise any unique characteristics that merit the application of the current initial and continued listing standard. Rather, the Exchange proposes that capitalization weighted index or modified capitalization weighted indexes comply with the initial and continued listing requirements currently applicable to all other equity indexes under NYSE Arca Equities Rule 5.2(j)(6)(B)(I) regardless of the index methodology.

The Exchange notes that the Exchange's exchange-traded fund (''ETF'') listing standard [4] does not impose equity index requirements on capitalization weighted and modified capitalization weighted indexes.

Currently for initial listing, Rule 5.2(j)(6)(B)(I)(1)(b)(ii) provides that each component security of an equity index shall have trading volume in each of the last six months of not less than 1,000,000 shares per month, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume will be at least 500,000 shares per month in each of the last six months.

The Exchange is proposing to: (i) Remove the requirement that each of the lowest weighted component securities in the index that in the aggregate account for 10% of the weight of the index have trading volume of at least 500,000 shares per month for each of the last six months; and (ii) adopt minimum global notional volume (''Global Notional Volume'') [5] traded per month of $25,000,000 averaged over of the last six months as an option for meeting the listing requirements. Proposed Rule 5.2(j)(6)(B)(I)(1)(b)(ii) sets forth:

> Component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum global monthly trading volume of 1,000,000 shares, or minimum Global Notional Volume traded per month of $25,000,000, averaged over the last six months.

With respect to the continued listing criteria, Rule 5.2(j)(6)(B)(I)(2)(a)(ii) [6] currently sets forth that the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months.

The Exchange is proposing to: (i) Remove the requirement that the lowest weighted component securities in the index that in the aggregate accounting for no more than 10% of the weight of the index have trading volume of at least 400,000 shares for each of the last six months; and (ii) adopt minimum Global Notional Volume traded per month of $12,500,000 averaged over the last six months as an option for satisfying the continued listing requirements. Proposed Rule 5.2(j)(6)(B)(I)(2)(ii) sets forth:

> Component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum global monthly trading volume of 500,000 shares, or minimum Global Notional Volume traded per month of $12,500,000, averaged over the last six months.

With respect to both the initial listing and continued listing standards, the Exchange believes that considering the weighting of the bottom 10% component securities is insignificant for determining the liquidity of the index. Rather, the Exchange proposes that focusing on 90% of the top weighted index component securities is a better indication as to whether the index or indexes has sufficient liquidity for listing and trading of the related Equity Index-Linked Security.

With respect to adopting, as an alternative to monthly trading volume, the minimum Global Notional Volume traded averaged over the last six months to both the initial and continued listing standards, the Exchange believes that averaged notional volume traded per month is a better measure of the liquidity of component stocks of the underlying index or indexes. Specifically, notional volume nullifies the volume discrepancies that generally occur between low-priced and high-priced stocks.[7] In addition, adopting an average of the trading volume and notional volume over six months eliminates seasonal volume fluctuations that may occur in the trading volume of a particular underlying security represented in the index or indexes.[8]

Further, investors, Equity Index-Linked Securities issuers, and third-party index sponsors would also benefit from NYSE Arca's ability to list—without the delay associated with a stand-alone rule filing—Equity Index-Linked Securities based on a broader group of indexes, promoting competition.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Division of Trading and Markets, Commission, on July 10, 2008 (correcting the citations to NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(2)(a)(iii) and 5.2(j)(6)(B)(I)(2)(a)(ii), respectively.) (''July 10 e-mail'').

[4] *See* NYSE Arca Equities Rule 5.2(j)(3) Commentary .01.

[5] Global Notional Volume is defined as the total shares traded globally times the price per share.

[6] *See* July 10 e-mail *supra* note 3.

[7] For example, a stock priced at $10 per share that trades 2,500,000 shares in a month has a notional volume of $25,000,000. Conversely, a stock priced at $100 per share that trades 250,000 shares in a month has a notional volume of $25,000,000.

[8] *See* July 10 e-mail *supra* note 3 (clarifying that the adoption of six month average applies to both trading volume and Global Notional Volume traded).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 reason for so finding or (ii) as to which the Exchange consents, the Commission will:

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–NYSEArca–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–NYSEArca–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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–70 and should be submitted on or before August 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–16350 Filed 7–16–08; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 6299]**

## Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Study of the United States Institute on U.S. National Security Policymaking in a Post 9/11 World

*Announcement Type:* New Cooperative Agreement.

*Funding Opportunity Number:* ECA/A/E/USS–09–01.

*Catalog of Federal Domestic Assistance Number:* 19.418.

*Key Dates:*

*Application Deadline:* September 17, 2008.

*Executive Summary:* The Branch for the Study of the U.S., Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs (ECA/A/E/USS), invites proposal submissions for the design and implementation of the Study of the United States Institute on U.S. National Security Policymaking in a Post 9/11 World. This institute will provide a multinational group of up to 18 experienced foreign university educators and other professionals with a deeper understanding of U.S. approaches to national security policymaking, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at universities and other institutions abroad. The institute should be an intensive, academically rigorous program for scholars and other professionals from outside the United States, and should have a central theme and a strong contemporary component.

It is anticipated that this grant will be awarded on or about October 15, 2008, pending the availability of funds. This six-week program, to be conducted during the winter of 2009, must include a four-week academic residency segment at a U.S. college or university campus (or other appropriate U.S. location) and a two-week study tour segment that complements the academic residency segment. The study tour segment must include a visit to Washington, D.C. that involves substantive briefings by national security policy professionals from the Department of State, other relevant U.S. government agencies, and private institutions.

**I. Funding Opportunity Description**

*Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

*Purpose:* The Bureau is seeking a detailed proposal for a Study of the United States (U.S.) Institute on U.S. National Security issues from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: Political science, international relations, law, military science, and/or other disciplines or sub-disciplines related to the program themes. The institute should be organized around a central theme or themes in U.S. national security policy planning and formulation and should illuminate contemporary political, social, and economic debates in American society.

The institute is intended to offer up to 18 foreign scholars and other professionals, whose professional work focuses in whole or in substantial part on the United States, the opportunity to deepen their understanding of American society, culture and institutions. The ultimate goal is to strengthen curricula, to improve the quality of teaching, and to broaden understanding of U.S. national security policymaking in universities and other institutions of influence abroad.

*This Study of the United States Institute program should:*

1. Provide participants with a survey of contemporary scholarship within the institute's governing academic discipline. The proposal should describe how current scholarly debates within the field will be presented;
2. Give participants a multi-dimensional examination of U.S. society and institutions that reflects a broad and balanced range of perspectives and responsible views from scholars and other professionals, such as government officials, and private practitioners; and,
3. Ensure access to library and material resources that will enable grantees to continue their research, study and curriculum development upon returning to their home institutions.

*Program Description*

1. Study of the U.S. Institute on U.S. National Security: U.S. National Security Policymaking in a Post 9/11 World

This Institute should provide participants an opportunity to increase their understanding of the foundations and formulation of U.S. national security policy, U.S. views on basic U.S. national security and defense requirements, and how those views have evolved in the post-Cold War era and in the ongoing global fight against terrorism. This multi-disciplinary program should examine historical, political, geographic, and economic factors involved in U.S. national security policymaking.

This intensive, academically rigorous program should integrate lectures, readings, seminar discussions, regional travel and site visits. The institute also should include opportunities for limited but well-directed independent research. Proposals should describe a thematically coherent program that maximizes institutional strengths, faculty, and resources, as well as recognized scholars and experts from throughout the United States.

The program must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

*Participants:* Participants will be diverse in age, professional position, and travel experience abroad. While participants may not have in-depth knowledge of the particular institute program theme, they will likely have had exposure to the relevant discipline and some experience teaching about the United States.

Participants will be drawn from all regions of the world and will be fluent or proficient in the English language. Fulbright Commissions and U.S. Embassies abroad will nominate candidates, and final selections will be made by the Bureau. A final list of participants will be sent to the grantee institution.

*Program Dates:* The anticipated award date for this cooperative agreement will be on or about October 15, 2008. Program activities should begin shortly thereafter. The institute should be approximately 44 days in length (including participant arrival and departure days), should begin in early January, and end in late February or early March 2009.

*Program Guidelines:* Proposals provide a comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and how each session relates to the overall institute theme. A syllabus must indicate the subject matter for each lecture or panel discussion, identify proposed lecturers and discussants, and demonstrate how assigned readings support each session. A calendar of all activities for the program must also be included. Proposals will be reviewed for the completeness and clarity with which they respond to the individual review criteria referenced in Section V.1.

**Note:** In a cooperative agreement, ECA/A/E/USS is substantially involved in program activities above and beyond routine grant monitoring. *ECA/A/E/USS activities and responsibilities for this program are as follows:* Completing the final selection of participants; Exercising oversight with one or more site visits; Coordinating and arranging briefings by officials from the Department of State; and, Debriefing participants. ECA/A/E/USS may also require changes in the content of the program as well as the activities proposed either before or after the grant is awarded.

## II. Award Information

*Type of Award:* Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

*Fiscal Year Funds:* FY–09.

*Approximate Total Funding:* $290,000.

*Approximate Number of Awards:* 1.

*Approximate Average Award:* $290,000.

*Anticipated Award Date:* Pending availability of funds, October 15, 2009.

*Anticipated Project Completion Date:* March 30, 2009.

*Additional Information:* Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

## III. Eligibility Information

*III.1. Eligible applicants:* Applications may be submitted by colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that meet the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

*III.2. Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110 (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

*III.3. Other Eligibility Requirements:*

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $290,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels

of cost sharing and funding in support of its programs.

(b) *Technical Eligibility:* All proposals must comply with the following or they will result in your proposal being declared technically ineligible and given no further consideration in the review process: The project director or one of the key program staff responsible for the academic program must have an advanced degree in political science, international relations, law, military science, and/or other disciplines or sub-disciplines related to the program themes, and; Staff escorts traveling under the cooperative agreement must have demonstrated qualifications to perform this service.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact the Branch for the Study of the United States, ECA/A/E/USS, Room 664, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel. (202) 453–8532; fax (202) 453–8533 to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/A/E/USS–09–01) located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Brendan M. Walsh, *WalshBm@state.gov*, and refer to the Funding Opportunity Number (ECA/A/E/USS–09–01) located at the top of this announcement on all other inquiries and correspondence.

*IV.2. To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

*IV.3. Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

*IV.3a.* You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This 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. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

*IV.3b.* All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document'' for additional formatting and technical requirements.

*IV.3c.* You must have nonprofit status with the IRS at the time of application. **Please note:** Effective March 14, 2008, all applicants for ECA federal assistance awards must include with their application, a copy of page 5, Part V–A, ''Current Officers, Directors, Trustees, and Key Employees'' of their most recent Internal Revenue Service (IRS) Form 990, ''Return of Organization Exempt From Income Tax.'' If an applicant does not file an IRS Form 990, but instead files Schedule A (Form 990 or 990–EZ)—''Organization Exempt Under Section 501(c)(3),'' applicants must include with their application a copy of Page 1, Part 1, ''Compensation of the Five Highest Paid Employees Other Than Officers, Directors and Trustees,'' of their most recent Internal Revenue Service (IRS) Form—Schedule A (Form 990 or 990–EZ).

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

*IV.3d.* Please consider the following information when preparing your proposal narrative:

*IV.3d.1 Adherence to All Regulations Governing the J Visa*

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, *Telephone:* (202) 203–5029, *FAX:* (202) 453–8640.

Please refer to Solicitation Package for further information.

*IV.3d.2 Diversity, Freedom and Democracy Guidelines*

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and

democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

*IV.3d.3. Program Monitoring and Evaluation*

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for overall program management, staffing, and coordination with ECA/A/E/USS ECA/A/E/USS considers program management, staffing and coordination with the Department of State essential elements of your program. Please be sure to give sufficient attention to these elements in your proposal. Please refer to the Technical Eligibility Requirements and the POGI in the Solicitation package for specific guidelines.

*IV.3e. Please take the following information into consideration when preparing your budget:*

*IV.3e.1.* Applicants must submit a comprehensive budget for the entire program. Awards for the institute on National Security may not exceed $290,000. While there is no rigid ratio of administrative to program costs, the Bureau urges applicant organizations to keep administrative costs as low and reasonable as possible. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Institute staff salary and benefits.
(2) Participant housing and meals.
(3) Participant travel and per diem.
(4) Textbooks, educational materials and admissions fees.
(5) Honoraria for guest speakers.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

*IV.3F. Application Deadline and Methods of Submission*

*Application Deadline Date:* September 17, 2008.

*Reference Number:* ECA/A/E/USS–09–01.

*Methods of Submission:*

*Applications may be submitted in one of two ways:*

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

*IV.3f.1 Submitting Printed Applications*

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the

established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

*The original and eight (8) copies of the application should be sent to:* U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/USS–09–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

*IV.3f.2—Submitting Electronic Applications*

Applicants have the option of submitting proposals electronically through *Grants.gov* (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*.

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with *Grants.gov.*

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

*Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.*

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review throughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

*Direct all questions regarding Grants.gov registration and submission to:*

*Grants.gov* Customer Support:

*Contact Center Phone:* 800–518–4726;

*Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time; E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

*IV.3g. Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

## V. Application Review Information

*V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards for cooperative agreements resides with the Bureau's Grants Officer.

*V.2. Review Criteria*

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Plan and Ability to Achieve Program Objectives:* Your proposal should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical. Objectives should be reasonable, feasible, and flexible. Your proposal should clearly demonstrate how the institution will meet the program's objectives and plan.

2. *Support for Diversity:* Your proposal should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, presenters, and resource materials).

3. *Evaluation and Follow-Up:* Your proposal should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is strongly recommended. Your proposal should also discuss provisions made for follow-up with returned participants as a means of establishing longer-term individual and institutional linkages.

4. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Your proposal should maximize cost-sharing through other private sector support, as well as institutional direct funding contributions.

5. *Institutional Track Record/Ability:* Your proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The

Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be fully qualified to achieve the project's goals.

## VI. Award Administration Information

*VI.1a. Award Notices*

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

*VI.2. Administrative and National Policy Requirements*

*Terms and Conditions for the Administration of ECA agreements include the following:*

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

*Please reference the following Web sites for additional information: http://www.whitehouse.gov/omb/grants*, or *http://fa.statebuy.state.gov*.

*VI.3. Reporting Requirements*

You must provide ECA with a hard copy original plus one (1) copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site, as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

## VII. Agency Contacts

For questions about this announcement, contact: Brendan M. Walsh, Branch for the Study of the United States, ECA/A/E/USS, Room 664, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel. (202) 453–8532, fax (202) 453–8533, e-mail *WalshBM@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number (ECA/A/E/USS–09–01).

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

## VIII. Other Information

*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: July 8, 2008.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. E8–16379 Filed 7–16–08; 8:45 am]

BILLING CODE 4710–05–P

# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Approval of Noise Compatibility Program; Ocala International Airport; Ocala, FL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the City of Ocala under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On December 28, 2008, the FAA determined that the noise exposure maps submitted by the City of Ocala under part 150 were in compliance with applicable requirements. On June 23, 2008, the FAA approved the Ocala International Airport noise compatibility program. All of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

**DATES:** *Effective Date:* The effective date of the FAA's approval of the Ocala International Airport Noise Compatibility Program is June 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, *phone number:* 407–812–6331. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Ocala International Airport, effective June 23, 2008.

Under Section 47504 of the Act, an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the

airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport operator with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in FAR part 150 and the Act, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150, Section 1505. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

City of Ocala submitted to the FAA on October 2, 2007, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August, 2004, through October, 2005. The Ocala International Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on December 28, 2007. Notice of this determination was published in the **Federal Register** on December 28, 2007.

The Ocala International Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the year 2007 to the year 2012. It was requested that FAA evaluate and approve this material as a Noise Compatibility Program as described in Section 47504 of the Act. The FAA began its review of the Program on December 28, 2007, and was required by a provisions of the Act to approve or disapprove the program within 180-days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained seven (7) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective June 23, 2008.

Outright approval was granted for all of the specific program elements. Mitigation measures approved include:

**Land Use Measures**

*1. Update City of Ocala Land Development Regulations*

Prevent future development of noise sensitive uses within the 60 DNL and greater noise contours. (NCP, pages ES–4, 96, 97; and Table ES–1.)

*FAA Action: Approved.* This is within the authority of the local land use jurisdictions; the Federal government does not control local land use. Outside the DNL 65 dB noise contour, FAA as a matter of policy encourages local efforts to prevent new noncompatible development immediately abutting the DNL 65 dB contour and to provide a buffer for possible growth in noise contours beyond the forecast period.

*2. Land Use Mitigation Program*

Purchase developed and undeveloped land within the DNL 65dB and greater noise contours. (NCP, pages ES–4, 65, 66, 97; Figures 11.4, 11.5; and Tables ES–1, 9.2, 9.3, 11.4.)

*FAA Action: Approved.* Acquisitions are limited to existing non-compatible land uses located with in the 65 DNL noise contour of the approved NEMs, and are consistent with FAA's 1998 remedial mitigation policy (63 FR 16409). The specific identification of structures recommended for inclusion in the program and specific definition of the scope of the program will be required prior to approval for Federal funding. Approval of this measure does not commit the FAA to future Federal funding assistance.

*3. Redevelopment Program*

Redevelop land purchases as part of the Land Use Mitigation Program. (NCP, pages ES–4, 101, 107; and Table ES–1.) Ensures that any re-development or re-use of land purchased as part of the Land Use Mitigation Program will be compatible with airport operations.

*FAA Action: Approved.* Eligibility for Federal funding of any re-use/re-development program will be determined at the time of application.

*4. Public Notification*

Advertise noise exposure contours and availability of Part 150 documents local newspapers 3 times each year. (NCP, pages ES–4, 101, 102; and Table ES–1.)

*FAA Action: Approved.*

**Program Management Measures**

*1. Pilot Education Program*

Development, publication and distribution of informational materials for pilots outlining noise abatement policies. (NCP, pages ES–4, 104; and Table ES–1.)

*FAA Action: Approved.* Inserts or other information must not be construed as mandatory air traffic procedures. Prior to release, language in the brochure shall be reviewed for wording and content by the appropriate FAA office. The content of the brochure is subject to specific approval by appropriate FAA officials outside of the FAR Part 150 process and is not approved in advance by this determination.

*2. Community Information Program*

Development, publication and distribution of informational materials for residents and businesses outlining airport noise abatement efforts. (NCP, pages ES–4, 104, 105; and Table ES–1.)

*FAA Action: Approved.*

*3. Periodic NCP Review*

Review of operational activity and NCP implementation to assist in determining future NEM/NCP update timing. (NCP, pages ES–4, 105; and Table ES–1.)

*FAA Action: Approved.* If made necessary by NEM changes, an update to the NCP would address requirements of 150.23(e)(9). Section 150.21(d), as amended, states that the NEM should be updated if there is either a substantial new noncompatible use within the DNL 65 dB contour, or if there is a significant reduction in noise over existing noncompatible land uses [69 FR 57622, dated 9/24/04].

These determinations are set forth in detail in a Record of Approval signed by the FAA on June 23, 2008. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the City of Ocala. The Record of Approval also will be available on-line at: *http://www.faa.qov/airports_airtraffic/airports/environmental/airport_noise/part_150/states/* .

Issued in Orlando, Florida on June 27, 2008.

**W. Dean Stringer,**

*Manager, Orlando Airports District Office.*

[FR Doc. E8–15954 Filed 7–16–08; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2008–0629]**

### Operating Limitations for Unscheduled Operations at John F. Kennedy International Airport and Newark Liberty International Airport

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

**ACTION:** Notice of Proposed Order Limiting Unscheduled Operations at John F. Kennedy International Airport and Newark Liberty International Airport; Request for comments.

**SUMMARY:** The FAA tentatively has determined that it is necessary to temporarily limit unscheduled aircraft operations at John F. Kennedy International Airport (JFK) and Newark Liberty International Airport (EWR). By Orders dated January 15 and May 15, 2008, the FAA restricted the number of scheduled operations respectively at JFK and EWR. These orders were a result of persistent congestion and delays at JFK and EWR during the peak operating hours, as well as a dramatic projected increase in fight delays at both airports during the summer of 2008 if proposed schedules were implemented as requested by carriers. The FAA recently published a notice of proposed rulemaking that addresses the operating limits of scheduled and unscheduled operations at both airports for the longer term. The FAA believes that in the interim it is necessary to limit unscheduled operations, as even the addition of a few operations in the critical peak hours can result in added congestion and delay. The intended effect of this action would be consistent with the previously issued Orders governing scheduled operations. This final Order would take effect at 6 a.m., Eastern Time, on August 28, 2008, and would expire at 11:59 p.m., Eastern Time, on October 24, 2009.

This proposed Order would implement a reservation system to limit unscheduled operations at the airports and includes special provisions for public charter operations. A final Order would be enforceable under the FAA's civil penalty authority.

**DATES:** Send your comments on or before July 28, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2008–0629 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information that you provide. Using the search function of the *http://www.regulations.gov* Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). The electronic form of all comments posted to *http://www.regulations.gov* can be searched by the submitter's name. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78). For information about the privacy aspects of the Federal eRulemaking Portal, please see the Privacy and Use notice at *http://www.regulations.gov.*

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket. Alternatively, go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this proposed rule contact: Gerry Shakley, System Operations Services, Air Traffic Organization; telephone (202) 267–9424; facsimile (202) 267–7277; e-mail *gerry.shakley@faa.gov.* For legal questions concerning this proposed rule contact: Rebecca B. MacPherson, Office of the Chief Counsel, Federal Aviation Administration; telephone (202) 267–7240; facsimile (202) 267–7971; e-mail: *rebecca.macpherson@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The U.S. Government has exclusive sovereignty over the airspace of the United States.[1] Under this broad authority, Congress has delegated to the Administrator extensive and plenary authority to ensure the safety of aircraft and the efficient use of the nation's navigable airspace. In this regard, the Administrator is required to assign the use of navigable airspace by regulation or order under such terms, conditions and limitations as he or she may deem necessary to ensure its efficient use.[2] The Administrator may modify or revoke an assignment when required in

[1] 49 U.S.C. 40103(a).

[2] 49 U.S.C. 40103(b)(1), as previously codified in 49 U.S.C. App. § 307(a). Title 49 was recodified by Public Law No. 103–222, 108 Stat. 745 (1994). The textual revisions were not intended to result in substantive changes to the law. The recodification stated that the words in § 307(a) ''under such terms, conditions, and limitations as he may deem'' were omitted as surplus. H. Rpt. 103–180 (103d Cong., 1st Sess. 1993) at 262.

the public interest.[3] The FAA interprets its statutory directive to act in the public interest as implicitly applying to any decision by the FAA to assign the efficient use of the navigable airspace. Furthermore, in carrying out the Administrator's safety responsibilities under the statute, the Administrator must consider controlling the use of the navigable airspace and regulating civil operations in that airspace in the interest of the safety and efficiency of those operations.[4]

The FAA interprets its broad statutory authority to manage ''the efficient use of airspace'' to encompass its management of the nationwide system of air commerce and air traffic control. On a daily basis, that system regularly transports millions of passengers, thousands of tons of cargo, and millions of pieces of mail. The FAA believes that ensuring the efficient use of the airspace means that it must take all necessary steps to prevent extreme congestion at an airport from disrupting or adversely affecting the overall air traffic system for which the FAA is responsible. Delays at a single key airport of the sort experienced at JFK and EWR can have a crippling effect on other parts of the system, causing untold losses in time and money for individuals and businesses, as well as the operators at JFK and EWR and beyond.

**John F. Kennedy International Airport (JFK)**

In 1968, the FAA issued the High Density Rule (HDR), designating JFK a high density traffic airport and limiting the number of takeoffs and landings at the airport, effective April 27, 1969.[5] Under the HDR, the FAA required carriers to hold a reservation, which came to be known as a ''slot,'' for each takeoff or landing under instrument flight rules at the high density traffic airports. The HDR remained in effect at JFK for nearly four decades, during which aircraft operations at JFK were limited for the five hours of peak demand—3 p.m. through 7:59 p.m., Eastern Time.

In April 2000, Congress began phasing out the HDR at certain airports, including JFK, which was no longer subject to the HDR after January 1, 2007.[6] The elimination of the HDR at JFK allowed increased scheduling during the peak hours, continuing a trend of increased operations at JFK in recent years. However, capacity has not increased commensurate with the flight increases. In addition, JFK has evolved from an airport that historically served primarily international markets and the associated domestic feeder service into an airport that now also provides significantly more domestic service. There has been more recently an increased emphasis on connecting traffic that is typical of hub airports, as well as an increased focus on origin and destination traffic.

As a result of these changes at JFK, carriers increased their scheduled operations throughout the day to the point that by summer 2007, demand exceeded the airport's capacity during some periods. For example, from February through July 2007, JFK's average actual airport capacity was 83 total operations per hour, including scheduled and nonscheduled flights. The scheduled demand during the busiest hour, 4 p.m., was over 110 arrivals and departures during summer 2007. Adjacent hours had fewer scheduled flights, but they were still above the average hourly runway capacity which resulted in increased delays. Although air traffic control procedural and runway use plans adopted in early 2007 have increased JFK's aircraft throughput, especially for departures, they do not provide a capacity increase that would have accommodated the proposed summer 2008 demand.

The increase in scheduled operations at JFK has had a profound effect on the delays that travelers have experienced. During fiscal year 2007, the average daily operations at JFK increased 21% over fiscal year 2006. Corresponding to the increased operations, on-time performance and other delay metrics have declined year over year. The on-time arrival performance at JFK, which is defined as arrival at the gate within 15 minutes of the scheduled time, declined from 68.5% in fiscal year 2006 to 62.19% in fiscal year 2007. On-time arrivals during the peak travel months of June, July and August declined from 63.37% in 2006 to 58.53% in 2007 while on-time departures declined from 67.49% to 59.89%. For the entire fiscal year, the average daily arrival delays exceeding one hour increased by 87% over fiscal year 2006 levels. Taxi out delay, which measures the time that aircraft wait prior to departing the runway, increased by 15%. Taxi out delays in the evening departure periods frequently exceeded an hour in duration. At the same time, U.S. and foreign air carriers continued to announce new flights for JFK throughout the day, including during the most oversubscribed hours. Unscheduled flights during the peak periods contributed to cumulative demand and shared in the resulting delays.

Using the authority conferred under § 41722 to address congested airports,[7] the Secretary of Transportation and the Acting Administrator of the FAA concluded that a meeting with U.S. air carriers was necessary to discuss flight reductions at JFK to reduce overscheduling and flight delays.[8]

The FAA convened the scheduling reduction meeting with the U.S. air carrier participants and representatives of the airport operator on October 23 and 24. The FAA issued an Order on January 15, 2008, that limited scheduled operations of U.S. air carriers and foreign air carriers at JFK to a maximum of 81 per hour, except as provided in the appendix to the Order. The Order was effective at 6 a.m., Eastern Time on March 30, 2008, and expires at 11:59 p.m., Eastern Time on October 24, 2009. This order will reduce the substantial inconvenience to the traveling public caused by excessive congestion-related flight delays at the airport that magnify as they spread through the National Airspace System. This action also is expected to reduce the average length of delays by about 15 percent over summer 2007 levels and provide for a more efficient use of the nation's airspace by more closely tying demand to capacity. In order to ensure the effectiveness of the carrier scheduling adjustments and limitations in the JFK Order, it is necessary to restrict unscheduled operations at JFK, as further explained later in this Proposed Order. Otherwise, even a few additional operations during peak hours would result in additional delay and could erode the gains achieved through schedule reductions.

**Newark Liberty International Airport (EWR)**

On May 15, 2008, the Acting Administrator of the FAA issued an Order limiting scheduled operations at EWR in order to ensure that delays did not increase significantly as a result of proposed summer 2008 scheduled operations that included about 100 new

[3] Id.

[4] 49 U.S.C. 40101(d)(4).

[5] 33 FR 17896 (1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K.

[6] 49 U.S.C. 41715(a).

[7] 49 U.S.C. 41722(a)

[8] Through a notice issued October 16, 2007, and published in the **Federal Register**, the FAA invited all U.S. scheduled air carriers and the Port Authority of New York and New Jersey (PANYNJ) to attend the scheduling reduction meeting, commencing October 23, 2007. The FAA also invited all interested persons to submit information on the subject of overscheduling at JFK, including any data and their views, to a public docket for the FAA's consideration in issuing its Order. The Docket ID is FAA–2007–29320, and it can be examined online at *www.regulations.gov* or in person at the docket Operations address listed in the **ADDRESSES** section of this NPRM.

operations, many during the already busy afternoon and evening hours. Newark routinely experiences delays and there is limited capacity for additional flights during the busiest hours of the day. Additionally, flight limitations recently adopted by the FAA for JFK may otherwise encourage carriers to operate to Newark if they are unable to obtain timely Operating Authorizations for JFK. The EWR limitations are necessary to ensure that operations do not significantly exceed the airports capacity and applies to all U.S. and foreign air carriers' scheduled operations, excluding helicopters, from 6 a.m.: Eastern Time, through 10:59 p.m., Eastern Time. The Order is effective at 6 a.m., Eastern Time on June 20, 2008, and expires at 11:59 p.m. on October 24, 2009.

Although EWR has historically experienced a significant number of congestion related delays, often ranking as the most delayed airport in the system, the proportion of delayed operations was relatively stable for many years and had declined compared to several years ago. More recently, however, the airport's on-time performance has diminished, and the modeled delays for the proposed summer 2008 schedules would have increased significantly.

**Initial Scheduling Information Requests**

Based on JFK and EWR's summer 2007 operational and on-time performance, demand that exceeded capacity during certain hours, and limited runway capacity to accommodate additional flights, the FAA designated both airports as Level 2 Schedules Facilitated Airports for the summer 2008 scheduling season, in accordance with the International Air Transport Association (IATA) Worldwide Scheduling Guidelines.[9] In designating the airports as Level 2 airports, the FAA required all U.S. and foreign air carriers to report to the FAA their proposed summer 2008 scheduled operations at the airports during designated hours.

In response to the U.S. and foreign air carriers' proposed summer 2008 schedules and discussions with carriers that indicated a purely voluntary solution to adjust schedules was unlikely to resolve expected congestion, the FAA elected to modify EWR's IATA designation to a Level 3 Coordinated Airport for summer 2008.[10] This designation permitted the FAA to approve new operations at the airports in hours during which airport capacity is available and to deny proposed new operations during peak hours. The results of the FAA's discussions with U.S. and foreign air carriers with respect to their summer 2008 schedules are captured in the appendix to the JFK and the EWR Orders.

The limitations on scheduled operations are based on the FAA's capacity review over a two year period from September 2006 through August 2007. That review indicated the airport average available runway capacity was 83 total operations per hour. This included scheduled and unscheduled operations.

**The Proposed Order**

Unscheduled operations, including general aviation, charter, cargo, ferry. and other ad hoc operations, are typically a small percentage of the overall traffic at JFK and EWR. When the airport operations at JFK were limited by the HDR, a total of 8 reservations were set aside for unscheduled operations during the five slot controlled hours. From 5 p.m. until 6 p.m., no unscheduled reservations were available. which permitted additional scheduled operations.

As part of the analyses conducted for developing appropriate scheduling targets at JFK and EWR, we reviewed both scheduled and unscheduled traffic levels. For calendar year 2007, unscheduled operations at both airports averaged about two operations (arrival and departures combined) per hour. We used this historical information at both airports as the baseline for unscheduled operations at JFK and EWR and reviewed alternatives to vary the number of authorized reservations in this proposal. The greatest delay reduction benefits would come from limiting unscheduled operations during peak hours, except when capacity exists to accommodate additional operations without delay. This additional capacity would primarily be days when the airport's optimal capacity could be achieved. Unscheduled operators are in a position to take advantage of this capacity whereas scheduled operators are not. The FAA is not proposing to completely eliminate unscheduled operations from any hour at either JFK or EWR. However, the number of reservations will be limited and an individual operator may be unable to obtain a reservation at the preferred time and may need to operate during other hours, or possibly at another airport. The FAA proposes to implement a reservation system for unscheduled operations at JFK and EWR from 6 a.m. through 10:59 p.m. (Eastern Time), Sunday through Saturday. The limits would begin on August 14, 2008 and continue through October 24, 2009, consistent with ending dates for scheduled carrier limits. Reservations would be available on July 7 beginning 72 hours in advance of the proposed operation times at EWR or JFK.

At JFK, the FAA proposes that during the controlled hours, unless otherwise authorized, the number of reservations for unscheduled operations would be limited to two per hour from 6 a.m. through 1:59 p.m.; one per hour from 2 p.m. through 9:59 p.m.; and two per hour from 10 p.m. through 10:59 p.m. At EWR, the FAA proposes that during the controlled hours, unless otherwise authorized, the number of reservations for unscheduled operations would be limited to two per hour from 6 a.m. through 11:59 a.m.; one per hour from 12 p.m. through 9:59 p.m.; and two per hour from 10 p.m. to 10:59 p.m. This rule would apply to operations under instrument flight rules (IFR) and visual flight rules (VFR).

The hours that permit only one unscheduled operation per hour represent the most concentrated peak operating hours at the airports when the demand is highest and delays, especially under adverse operating conditions, are also routinely at their highest levels. In these hours, scheduled operations have been curtailed and reduced under the applicable Orders. While the FAA prefers increasing the capability of the system to accommodate demand, rather than limiting access, in the case of both JFK and EWR, all operations have to be restricted to reduce delays and recognize capacity constraints. Many unscheduled operations have flexibility because of the nature of the operation and the New York City area has other airports that can be used for some unscheduled flights including Westchester, Islip, Republic, Stewart, Morristown, and Teterboro.

Unscheduled operators, including air carriers conducting unscheduled operations at JFK and EWR, would need to review and possibly modify their plans based on the available reservations since the FAA cannot guarantee access to all operators without unduly increasing congestion. Unscheduled operators will need to consider the proposed reservation system at JFK and EWR, along with weight restrictions, noise abatement rules, and other limitations at other

[9] 72 FR 54,317 (Sept. 24, 2007).

[10] In connection with its January 15 order, the FAA also designated JFK an IATA Level 3 Coordinated Airport. 73 FR 3,510 (Jan. 18, 2008)(order limiting scheduled operations); 72 FR 60,710 (Oct. 25, 2007)(notice of airport level designation); 72 FR 73,418 (Dec. 27, 2007).

airports in the New York City area when planning their flights.

Under certain weather conditions and runway configurations, JFK and EWR have capacity to accommodate additional operations without causing significant additional delay. Scheduled operators cannot readily adjust the number or timing of arrivals and departures to take advantage of temporary fluctuations in the airports capacity during optimal weather. Unscheduled operators may have flexibility to make such adjustments and often conduct flights with short lead times. Therefore, when operating conditions permit, the FAA would make additional reservations available. The added capacity for unscheduled operations typically will not be determined more than eight hours in advance. There may also be times when the FAA has unallocated Operating Authorizations (under the Orders) for scheduled operations. The FAA would assess whether additional reservations could be made available for unscheduled flights. All reservations for unscheduled flights would be allocated using the procedures described below.

Each reservation would be allocated on a 60-minute basis during the restricted hours. Although a 30-minute reservation may provide some additional delay reduction benefits by potentially avoiding peaks, the FAA has determined that greater latitude in timing should be permitted given the limited number of proposed reservations. The FAA's Airport Reservation Office (ARO) would receive and process all reservations requests. The reservations would be allocated on a first-come, first-served basis, determined by the time the request is received by the ARO. Operators would primarily obtain reservations through the ARO's interactive computer system accessed via the internet or touch-tone telephone. This system is known as the Enhanced Computer Voice Reservation System (e-CVRS). Operators would provide the date/time of the proposed operation and other identifying information concerning the aircraft and the intended flight. The ARO would allocate through e-CVRS the added reservations that may be accommodated during periods of favorable weather and capacity conditions.

The allocation mechanism for unscheduled operations proposed in this Order is similar to the procedures used to allocate slots for the ''Other'' category under the HDR, and for unscheduled arrivals at Chicago's O'Hare International Airport (ORD). The proposed procedures are also similar to those used by unscheduled aircraft operators during Special Traffic Management Programs implemented by the Air Traffic Organization during periods of abnormally high traffic demand due to special events such as major conventions, sporting events, fly-ins, and other circumstances that cause temporary increases in airport demand. Consequently, many aircraft operators are familiar with the procedures that the FAA now proposes to adopt.

Allocation of a reservation does not constitute an air traffic control (ATC) clearance nor does it obviate the need to file an IFR flight plan. Reservations would be required for both IFR and VFR operations. Although capacity typically increases in visual meteorological conditions, unscheduled VFR flights could still impact operations if concentrated in peak periods. The FAA would accommodate declared emergencies without regard to reservations. The filing of JFK or EWR as an alternate airport in flight plans, or an aircraft diversion absent a declared emergency, does not constitute a reservation. Non-emergency flights in support of national security, law enforcement, or similar requirements may be accommodated above the reservation limits with the prior approval of the FAA. The proposed text of the Order contains detailed instructions for requesting reservations via the Internet, telephone, or alternatively, by contacting the ARO. Reservations for regularly scheduled operations are authorized separately under the terms of the JFK and EWR Orders. The procedures described in this proposed Order would not be used for scheduled flights.

The provisions of this proposal would apply to unscheduled operations at JFK and EWR conducted by foreign or domestic operators, regardless of whether the operation is domestic or foreign. We propose special provisions necessary to support flight operation for national security and similar purposes. In the case of the airports serving the New York City area, which is the headquarters of the United Nations, this may include diplomatic or other flights in direct support of foreign governments. The FAA would permit additional reservations, if necessary, to accommodate these flights but may approve an operation at a time other than the one initially requested. The FAA does not intend to categorically exclude these types of flights from the requirement to obtain a reservation prior to operation at JFK or EWR.

In order to address the needs of public charter operators for advance planning and compliance with 14 CFR part 380, the FAA proposes to allow public charter operators to obtain a reservation up to six months in advance of a planned operation. Due to the limited number of reservations in the afternoon and evening periods, no more than one advance reservation would be allocated in any hour and no more than two advance reservations would be allocated in the 2 p.m. through 9:59 p.m. period. Public charter operators may need to consider operating at other times when capacity is available and may also obtain reservations within the 72 hour window. Carriers conducting charter operations or other unscheduled flights may use assigned Operating Authorizations under the JFK and EWR orders. Carriers could also lease Operating Authorizations from other carriers.

The proposed provisions regarding reservations for public charter operations that are not regularly conducted are similar to the provisions applicable to public charter arrivals at Chicago's O'Hare International Airport under SFAR 105.[11] Under the proposed provisions for public charter operations, the reservation is requested by and allocated to the public charter operator, regardless of whether the charter is operated by a U.S. or foreign air carrier. The public charter operator retains the discretion to select the direct air carrier. Thus, this proposed Order does not provide any incentive for a public charter operator to select a U.S. certificated carrier or a foreign air carrier.

Public charter operations that seek a reservation more than 72 hours and up to 6 months in advance of the planned operation, would submit their request to the FAA's Slot Administration Office. A public charter operator would be required to provide the Slot Administration Office with a certification that any required prospectus has been accepted by the DOT in accordance with 14 CFR part 380 for the flight requiring a reservation; the call sign/flight number to be used for ATC communication by the direct air carrier conducting the operation; the date and time of the proposed arrival(s) or departure(s); origin airport immediately prior to JFK or EWR, or destination airport immediately following JFK or EWR; and aircraft type. A public charter operator also would be required to notify the Slot Administration Office of any changes to

[11] 70 FR 39610 (July 8, 2005). FAA considers regularly conducted public charter operations to be similar to scheduled operations, even if they are not listed in the Official Airline Guide or other computer reservation systems. Thus, regularly public charter operations are covered by the JFK and EWR Orders, not this proposal.

the above information once a reservation has been allocated. If each of the reservations reserved for public charters has been allocated, a public charter operator may request a reservation through the ARO beginning 72 hours in advance in accordance with the same procedures as unscheduled operators.

Historically under the HDR, military operations and public use aircraft operations were subject to the reservation requirement. Military and public aircraft would be subject to this proposed rule and would need reservations. As provided for in proposed paragraph 7(c) of the Proposed Order, the FAA will accommodate non-emergency flights in support of national security, law enforcement, or similar requirements above the administrative limit with prior approval by the FAA. Approvals for these reservations above the limits would be obtained from the ARO. We anticipate these exceptions to be limited. Since the operations must be approved in advance by the ARO, changes to proposed arrival times may be necessary to minimize impacts at the airport. We do not support a blanket exception for flights of this nature. The incremental addition of just a few flights during peak hours cumulatively affects the airport. Carriers conducting scheduled operations have had to either reduce operations or limit growth to reach the manageable level that exists today and most of the unscheduled arrivals at JFK and EWR will be covered by this proposed Order. While the FAA does not expect or intend for military and public aircraft operators at these airports to be unfairly burdened, we do not propose to categorically exclude all military and public aircraft flights from the coverage of this proposed Order while limiting others with similar time or operational constraints. The public interest is served by permitting access for these mission-critical flights but they still remain subject to the Order. We have also received comments in related rulemaking proceedings that some carriers operate under contracts to government agencies such as the Department of Defense to carry military troops or supplies, or the United States Postal Service to carry mail. These flights would require reservations but the FAA may treat qualified flights in a similar fashion to military or public aircraft. However, to the extent possible, military, public aircraft, and supporting flights should be conducted outside peak periods or possibly at other airports with less congestion than JFK and EWR.

The proposed Order may affect the use of JFK and EWR as an alternate airport for flight planning purposes for unscheduled IFR flights. There are various factors affecting use that may be applicable to a particular airport. Due to runway configuration, certain aircraft may not be able to operate at an airport. There may be noise abatement rules, departure procedures, and other operational procedures that must be factored into the flight planning process and the selection process of an alternate airport. The proposed reservation system at JFK and EWR would be another such factor. It is a traffic management tool, and if an unscheduled IFR operation intended to use JFK or EWR as an alternate, that operator would have to be prepared to meet all the requirements necessary to operate at the airport, including a reservation. While JFK or EWR might be preferable as an alternate airport from the operator's point of view, it is not operationally expedient to permit unpredictable increases in demand by allowing the unrestricted use of JFK and EWR as alternate airports. The FAA recognizes that there may be circumstances when safety or other considerations lead an operator to arrive at JFK or EWR without a reservation and current regulations and enforcement procedures provide for those cases.

**Enforcement of This Order**

The FAA may enforce the final Order through an enforcement action seeking a civil penalty under 49 U.S.C. 4630 1(a). Under that provision, a carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, is liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in the order. An individual or small business, as defined in the Small Business Act, is liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in the Order. The FAA may also file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any entity from violating the terms of the Order.

**Environmental Impact**

The agency order stating FAA policies and procedures with respect to the environmental impact of FAA activities, FAA order 1015.1E, identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this Order qualifies for the categorical exclusion identified in paragraph 312d ''Issuance of regulatory documents (*e.g.*, Notice of Proposed Rulemaking and issuance of Final Rules) covering administrative or procedures requirements (Does not include Air Traffic procedures; specific Air Traffic procedures that are categorically excluded are identified under paragraph 311 of this Order.)'' This Order, which proposes a reservation system to temporarily limit unscheduled operations pending a future rulemaking, is in the nature of a rule. No extraordinary circumstance exists that may cause a significant impact and therefore no further environmental review is required.

*Accordingly, with respect to unscheduled flight operations at JFK and EWR, the FAA proposes the following ordering language:*

1. This Order applies to persons conducting unscheduled operations to and from John F. Kennedy International Airport (JFK) and Newark Liberty International Airport (EWR) from August 28, 2008, through October 24, 2009, during the hours of 6 a.m., Eastern Time, through 10:59 p.m., Eastern Time, Sunday through Saturday. This Order does not apply to helicopter operations.

2. *For purposes of this Order:*

''Additional Reservation'' is an approved reservation above the operational limit in section 3. Additional Reservations are available for unscheduled operations only, and are allocated in accordance with the procedures described in paragraph 7 of this Order.

''Airport Reservation Office (ARO)'' is an operational unit of the FAA's David J. Hurley Air Traffic Control System Command Center. It is responsible for the administration of reservations for the ''other'' category of operations, *i.e.* unscheduled flights at High Density Traffic Airports (14 CFR, part 93, subpart k); unscheduled flights under Special Traffic Management Programs; unscheduled flights at LaGuardia Airport; the O'Hare Arrival Reservation Program (excluding reservations for certain public charter flights allocated in accordance with section 6 of Special Federal Aviation Regulation No. 105); and unscheduled flights at JFK and EWR (excluding reservations for certain public charter flights allocated in accordance with paragraph 6 of this proposed Order).

''Enhanced Computer Voice Reservation System (e-CVRS)'' is the system used by the FAA to make arrival and/or departure reservations at designated airports requiring reservations. Reservations are made through a touch-tone telephone interface, an Internet Web interface, or directly through the ARO.

''Public Charter'' is defined in 14 CFR 380.2 as a one-way or roundtrip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator.

''Public Charter Operator'' is defined in 14 CFR 380.2 as a U.S. or foreign public charter operator.

''Reservation'' is an authorization received in compliance with applicable Notices to Airmen (NOTAMs) and procedures established by the FAA to operate an unscheduled flight to or from JFK or EWR during the restricted hours specified in paragraph 1. ''Unscheduled Operation'' is an operation other than one regularly conducted and scheduled by an air carrier or other operator between JFK or EWR and another service point. Certain types of air carrier operations are considered unscheduled operations for the purposes of this rule, including but not limited to: Public, on-demand, and other charter flights; hired aircraft service; ferry flights; and other non-passenger flights.

3. *Except as provided for in paragraph 7 below, Unscheduled operations:*

a. To and from JFK are limited to two reservations per hour from 6 a.m. through 1:59 p.m., one reservation per hour from 2 p.m. through 9:59 p.m.; and two reservations per hour from 10 p.m. through 10:59 p.m.

b. To and from EWR are limited to two reservations per hour from 6 a.m. through 11:59 a.m., one reservation per hour from 12 p.m. through 9:59 p.m.; and two reservations from 10 p.m. through 10:59 p.m.

4. Each person conducting an unscheduled flight to or from JFK or EWR during the peak hours described in paragraph 1 must obtain, for such flight operation, a Reservation allocated by the ARO or, in the case of public charters, in accordance with the procedures in paragraph 6. A Reservation is not an air traffic control clearance. Additionally, it is the separate and sole responsibility of the pilot/operator to comply with all NOTAMs, security or other regulatory requirements to operate at JFK or EWR.

5. *The reservation procedures are as follows:*

a. The FAA's ARO will receive and process all Reservation requests for Unscheduled Operations at JFK and EWR during the effective period, except for requests for public charter flights made more than 72 hours and up to 6 months in advance of the planned operation. Requests for Reservations for such public charter flights are addressed in paragraph 6. Reservations are assigned on a ''first-come, first-served'' basis determined by the time the request is received at the ARO.

b. The filing of a request for a Reservation does not constitute the filing of an IFR flight plan as required by regulation. The IFR flight plan must be filed only after the Reservation is obtained, and must be filed in accordance with FAA regulations and procedures. Reservation numbers should be included in the remarks section of the flight plan. The ARO does not accept or process flight plans.

c. Operators may obtain Reservations by (1) accessing the Internet; (2) calling the ARO's interactive computer system via touch-tone telephone; or (3) calling the ARO directly. The telephone number for the e-CVRS computer is 1–800–875–9694. This toll free number is valid for calls originating within the United States, Canada, and the Caribbean. ''Operators outside those areas may access e-CVRS by calling the toll number of (703) 707–0568. The Internet Web address for accessing e-CVRS is *http://www.fly.faa.gov/ecvrs.* Operators may contact the ARO at (703) 904–4452 if they have a technical problem making a Reservation using the automated interfaces, if they have a question concerning the procedures, or if they wish to'' make a telephone Reservation from outside the United States, Canada, or the Caribbean.

6. *The following provisions apply to Public Charter operations:*

a. No more than one Reservation in any hour will be available for assignment to Public Charters in advance of 72 hours prior to the operation.

b. During the hours of 2 p.m. through 9:59 p.m., no more than two reservations total will be available for assignment to Public Charter operations in advance of 72 hours prior to operation.

c. The Public Charter Operator may request a Reservation up to six months from the date of the flight operation. Reservations should be submitted to Federal Aviation Administration, Slot Administration Office, AGC–200, 800 Independence Avenue, SW., Washington, DC 20591. Submissions may be made by facsimile to (202) 267–7277 or by e-mail to *7–AWA-slotadmin@faa.gov.*

d. The Public Charter Operator must certify that its prospectus has been accepted by the Department of Transportation in accordance with 14 CFR part 380.

e. The Public Charter Operator must identify the call sign/flight number or aircraft registration number of the direct air carrier, the date and time of the proposed operations, and aircraft type. For arrivals, the Public Charter Operator must also identify the origin airport immediately prior to JFK or EWR, and, for departures, the Public Charter Operator must also identify the destination airport immediately following JFK or EWR. Any changes to an approved Reservation must be approved in advance by the Slot Administration Office.

f. If Reservations under paragraph (a) above have been assigned and are unavailable, the Public Charter Operator may request Reservations under paragraph 5.

7. *Notwithstanding the restrictions in paragraph 1:*

a. If the Air Traffic Organization determines that ATC weather and capacity conditions are favorable and significant delay is not likely, the FAA may determine that Additional Reservations may be accommodated for a specific time period. Generally, the availability of Additional Reservations will not be determined more than 8 hours in advance. Unused Operating Authorizations allocated for scheduled operations may also be made available as Additional Reservations for Unscheduled Operations. If available, Additional Reservations will be added to e–CVRS and granted on a first-come, first served basis using the procedures described in paragraph 5 of this Order. Reservations for additional unscheduled operations are not granted by the local ATC facility and must be obtained through e–CVRS or the ARO.

b. An operator that has been unable to obtain a Reservation at the beginning of the 72-hour window may find that a Reservation may be available on the scheduled date of operation due to Additional Reservations or cancellations.

c. ATC will accommodate declared emergencies without regard to Reservations. Non-emergency flights in support of national security, law enforcement, military aircraft operations, public-use aircraft operations, or similar mission-critical flights may be accommodated above the Reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate waiver are available on the Internet at the e-CVRS Web site at *http://www.fly.faa.gov/ecvrs.*

d. Reservations may not be bought, sold or leased.

8. The FAA will enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in this

Order. An individual or small business, as defined in the Small Business Act, will be liable for a civil penalty of up to $10.000 for every day that it violates the limits set forth in this Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any entity from violating the terms of this Order.

9. The FAA may modify or withdraw any provision in this Order on its own or on application by any operator for good cause shown.

Issued in Washington, DC on July 8, 2008.

**Rebecca B. MacPherson,**

*Assistant Chief Counsel for Regulation.*

[FR Doc. E8–15961 Filed 7–16–08; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

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

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In June 2008, there were seven applications approved. Additionally, 32 approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph (d) of § 158.29.

**PFC Applications Approved**

*Public Agency:* City of Des Moines, Iowa.

*Application Number:* 08–11–C–00–DSM.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $2,525,646.

*Earliest Charge Effective Date:* August 1, 2017.

*Estimated Charge Experiation Date:* January 1, 2018.

*Class of Air Carriers not Required to Collect PFC's:* Part 135 air taxi/commercial operators.

*Determination:* Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Des Moines International Airport.

*Brief Description of Projects Approved for Collection and Use:*

Concourses A and C enhancements.

East cargo pavement reconstruction.

Taxiway P reconstruction.

Snow blower head rebuild/replacement.

*Decision Date:* June 5, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jan Monroe, Central Region Airports Division, (816) 329–2635.

*Public Agency:* City of Worland, Wyoming.

*Application Number:* 08–02–C–00–WRL.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $193,038.

*Earliest Charge Effective Date:* August 1, 2008.

*Estimated Charge Experiation Date:* July 1, 2022.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Road and trail relocation, construct spray operations area, extend and widen taxilane.

Reconstruct taxiway A south, grade safety area runway 16/34, Hanover Canal siphon.

Reconstruct taxiway A south, grade extended safety area runway 16/34, extend and widen taxilane.

Reconstruct runway 16/34 south.

Appraisal and hangar purchase costs (schedules I, II, III, and IV).

Relocate obstructions—Highland Hanover Canal and Country Road, phase 2.

*Decision Date:* June 5, 2008.

**FOR FURTHER INFORMATION CONTACT:** Chris Schaffer, Denver Airports District Office, (303) 342–1258.

*Public Agency:* City of Modesto, California.

*Application Number:* 08–07–C–00–MOD.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $395,134.

*Earliest Charge Effective Date:* August 1, 2008.

*Estimated Charge Experiation Date:* December 1, 2015.

*Class of Air Carriers not Required to Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Rehabilitate taxilanes.

Install/upgrade airfield guidance signs.

Improve airport drainage.

Expand/construct parking lot.

Rehabilitate apron.

Conduct Part 150 noise compatibility study.

Miscellaneous planning study.

Procure aircraft rescue and firefighting vehicle.

PFC administrative costs.

*Brief Description of Projects Approved for Collection:*

General aviation apron rehabilitation.

Enhance runway safety area.

*Decision Date:* June 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ron Biaoco, San Francisco Airports District Office, (650) 876–2778, extension 626.

*Public Agency:* County of Okaloosa, Valparaiso, Florida.

*Application Number:* 08–04–C–00–VPS.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $1,485,650.

*Earliest Charge Effective Date:* July 1, 2020.

*Estimated Charge Experiation Date:* April 1, 2021.

*Class of Air Carriers not Required to Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Terminal expansion program.

Acquire interactive training system.

PFC program and administrative costs.

*Decision Date:* June 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Susan Moore, Orlando Airports District Office, (407) 812–6331, extension 120.

*Public Agency:* Meridian Airport Authority, Meridian, Mississippi.

*Application Number:* 08–10–C–00–MEI.

*Application Type:* Impose and use a PFC. PFC Level: $4.50.

*Total PFC Revenue Approved in This Decision:* $502,500.

*Earliest Charge Effective Date:* June 1, 2012.

*Estimated Charge Experiation Date:* August 1, 2017.

*Class of Air Carriers not Required to Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Rehabilitate general aviation apron.

Relocate taxiway A.

Acquire security vehicle.

Construct hangar access roads.

Rehabilitate security fencing.

*Decision Date:* June 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Keafur Grimes, Jackson Airports District Office, (601) 664–9886.

*Public Agency:* County of Marquette, Marquette, Michigan.

*Application Number:* 08–09–C–00VSAW.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $852,250.

*Earliest Charge Effective Date:* August 1, 2008.

*Estimated Charge Experiation Date:* August 1, 2011.

*Class of Air Carriers not Required to Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Runway and taxiway concrete joint repair and slab replacement.

Runway 1, approach rehabilitation, very high frequency omnidirectional range and glideslope access roads.

Aircraft rescue and firefighting/snow removal equipment building alarm system construction and installation.

Snow removal equipment (snow blower).

Airfield lighting—phase 2 (construction).

Pavement maintenance and repairs—runway, taxiways, and aprons.

Airfield lighting (navigation aids utility power study).

Terminal renovation and expansion—phase 1 (design only).

Fencing, security, vehicle access, wildlife control and Transportation Security Administration compliance.

Interactive employee training system.

Terminal building renovation and expansion.

Snow removal anti-icing and deicing equipment.

PFC package application and administration.

*Decision Date:* June 18, 2009.

**FOR FURTHER INFORMATION CONTACT:** Matthew Thys, Detroit Airports District Office, (734) 229–2901.

*Public Agency:* County of Broome, Binghamton, New York.

*Application Number:* 08–11-C–00-BGM.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in this Decision:* $149,796.

*Earliest Charge Effective Date:* November 1, 2010.

*Estimated Charge Experiation Date:* March 1, 2011.

*Class of Air Carriers not Required to Collect PFC's:*

Non-scheduled/on-demand air carriers filing FAA Form 1900–31.

*Determination:* Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Greater Binghamton Airport.

*Brief Description of Projects Approved for Collection and Use:*

Replace runway 16/34 precision approach path indicators.

Storm water management plan.

Snow removal equipment replacement.

*Brief Description of Project Aprpoved for Use:*

Taxiway rehabilitation! extension construction.

*Decision Date:* June 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** Robert Levine, New York Airports District Office, (516) 227–3807.

AMENDMENTS TO PFC APPROVALS

| Amendment No. city, state | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 05–04–C–01–LYH, Lynchburg, VA | 05/27/08 | $1,810,000 | $1,610,000 | 06/01/15 | 06/01/15 |
| 98–03–C–03–SJT, San Angelo, TX | 06/03/08 | 830,830 | 437,726 | 08/01/04 | 08/01/04 |
| 04–05–C–01–SJT, San Angelo, TX | 06/03/08 | 335,042 | 259,336 | 01/01/06 | 01/01/06 |
| 05–06–C–01–SJT, San Angelo, TX | 06/03/08 | 200,000 | 217,044 | 11/01/06 | 11/01/06 |
| 06–07–C–01–SJT, San Angelo, TX | 06/03/08 | 1,568,947 | 1,477,361 | 09/01/12 | 09/01/12 |
| 99–05–C–01–MOD, Modesto, CA | 06/06/08 | 154,750 | 107,637 | 09/01/01 | 09/01/01 |
| 01–06–C–01–MOD, Modesto, CA | 06/06/08 | 124,180 | 65,871 | 03/01/05 | 03/01/05 |
| 04–11–C–02–BNA, Nashville, TN | 06/06/08 | 79,614,555 | 75,873,967 | 12/01/09 | 08/01/09 |
| 06–12–0–01–BNA, Nashville, TN | 06/06/08 | 21,671,262 | 21,671,262 | 02/01/11 | 02/01/11 |
| 97–06–I–03–BDL, Windsor Locks, CT | 06/09/08 | 15,019,913 | 15,038,863 | 02/01/99 | 02/01/99 |
| 99–08–U–02–BDL, Windsor Locks, CT | 06/09/08 | NA | NA | 02/01/99 | 02/01/99 |
| 99–09–I–01–BDL, Windsor Locks, CT | 06/09/08 | 4,400,000 | 4,557,854 | 07/01/00 | 07/01/00 |
| 01–13–U–01–BDL, Windsor Locks, CT | 06/09/08 | NA | NA | 07/01/00 | 07/01/00 |
| 06–05–C–02–RDM, Redmond, OR | 06/12/08 | 1,229,416 | 1,148,690 | 05/01/08 | 07/01/08 |
| *97–01–C–04–SDF, Louisville, KY | 06/16/08 | 90,600,000 | 90,600,000 | 09/01/14 | 03/01/14 |
| 06–04–C–02–SDF, Louisville, KY | 06/16/08 | 1,267,315 | 1,267,315 | 05/01/18 | 10/01/17 |
| 97–01–C–01–AHN, Athens, GA | 06/18/08 | 187,628 | 165,615 | 01/01/02 | 01/01/02 |
| 98–08–C–01–MHT, Manchester, NH | 06/18/08 | 3,088,148 | 3,033,074 | 2/01/16 | 02/01/16 |
| 01–09–C–01–MHT, Manchester, NH | 06/18/08 | 700,000 | 678,332 | 04/01/16 | 03/01/16 |
| 99–04–C–04–ILE, Killeen, TX | 06/18/08 | 3,157,544 | 3,104,371 | 12/01/05 | 12/01/05 |
| 01–05–C–02–ILE, Killeen, TX | 06/18/08 | 30,000 | 26,839 | 01/01/06 | 01/01/06 |
| 97–05–I–01–PLN, Pellston, MI | 06/19/08 | 16,250 | 19,361 | 09/01/97 | 09/01/97 |
| 99–08–U–02–PLN, Pellston, MI | 06/19/08 | NA | NA | 09/01/97 | 09/01/97 |
| 98–07–I–03–PLN, Pellston, MI | 06/19/08 | 97,089 | 79,747 | 08/01/02 | 06/01/02 |
| 01–09–C–02–PLN, Pellston, MI | 06/19/08 | 708,506 | 708,506 | 08/01/02 | 06/01/02 |
| 01–09–C–03–PLN, Pellston, MI | 06/19/08 | 708,506 | 799,792 | 07/01/11 | 07/01/11 |
| 95–02–C–03–EWR, New York, NY | 06/20/08 | 329,343,000 | 335,401,500 | 11/01/01 | 11/01/01 |
| 96–03–U–02–EWR, New York, NY | 06/20/08 | NA | NA | 11/01/01 | 11/01/01 |
| 95–02–C–03–JFK, New York, NY | 06/20/08 | 307,600,500 | 314,523,500 | 11/01/01 | 11/01/01 |
| 96–03–U–02–JFK, New York, NY | 06/20/08 | NA | NA | 11/01/01 | 11/01/01 |
| 95–02–C–03–LGA, New York, NY | 06/20/08 | 248,056,500 | 252,575,000 | 11/01/01 | 11/01/01 |
| 96–03–U–02–LGA, New York, NY | 06/20/08 | NA | NA | 11/01/01 | 11/01/01 |

Note: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Louisville, KY, this change is effective on September 1, 2008.

Issued in Washington, DC on July 3, 2008.

**Joe Hebert,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. E8–15958 Filed 7–16–08; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2008–28]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before August 6, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2008–0762 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jan Thor, ANM–113, (425) 227–2127, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Frances Shaver, (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 11, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2008–0762.

*Petitioner:* Viking Air Limited.

*Section of 14 CFR Affected:* Section 26.11.

*Description of Relief Sought:* Viking Air Limited seeks exemption of the DHC–7–1 from the requirements of § 26.11 on the basis that these airplanes are not currently operated commercially within the United States, nor are they expected to be in the future. Therefore, the operational rules that necessitate the enhancement of instructions for continued airworthiness are not applicable.

[FR Doc. E8–16248 Filed 7–16–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2008–26]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before August 6, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2002–12590 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Laverne Brunache (202) 267–3133 or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 11, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2002–12590.

*Petitioner:* United States Hang Gliding and Paragliding Association.

*Section of 14 CFR Affected:* 14 CFR 91.309 and 103.1(b).

*Description of Relief Sought:* To amend United States Hang Gliding and Paragliding Association (USHPA) current Exemption No. 4144, which allows USHPA members to tow unpowered ultralight vehicles (hang gliders) using powered ultralight vehicles. The requested amendment would allow USHPA members who are licensed sport pilots, with light sport aircraft, to tow aloft unpowered ultralight vehicles (hang gliders) for recreational and/or instructional purposes, as well.

[FR Doc. E8–16249 Filed 7–16–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; St. Lucie County, FL

**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 (EIS) will be prepared for a proposed new river crossing project in the City of Port St. Lucie, St. Lucie County, Florida.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Hadley, Federal Highway Administration, 545 John Knox Road, Suite 200, Tallahassee, Florida 32303, Telephone: (850) 942–9650 ext. 3011.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a third east-west bridge crossing over the North Fork of the St. Lucie River in the City of Port St. Lucie, in St. Lucie County, Florida. The proposed improvement would link the Crosstown Parkway on the west to U.S. 1 (SR 5) on the east. The proposed action is known as the Crosstown Parkway Corridor Extension Study and was formerly known as the Third East-West River Crossing Study. The proposed action would provide needed relief to the two existing river crossings which are over capacity. Alternatives under consideration include a No Build Alternative and multiple alternatives that provide a river crossing on a new alignment. Expansion of the two existing river crossings was previously considered and determined to be infeasible.

Coordination with appropriate Federal, State, and local agencies, and private organizations and citizens who have expressed interest in this proposal has been ongoing and will continue. A series of public meetings and workshops have been held in Port St. Lucie as part of the planning efforts for this project and will continue throughout the EIS process. A formal scoping meeting is planned for this project and is anticipated to occur in August of 2008. In addition, public workshops and a public hearing will be held. Public notice will be given of the time and place of the hearing and for future meetings. The Draft EIS will be made available for public and agency review and comment before the public hearing date.

To ensure that the full range of issues related to the proposed action is 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 the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: July 10, 2008.

**George B. Hadley,**

*Environmental Programs Coordinator, Tallahassee, Florida.*

[FR Doc. E8–16342 Filed 7–16–08; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Project Number STP–0022–01 (059)]**

### Environmental Impact Statement: Stone, Perry, George, and Greene Counties, MS

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of Intent.

**SUMMARY:** The Federal Highway Administration is issuing this notice to advise the public that an Environmental Impact Statement will be prepared to study improvements to State Route 15 to provide a four-lane facility beginning in the vicinity of Ramsey Springs, Mississippi and terminating on U.S. Highway 98 near Beaumont, Mississippi, a distance of approximately 35 miles.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cecil Vick, Project Development Team Leader, Federal Highway Administration, 666 North Street, Suite 105, Jackson, MS 39202–3199, *Telephone:* (601) 965–4217. Contacts at the State and local level, respectively are: Mr. Claiborne Barnwell, Environmental/Location Division Engineer, Mississippi Department of Transportation, P.O. Box 1850, Jackson, MS 39215–1850, telephone: (601) 359–7920; and Mr. Steven Twedt, District 6 Engineer, Mississippi Department of Transportation, 6356 Highway 49 North, Hattiesburg, MS 39403–0551, telephone (601) 544–6511.

**SUPPLEMENTARY INFORMATION:** The FHWA, Mississippi Division Office will serve as the lead Federal agency for this project while the Mississippi Department of Transportation (MDOT) will serve as joint lead agency. The FHWA, in cooperation with MDOT, will prepare an Environmental Impact Statement (EIS) to study potential improvements to State Route 15 (SR 15) in order to provide a four-lane facility. This approximately 35-mile long corridor has logical termini near Ramsey Springs in Stone County and on U. S. Highway 98 near Beaumont, MS in Perry County.

The purpose of the EIS is to address the transportation, environmental, and safety issues of such a transportation corridor. The Transportation facility will greatly enhance Hurricane evacuation from the Mississippi Gulf, provide a new four-lane facility, and meet legislative intent. Alternatives under consideration include (1) taking no action and (2) build alternatives.

The FHWA and MDOT are seeking input as a part of the scoping process to assist in determining and clarifying issues relative to this project. Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, Native American tribes, private organizations and citizens who have previously expressed or are known to have interest in this proposal. A formal scoping meeting with federal, state, and local agencies, and other interested parties will be held in the near future. Public involvement meetings will be held during the EIS process. The draft EIS will be available for public and agency review and

comment prior to the official public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

**Andrew H. Hughes,**

*Federal Highway Administration, Division Administrator, Mississippi Division, Jackson, Mississippi.*

[FR Doc. E8–16371 Filed 7–16–08; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in Idaho

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

**SUMMARY:** This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, 1–84 Orchard Interchange to Gowen Interchange Study, in Boise, Ada County in the State of Idaho [Idaho Transportation Department (ITD) Key Number 6492].

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 13, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Mr. Peter Hartman, Division Administrator, Federal Highway Administration, 3050 Lake Harbor Lane, Suite 126, Boise, Idaho 83703; telephone: (208) 334–1843; e-mail: *Peter.Hartman@fhwa.dot.gov*. The FHWA Idaho Division Office's normal business hours are 8 a.m. to 5 p.m. (Mountain Standard Time). For lID: Ms. Sue Sullivan, Project Manager, Idaho Transportation Department, District 3 Office, 8150 Chinden Blvd., Boise, Idaho 83724, telephone: (208) 334–8300. Normal business hours are 8 a.m. to 5 p.m. (Mountain Standard Time).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 139(I)(1) by issuing approvals for the following highway project in the State of Idaho: 1–84 Orchard Interchange to Gowen Interchange Study in Boise, Ada County. The project will be 9.2 miles long, and expand the existing four-lane freeway to an eight-lane freeway with auxiliary lanes from approximately one half mile west of the Orchard interchange to Broadway interchange. An existing four-lane freeway will be expanded to a six-lane freeway from Broadway interchange to Gowen interchange and from Gowen interchange to just east of Issacs Canyon the existing four-lane freeway will be reconstructed. The project also includes the reconstruction of the Vista, Orchard, Broadway and Gowen interchanges. The actions by the FHWA, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project approved on July 13, 2007. A Finding of No Significant Impact (FONSI) issued on November 5, 2007. The EA, FONSI and other project records are available by contacting the FHWA or the Idaho Transportation Department at the addresses provided above. The EA and FONSI can be viewed and downloaded from the project Web site at *http://www.itd.idaho.gov/Projects/D3/I84Orchard To Gowen/* or viewed at the Idaho Transportation Department.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; Public Hearing [23 U.S.C. 128].

2. Air and Noise: Clean Air Act [42 U.S.C. 7401–7671(q)]; Intermodal Surface Transportation Efficiency Act of 1991, Congestion Mitigation and Air Quality Improvement Program (Sec 1008 U.S.C. 149); Noise Standards: 23 U.S.C. 109(i) (P.L. 91–605) (P.L. 93–87).

3. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(II)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

5. Land: Section 4(f) of The Department of Transportation Act: 23 U.S.C. 138,49 U.S.C. 303 (P.L. 100–17), (P.L. 7–449), (P.L. 86–670); Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*).

6. Social and Economic: Civil Rights Act of 1964 (42 U.S.C. 2000(d)–2000(d)(1)]; Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601 *et seq.*, P.L. 91–646) as amended by the Uniform Relocation Act Amendments of 1987 (P.L. 100–17).

7. Wetlands and Water Resources: Clean Water Act [33 U.S.C.]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)].

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(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.)

**Authority:** 23 U.S.C. § 139(l)(1).

Issued on: July 8, 2008.

**Peter J. Hartman,**

*Division Administrator, FHWA—Idaho Division.*

[FR Doc. E8–16052 Filed 7–16–08; 8:45 am]

**BILLING CODE 4910–RY–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement (EIS), Ada and Canyon Counties, ID

**AGENCY:** Federal Highway Administration.

**ACTION:** Rescind Notice of Intent to Prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The FHWA is issuing this notice to advise the public that the Notice of Intent (NOI) published on July 17, 2007 to prepare an Environmental Impact Statement (EIS) for a proposed highway project in Ada County, Idaho is being rescinded.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Hartman Division Administrator, Federal Highway Administration, 3050 Lakeharbor Lane, Suite 126, Boise, Idaho 83703, Telephone: (208) 334 9180, ext. 116, or Ms. Amy Schroeder, GARVEE Program Engineer, Idaho Transportation Department, P.O. Box 7129, Boise, Idaho 83703–1129, Telephone: (208) 334–8772.

**SUPPLEMENTARY INFORMATION:**

## Background

The Idaho Transportation Department (ITD) and the Federal Highway Administration (FHWA) are rescinding the Notice of Intent (NOI) to prepare an EIS for a project that has been proposed to evaluate existing transportation improvement needs along approximately 16 miles of Interstate 84 (1–84) in Ada and Canyon Counties, Idaho. The project is officially known as the 1–84 Karcher Interchange to Five Mile Environmental Study (Project No. A010 (002); Key No. 10002).

The NOI is being rescinded because the current project development and NEPA process are yielding minimal potential for significant impacts and an EIS is not necessary or appropriate for the environmental evaluation.

The I–84 Environmental Study is identified in the COMPASS Communities in Motion: Regional Long-Range Transportation Plan 2030 (CIM) as one of several potential transportation needs in the Treasure Valley. The project was initiated with several conceptual alternatives from the previous planning efforts. The initially developed wide range of concept alternatives identified for evaluation in the I–84 Karcher to Five Mile Environmental Study had unknown and much greater potential for impacts. In response, it was thought that an EIS would be the best method to discuss impacts from the broad range of alternatives. This class of action was determined before the purpose and need statement was crafted.

Consequently, a Letter of Project Initiation and NOl was published on July 17, 2007 to prepare an EIS.

Public input, agency and stakeholder coordination was conducted under the SAFETEA–LU Environmental Review process. Public meetings were held on May 15, May 17, and November 6, 2007 to solicit comments from the public on the purpose and need, alternatives being considered and the alternative screening process.

The Participating Agency group convened on August 9 and October 25, 2007. Input from the public and agency meetings assisted in the establishment of the purpose and need for the project, and yielded the project range of alternatives to be considered. Some of the concept alternatives initially considered for the action, such as the development of a new corridor to the south and improvement of local streets, did not meet the established purpose and need and were therefore dismissed from further consideration. In addition, environmental scans and screening did not reveal potential for significant impacts from the remaining build alternatives. Subsequently added screening criteria effectively dismissed additional concept alternatives based on their reasonability, practicability, and constructability. Alternatives were developed and advanced into further screening where actual footprints are evaluated for impacts within the project limits. The screened alternatives to be advanced were presented to the public on March 19, 2008 and to participating agencies on April 2, 2008.

At this point in the project development process, no significant human or natural environmental impacts are evident in the 1–84 Karcher Interchange to Five Mile Road Environmental Study project that would require an ElS. If, at any point in the environmental process, it is determined that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

To ensure that the full range of issues related to this proposed action and all significant issues are identified, comments and suggestions are invited from all interested parties regarding this action to rescind the NOl published July 17, 2007 for the highway project in Ada and Canyon County, Idaho. Comments or questions concerning this proposed action should be directed to the FHWA or lTD at the addresses provided above.

**Peter J. Hartman,**

*Division Administrator, FHWA—Idaho Division.*

[FR Doc. E8–16053 Filed 7–16–08; 8:45 am]

**BILLING CODE 4910–RY–M**

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# DEPARTMENT OF THE TREASURY

## Fiscal Service

## Rate for Use in Federal Debt Collection and Discount and Rebate Evaluation

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice of rate for use in Federal debt collection and discount and rebate evaluation.

**SUMMARY:** Pursuant to Section 11 of the Debt Collection Act of 1982, as amended, (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts owed to the Government. Treasury's Cash Management Requirements (1 TFM 6–8000) prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. In addition, 5 CFR 1315.8 of the Prompt Payment rule on ''Rebates'' requires that this rate be used in determining when agencies should pay purchase card invoices when the card issuer offers a rebate. Notice is hereby given that the applicable rate is 3.00 percent for the remainder of the calendar year.

**DATES:** The rate will be in effect for the period beginning on July 1, 2008, and ending on December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Inquiries should be directed to the Agency Enterprise Solutions Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (*Telephone:* 202–874–6650).

**SUPPLEMENTARY INFORMATION:** The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Public Law 95–147, 91 Stat. 1227. The rate is computed each year by averaging Treasury Tax and Loan (TT&L) investment rates for the 12-month period ending every September 30, rounded to the nearest whole percentage, for applicability effective each January 1. The rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 percentage points, which is the case for the quarter ending June 30, 2008. Therefore, the rate in effect for the period July 1, 2008 through December 31, 2008 reflects the average investment rates for the 12-month period that ended June 30, 2008.

Dated: July 8, 2008.

**Sheryl Morrow,**

*Assistant Commissioner, Federal Finance.*

[FR Doc. E8–16250 Filed 7–16–08; 8:45 am]

**BILLING CODE 4810–35–M**

## DEPARTMENT OF THE TREASURY

### United States Mint

### Notification of Citizens Coinage Advisory Committee August 2008 Public Meeting

**ACTION:** Notification of Citizens Coinage Advisory Committee August 2008 Public Meeting.

**SUMMARY:** Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting and public forum scheduled for August 1, 2008, at the American Numismatic Association's World's Fair of Money®.

*Date:* August 1, 2008.

*Time:* 9 a.m. to 12 p.m. (public meeting followed by public forum).

*Location:* Room 316, Baltimore Convention Center, One West Pratt Street, Baltimore, MD 21201.

*Subject:* Review candidate reverse designs for the 2009 American Eagle Platinum Coin Program, candidate privy mark designs for the American Eagle Platinum Coin series, and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

**FOR FURTHER INFORMATION CONTACT:** Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

**Authority:** 31 U.S.C. 5135(b)(8)(C).

Dated: July 11, 2008.

**Edmund C. Moy,**

*Director, United States Mint.*

[FR Doc. E8–16341 Filed 7–16–08; 8:45 am]

**BILLING CODE 4810–02–P**

## UNITED STATES INSTITUTE OF PEACE

### Announcement of a Formal Evaluation of the Annual Grant Competition (Formerly Known as the Unsolicited Grant Initiative); Effective Immediately

**AGENCY:** United States Institute of Peace (USIP).

**ACTION:** Notice.

**SUMMARY:** Conduct an evaluation to assess the contribution and impact of the work of its Annual Grant Competition Program (formerly unsolicited grant program) from 1996–2006. USIP seeks an assessment of the program's effectiveness in advancing the Institute's mission to ''prevent and resolve violent international conflicts, promote post-conflict stability and development, and increase conflict management capacity, tools, and intellectual capital worldwide.'' The evaluation seeks to address the following concerns: (1) Demographic data of organizations and individuals funded by USIP (670 grantees); (2) Accountability of grantees; (3) Impact of USIP grants on the grantees and the professional field; (4) Perception of Annual Grant Competition Program at home and abroad.

The fixed-price contract of $50,000 will be awarded to a not-for-profit organization.

*Deadline:* Received by July 28, 2008, 5 p.m.

Proposal must include: Letter of Intent; Proof of non-profit status; Demonstrated knowledge of the conflict management field; Summary of proposed evaluation methodologies and techniques; Two examples of completed evaluation efforts; CVs of lead investigator and team members.

**DATES:** Notification Date: August 11, 2008. Completion Date: January 30, 2009.

**ADDRESSES:** United States Institute of Peace, Grant Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), E-mail: *grants@usip.org.*

**FOR FURTHER INFORMATION CONTACT:** The Grant Program Annual Grant Competition, Phone (202) 429–3842, e-mail: *grants@usip.org.*

Dated: July 7, 2008.

**Michael Graham,**

*Vice President for Administration.*

[FR Doc. E8–15767 Filed 7–16–08; 8:45 am]

**BILLING CODE 6820–AR–M**

## DEPARTMENT OF VETERANS AFFAIRS

### Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on July 17–18, 2008, at 810 Vermont Avenue, NW., Washington, DC, from 8 a.m. to 4:30 p.m. each day. The July 17 session will be in room 630, and the July 18 session will be in room 530. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on adverse health effects that may be associated with exposure to ionizing radiation, and to make recommendations on proposed standards and guidelines regarding VA benefit claims based upon exposure to ionizing radiation.

The major items on the agenda for both days will be discussions of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of the discussions, the Committee may make recommendations to the Secretary concerning the relationship of certain diseases to exposure to ionizing radiation. The July 18 session will include planning for future Committee activities and assignment of tasks among members.

An open forum for oral statements from the public will be available for 30 minutes in the afternoon each day. People wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis and will be provided three minutes per statement.

Members of the public wishing to attend should contact Ms. Bernice Green at the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 461–9723, or by fax at (202) 275–1728. Individuals should submit written questions or prepared statements for the Committee's review to Ms. Green at least five days prior to the meeting. Those who submit material may be asked for clarification prior to its consideration by the Committee.

Dated: June 20, 2008.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. E8–15775 Filed 7–16–08; 8:45 am]

**BILLING CODE 8320–01–M**

Federal Register

Thursday,
July 17, 2008

# Part II

# Federal Deposit Insurance Corporation

## 12 CFR Part 360

## Processing of Deposit Accounts in the Event of an Insured Depository Institution Failure; Large Bank Deposit Insurance Determination Modernization; Interim and Final Rules

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 360**

**RIN 3064–AD26**

## Processing of Deposit Accounts in the Event of an Insured Depository Institution Failure

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The FDIC is adopting an interim rule establishing the FDIC's practices for determining deposit and other liability account balances at a failed insured depository institution. Except as noted, the FDIC practices defined in the interim rule represent a continuation of long-standing FDIC procedures in processing such balances at a failed depository institution. The FDIC is adopting the interim rule concurrently with its adoption of a related final rule requiring the largest insured depository institutions to adopt mechanisms that would, in the event of the institution's failure: Provide the FDIC with standard deposit account and other customer information; and allow the placement and release of holds on liability accounts, including deposits. This interim rule applies to all insured depository institutions.

**DATES:** This interim rule is effective August 18, 2008, except for § 360.8(e), which will be effective July 1, 2009. Written comments must be received by the FDIC on or before September 15, 2008.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal*. Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov*. Include ''Processing of Deposit Accounts'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

*Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

**FOR FURTHER INFORMATION CONTACT:** James Marino, Project Manager, Division of Resolutions and Receiverships, (202) 898–7151 or *jmarino@fdic.gov*; Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349 or *jdinuzzo@fdic.gov*; or Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839 or *chencke@fdic.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

In January of this year the FDIC published a proposed rule composed of two parts (''proposed rule'').[1] The first part proposed FDIC practices for determining deposit and other liability account balances at a failed insured depository institution. The second part proposed requirements for the largest insured depository institutions to adopt mechanisms that would, in the event of the institution's failure: (1) Provide the FDIC with standard deposit account and other customer information; and (2) allow the placement and release of holds on liability accounts, including deposits.

The comment period for the proposed rule ended on April 14, 2008. The FDIC received twenty-one comment letters, all of which may be viewed on the FDIC's Web site at *http://www.fdic.gov/regulations/laws/federal/2008/08comAD26.html*.

Based in part on the comments received on the proposed rule, the FDIC has decided to finalize the proposed rule by issuing two separate rulemakings—(1) the interim rule, covering part one of the proposed rule and (2) a separate final rule, covering part two of the proposed rule (''Large Bank Modernization Final Rule'').

Throughout this preamble the terms ''deposit'' (or ''domestic deposit''), ''foreign deposit'' and ''international banking facility deposit'' identify liabilities having different meanings for deposit insurance purposes. A ''deposit'' is used as defined in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)) (''Section 3(l)''). A deposit includes only deposit liabilities payable in the United States, typically those deposits maintained in a domestic office of an insured depository institution. Only deposits meeting these criteria are eligible for insurance coverage. Insured depository institutions may maintain deposit liabilities in a foreign branch (''foreign deposits''), but these liabilities are not deposits in the statutory sense (for insurance or depositor preference purposes) for the time that they are payable solely at a foreign branch or branches. Insured depository institutions also may maintain liabilities in an international banking facility (''IBF''). An ''international banking facility deposit,'' as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), also is excluded from the definition of ''deposit'' in Section 3(l) and the depositor preference statute (12 U.S.C. 1821(d)(11)).

### II. Background

Upon the failure of an FDIC-insured depository institution, the FDIC must determine the total insured amount for each depositor. 12 U.S.C. 1821(f). To make this determination, the FDIC must ascertain the balances of all deposit accounts owned by the same depositor in the same ownership capacity at a failed institution as of the day of failure.

The Large Bank Modernization Final Rule, among other things, requires certain large depository institutions to adopt mechanisms that will allow the FDIC, as receiver, to place holds on liability accounts, including deposits, in the event of failure. The amount held would vary depending on the account balance, the nature of the liability (whether or not it is a deposit for insurance purposes) and the expected losses resulting from the failure. In order to calculate these hold amounts, the rules used by the FDIC to determine account balances as of the day of failure must be clearly established.

A deposit account balance can be affected by transactions[2] presented during the day. A customer, a third party or the depository institution can initiate a deposit account transaction. All depository institutions process and post these deposit account transactions according to a predetermined set of rules to determine whether to include a deposit account transaction either in that day's end-of-day ledger balances or in a subsequent day's balances. These rules establish cutoff times that vary by institution and by type of deposit account transaction—for example, check

[1] 73 FR 2364 (Jan. 14, 2008).

[2] A deposit account transaction, such as deposits, withdrawals, transfers and payments, causes funds to be debited from or credited to the account.

clearing, Fedwire, ATM, and teller transactions. Institutions post transactions initiated before the respective cutoff time as part of that day's business and generally post transactions initiated after the cutoff time the following business day. Further, institutions automatically execute prearranged ''sweep'' instructions affecting deposit and other liability balances at various points throughout the day. The cutoff rules for posting deposit account transactions and the prearranged automated instructions define the end-of-day balance for each deposit account on any given business day.[3]

In the past, the FDIC usually took over an institution as receiver after it had closed on a Friday. For institutions with a few branches in one state, deposit account transactions for the day were completed and determining account balances on that day was relatively straightforward. The growth of interstate banking and branching over the past two decades and the increasing complexity of bank products and practices (such as sweep accounts) has made the determination of end-of-day account balances on the day of closing much more complicated.

## III. The Proposed Rule

### *Overview*

The proposed rule defined the deposit account balance used for deposit insurance determination purposes as the end-of-day *ledger* balance of the deposit account on the day of failure. Except as noted, the FDIC would use the cutoff times previously applied by the failed insured depository institution in establishing the end-of-day ledger balance for deposit insurance determination purposes. The use of end-of-day ledger balances and the institution's normal cutoff times for insurance determination purposes continues long-standing FDIC procedures in processing such balances at a failed depository institution. Whether a deposit account transaction would be included in the end-of-day ledger balance on the day of failure would depend generally upon how it normally would be treated using the institution's ordinary cutoff time on that day. Many institutions have different cutoff times for different kinds of transactions, such as check clearing, Fedwire, ATM and teller transactions.

The FDIC proposed establishing an FDIC Cutoff Point, defined as a point in time after it takes control of the failed institution as receiver, to allow the FDIC to make a final determination of the ledger balances of the deposit accounts if the institution's normal cutoff times for the accounts would impair the efficient winding up of the institution. If the institution's ordinary cutoff time on the day of failure *for any particular kind of transaction* preceded the FDIC Cutoff Point, the institution's ordinary cutoff time would be used. Otherwise, the institution's ordinary cutoff time for an individual kind of transaction would be replaced by the FDIC Cutoff Point. The ''Applicable Cutoff Time'' used for any kind of transaction thus would be the earlier of the institution's ordinary cutoff time or the FDIC Cutoff Point. In practice, there might be several Applicable Cutoff Times for a given failed institution, since different kinds of transactions could have different cutoff times. No Applicable Cutoff Time would be later than the FDIC Cutoff Point established by the FDIC, though some could be earlier.

Under the proposed rule, transactions occurring after the Applicable Cutoff Time would have been posted to the next day's business, if the operations of the failed institution were carried on by a successor institution. In a depository institution failure where deposit operations were not continued by a successor institution, account transactions on the day of failure would have been posted to the applicable deposit accounts until the FDIC Cutoff Point. This practice would have been consistent with the FDIC's current practice in handling deposit account transactions in deposit insurance *payout* situations.[4]

Upon taking control of a failed institution as receiver, as proposed, the FDIC would take steps necessary to limit additional transactions to ensure, to the extent practicable, that funds would not be received by or removed from the failed institution. These steps might include the suspension of wire activities and new deposit account transactions. For example, wire transactions not yet executed by the FDIC Cutoff Point would not be allowed to occur on the day of closing.

For a failed institution operating in several time zones, the FDIC Cutoff Point, which would have set the latest possible time for any particular transaction's Applicable Cutoff Time, would have been translated into local time. For example, a 6 p.m. Eastern Time FDIC Cutoff Point on the day an institution was closed would have meant a 5 p.m. FDIC Cutoff Point in the Central Time zone. As receiver, the FDIC would have attempted, as it has customarily done in the past, to close all offices of the failed institution as soon as practicable after taking over as receiver.

### *Treatment of Uncollected Deposited Checks*

Under the proposed rule, in determining end-of-day deposit account balances at a failed insured depository institution, the FDIC would have deemed all checks deposited into and posted to a deposit account by the Applicable Cutoff Time as part of the end-of-day deposit account balance for insurance purposes. This approach means that the FDIC would have used the end-of-day ledger balance of the account for purposes of its deposit insurance determination, in contrast to using either end-of-day available or collected funds balances. The proposed rule differed from the FDIC's practices in an important way. In the past, for a check that was posted to an account but not yet collected at the time of failure—including a check already forwarded by the failed institution for collection but not yet collected—the FDIC acted as agent for the depositor and remitted or credited payments received on these checks to the depositor in full. These checks were not included in deposits on the day of failure for insurance purposes and were not subject to deposit insurance limits.[5] In contrast, under the proposed rule, when a check is posted to an account at the failed institution by the Applicable Cutoff Time, the check would have been included in the end-of-day balance and would have been subject to deposit insurance limits, even if uncollected.

### *Prearranged Instructions To ''Sweep'' Funds*

The proposed rule attempted to distinguish between internal and external sweep accounts. Internal sweep arrangements—such as those applying

[3] Some depository institutions operate ''real-time'' deposit systems in which some deposit account transactions are posted throughout the business day. Most depository institutions, however, process at least some deposit account transactions in a ''batch mode,'' where deposit account transactions presented before the cutoff time are posted that evening or in the early morning hours of the following day. With either system—batch or real-time—the institution calculates a close-of-business deposit balance for each deposit account on each business day.

[4] This is when the FDIC handles the resolution of a failed depository institution by making payments to insured depositors. More commonly, the FDIC handles a failed institution by arranging a purchase-and-assumption transaction with a healthy depository institution. In those cases, insured depositors' funds are transferred to the assuming institution and available at that institution to depositors.

[5] FDIC Adv. Op. 95–2 (Jan. 23, 1995).

to *zero balance accounts*[6] or where the investment vehicle is a deposit in a foreign branch of the institution or its international banking facility—were characterized as arrangements that sweep funds only within the institution itself by accounting or bookkeeping entries. External sweep arrangements—such as those connected to investments in money market mutual funds—were characterized as arrangements that move funds (usually by wire transfer) outside the institution and, hence, off its books altogether.

Under the proposed rule, any automated internal sweep transaction from one account at the failed institution to another account at the failed institution would have been completed on the day of failure. The FDIC as receiver, in effect, would have recognized the transfer, pursuant to the account agreement, in determining the end-of-day balance for deposit insurance and depositor preference purposes. Under the proposed rule the FDIC as receiver would not, however, complete an external sweep—a sweep in which funds leave the institution and another entity assumes liability to the customer—if funds have not already left the failed institution by the FDIC Cutoff Point. An external sweep included, for example, an account where funds are swept from a deposit account at the institution and wired to a third party money market mutual fund every day. External sweeps also would have included an arrangement where funds are swept from a deposit account at a depository institution to an account or product at an affiliate of the institution, even if the transfer is accomplished through a book-entry at the depository institution. In some cases it would not be practicable to stop an external sweep from occurring after the FDIC general cutoff time. In these cases the FDIC proposed using the pre-sweep deposit balance for insurance purposes.

The proposed rule would have applied differently to sweep accounts involving the transfer of funds outside the depository institution. In those situations, the status of the funds as of the institution's day of failure would depend on whether the funds left the institution (via wire transfer or otherwise) before the FDIC Cutoff Point. Where funds subject to a prearranged, automated external sweep have been temporarily transferred to an intermediate deposit account (or omnibus account) at the failed institution awaiting transfer to an external source, but have not actually been transferred to the external source (for example, the mutual fund) by the FDIC Cutoff Point, those funds would still have been considered part of the customer's deposit account balance for deposit insurance and receivership purposes.

The completion of prearranged internal sweep transactions results in the calculation of end-of-day deposit balances for insurance proposes consistent with how such funds currently are reported on Call and Thrift Financial Reports and are treated for assessment purposes. As detailed in the proposed rule, the need for the FDIC to clarify the treatment of internal sweep arrangements was motivated, in part, by the decision in *Adagio Investment Holding Ltd.* v. *FDIC*, 338 F. Supp. 2d 71 (D.D.C. 2004) (''Adagio'').

In that case the FDIC had been appointed receiver of the failed Connecticut Bank of Commerce. On the night of the bank's failure, in accordance with its customary practice, the FDIC ''completed the day's business'' which involved processing pending transactions, including approximately $20.2 million which had been authorized to be swept from a demand deposit account in the bank to an account in the bank's IBF. Because an IBF account is not a deposit for purposes of section 3(l) of the FDI Act, the FDIC issued the holders of the IBF accounts receivership certificates as general creditors rather than according them priority status as depositors (pursuant to the national deposit preference statute, described below). The creditors, claiming that the receiver did not have authority to permit the sweeps, sued the FDIC. In the *Adagio* case, the court concluded that the sweep should not have been performed in light of the lack of ''any provision in either the statute or regulations that would permit the sweep that occurred. * * *'' 338 F. Supp. 2d at 81.

*Post-Closing Adjustments*

Under the proposed rule, the FDIC, as receiver, would have been able to correct errors and omissions after the day of failure and reflect them in the day-of-closing deposit account balances.

*No New Requirements Would Have Been Imposed on Open and Operating Institutions*

The proposed rule would not have required insured institutions to have in place computer systems capable of applying the FDIC Cutoff Point to determine deposit account balances upon an institution's day of failure. The FDIC, however, requested comments on whether such a requirement should be imposed for either all institutions or, alternatively, for ''Covered Institutions''—defined in the second part of the proposed rule as institutions having at least $2 billion in domestic deposits and either: More than 250,000 deposit accounts; or total assets over $20 billion, regardless of the number of deposit accounts.

*Repo Sweep Arrangements*

The preamble to the proposed rule noted that some repurchase sweep agreements provide for an actual sale of securities by the depository institution to a customer (followed by the institution's repurchase of the securities from the customer). Accordingly, when the customer uses funds in a deposit account to make the purchase, the bank's deposit liability to the customer is extinguished. There may be other so-called repurchase agreements that do not provide for the actual sale and repurchase of securities, but simply provide for the transfer of the customer's claim from a deposit account at the depository institution to another liability account, collateralized by either specific securities or a pool of securities, at the same institution. In the proposed rule, the FDIC posed the following questions:

- Do some or all repurchase arrangements as actually executed: (1) Pass title to the customer in a transaction that is enforceable against the FDIC? or (2) create perfected security interests that are enforceable against the FDIC?
- Does the nature of some or all repurchase sweep arrangements satisfy the definition of ''deposit'' in section 3(l) of the FDI Act?
- What arguments may be made that repurchase arrangements in which the institution collateralizes its liability are permissible, given restrictions on collateralizing private deposits? *See Texas & Pacific Railway Company* v. *Pottorff*, 291 U.S. 245 (1934).

*Sweeps Alternative*

Under the proposed rule, funds subject to an internal sweep that is to take place before end-of-day balances are calculated would not be accorded

[6] In the case of a zero balance account ordinarily a customer has a master account tied to one or more subsidiary accounts. The institution's agreement with the customer calls for the subsidiary account to have a zero balance at the end of each day. For example, if funds need to be transferred from the master account to cover checks presented against the subsidiary account, this will be done during the nightly processing cycle. Alternatively, if there are excess funds in the subsidiary account they will be transferred to the master account prior to the end of the day.

treatment as deposits if they were to be swept, within the depository institution, by prearrangement, before the institution's end-of-day balances are determined, from a deposit to a liability not recognized as a deposit for insurance purposes. The discussion noted that under such an arrangement, no deposit insurance premiums would have been assessed against these funds since they would not have been reported as deposits by the institution. The FDIC asked whether, if the swept funds in such arrangements were to be assessed insurance premiums, they also should be eligible to be treated as deposits for purposes of FDIC deposit insurance and depositor preference. The FDIC also asked whether or to what extent such an option would involve any operational or regulatory burden or other adverse regulatory consequences.

## IV. Comments on the Proposed Rule

As noted, the FDIC received twenty-one comments on the proposed rule, the bulk of which addressed both parts of the proposed rule. Four of the comments were from banking industry trade associations (including one joint letter), two from bank regulatory authorities, ten from large insured depository institutions, one from a law firm representing broker-dealers who place brokered funds in insured depository institutions, one from a member-owned electronic funds transfer network and three from individuals. The following is a summary of the comments we received on part one of the proposed rule—determining deposit and other liability account balances at a failed insured depository institution.

*Use of End-of-Day Ledger Balances*

All of the bank trade association commenters and many of the large-bank commenters agreed with the FDIC's proposal to define the deposit account balance on the day of failure as the end-of-day ledger balance. Further, these commenters stated that, upon an institution's failure, the FDIC should use the end-of-day ledger balances normally calculated by the institution; thus, such balances should not be affected by the FDIC Cutoff Point.

*FDIC Cutoff Point*

The bank trade associations and large-bank commenters opposed the use of an FDIC Cutoff Point, proposing alternatively that the FDIC should always use the cutoff times normally established by the insured depository institution. They argued that introducing a new cutoff scheme would be unfair to customers. Many commenters expressed a belief that FDIC practices should not impinge upon the contractual arrangements or other understandings established between the insured depository institution and its customers. Further, it was argued that altering the customer's understanding of how deposit transactions will be posted would create uncertainty and may result in depositor flight.

Additionally, the implementation of an FDIC Cutoff Point was largely viewed as technically infeasible. It was noted that deposit systems are preprogrammed to implement cutoff times as established by the policies of the particular insured depository institution. Adapting these systems to accommodate an FDIC Cutoff Point would be costly, especially since the FDIC Cutoff Point would not be known until the day of failure.

*Treatment of Sweep Account Arrangements*

*In general*. Commenters supported at a very general level the establishment of a regulation intended to resolve the legal confusion brought about by the decision in *Adagio*. Commenters recommended that the FDIC limit any regulation to addressing only the legal confusion raised in *Adagio*. One banking trade group suggested this could be done by language to ''explicitly provide that all automated sweep arrangements that are codified in contract will be recognized as part of the day's business and reflected in end-of-day ledger balances, regardless of when the transactions are processed.'' Another banking trade association noted its ''greatest concerns relate to the FDIC's extensive new proposals relating to the treatment of sweep products. Sweep transactions have been an extensively used business practice for decades, enabling banks to secure substantial funding at reasonable costs and their customers to achieve their financial objectives. Any proposal that disrupts the existing treatment and expectations of institutions and their customers *vis-à-vis* sweeps would potentially impair the viability of sweeps with very serious and unpredictable consequences.''

Generally, commenters felt the FDIC should delay a final rule that would go beyond narrowly addressing the *Adagio* concerns. One large bank stated ''the issues raised and the potential impact to financial markets that could result from these proposals are very substantial. All of the proposals relating to sweeps warrant further study and consideration by the FDIC and should be removed from this rulemaking and should not be part of any final rule. The FDIC should consult further with other banking and financial regulatory agencies and with financial institutions that are key players in this market before finalizing a rule on sweeps.'' This commenter further stated ''the proposed regulation could have major ripple effects on other laws and regulations that ultimately rely upon the same legal definitions of a deposit as the Federal Deposit Insurance Act, including Regulation D, Regulation Q, deposit insurance assessments and the nationwide 10% deposit cap.''

*Repo sweep arrangements*. The FDIC's questions regarding the nature of funds swept through arrangements identified as repurchase agreement sweeps generally were not addressed, other than through the overall comment that the FDIC should only narrowly address *Adagio* in any final rule. One large bank stated that it ''believes the current sweep structures commonly used in the industry (including the structures of securities repos) are appropriately characterized as not being deposits under the FDIA. [The bank] further believes that any proposal to charge FDIC insurance premiums on the amounts swept would dramatically increase costs to banks relating to that product and could result in the product no longer being economically viable or able to be offered on terms that are competitive with other products offered by non-bank market participants.''

*Sweeps alternative*. In the proposed rule, the FDIC asked whether, if the funds involved in certain sweep arrangements were to be assessed insurance premiums, they also should be eligible to be treated as deposits for purposes of FDIC deposit insurance and depositor preference. No commenters addressed this question directly, although the tenor of the comments from the large banks and bank trade associations was that issues such as this should not be considered as part of this rulemaking.

*Consistent treatment across sweep transactions*. Several commenters argued that, if the FDIC proceeds with the rulemaking, it should treat each sweep transaction the same for claims purposes. One banking trade association argued that ''all these products have one common element—once swept from a deposit account, and until returned to the deposit account, none of the bank's obligations meets the definition of a 'deposit' under the Federal Deposit Insurance Act and are therefore not covered by deposit insurance in the event of the bank's insolvency. This characterization of sweeps is consistent with the long-standing practices of virtually every financial institution and has been the widely accepted practice by banking regulators for decades.'' In this regard, the commenter noted that, should the FDIC afford different

treatment across sweep products, it ''would therefore result in different (and, to a certain degree, arbitrary) treatment under the Proposal. Our members have great concern as to these potential disparities that could result, in some cases from nothing more than differences in the mechanisms used to execute and arrange sweep transactions.''

To provide consistent treatment among the various sweep products, several commenters suggested the FDIC should do away with the internal versus external distinction between sweep transactions as well as the Class A versus Class B distinction. ''We urge the FDIC to eliminate these unnecessary distinctions, to the extent that the FDIC proceeds with rulemaking around sweeps at all, and treat similar sweep products the same, despite different methods used by banks for processing the necessary transfers and posting the relevant accounts.''

## V. Rationale for Interim Rulemaking

As noted above, the practices being adopted in the interim rule were proposed in part one of the proposed rule. Hence, the FDIC is adopting those practices through the usual public notice-and-comment procedures pursuant to requirements in the Administrative Procedure Act, 5 U.S.C. 553. Before adopting the interim rule as a permanent rule, however, the FDIC invites comment on all aspects of the interim rule, including an aspect of the proposed rule on which the FDIC had not requested specific comment.

The interim rule addresses how the FDIC will treat sweep accounts upon an insured institution failure. The result is that, in many cases, the swept funds will not be treated by the FDIC as deposit obligations of the failed institutions. As explained above, that means the swept funds will not be eligible for deposit insurance coverage and will not be afforded status as a deposit under the depositor preference statute. Commenters on the proposed rule indicated that sweep account customers are aware of this potential consequence if the institution were to fail. In order to ensure that sweep account customers are aware that their funds will not be treated as deposits if the insured institution fails, however, the FDIC will require institutions to prominently disclose to customers whether the swept funds are deposits and the status of the swept funds if the institution failed. The effective date of this requirement will be deferred until July 1, 2009 to allow the FDIC to consider specific comments on the disclosure requirement. (Further explanation of the disclosure requirement is provided below under ''Request for Comments.'')

## VI. The Interim Rule

After fully considering the comments on the proposed rule, FDIC has adopted the interim rule substantially as proposed, with some modifications in connection with the treatment of ''internal and external'' sweep transactions, and in other limited areas. As noted, the interim rule requires institutions to disclose to customers whether the swept funds are deposits and the status of the swept funds if the institution failed, but the effective date of this requirement is deferred to allow for public comment. In addition, the FDIC will entertain comments on all other aspects of the interim rule.

### *Underlying Principles*

The interim rule describes the method for determining the value and nature of claims against a failed insured depository institution to be used in the event of failure. Upon taking control of a failed insured depository institution it is the receiver's responsibility to construct an ending balance sheet for the depository institution (which becomes the beginning balance sheet for the receivership) and determine the value and nature of the claims against the failed institution, including claims to be made by depositors, general creditors, subordinated creditors, and shareholders. Such claims determinations will be made consistent with the principles described below, which for the most part reflect existing practices and procedures used to determine account balances in the event of failure.

- In making deposit insurance determinations and in determining the value and nature of claims against the receivership on the institution's date of failure the FDIC, as insurer and receiver, will treat deposits and other liabilities of the failed institution according to the ownership and nature of the underlying obligations based on end-of-day ledger balances for each account using, except as expressly provided otherwise in the interim rule, the depository institution's normal posting procedures.
- In its role as receiver of a failed insured depository institution, in order to ensure the proper distribution of the failed institution's assets under the FDI Act (12 U.S.C. 1821(d)(11)) as of the FDIC Cutoff Point, the FDIC will use its best efforts to take all steps necessary to stop the generation, via transactions or transfers coming from or going outside the institution, of new liabilities or extinguishing existing liabilities for the depository institution.[7]
- End-of-day ledger balances are subject to corrections for posted transactions that are inconsistent with the above principles.

### *End-of-Day Ledger Balances and Cutoff Points*

As proposed, in the interim rule the deposit or liability account balance used for deposit insurance determination purposes is defined as the end-of-day *ledger* balance of the deposit or other liability on the day of failure. Except as noted, the FDIC will use the cutoff rules previously applied by the failed insured depository institution in establishing the end-of-day ledger balance for deposit insurance determination purposes. However, the interim rule allows the FDIC to establish an FDIC Cutoff Point, coinciding with the point in time at which the receiver acts to stop deposit transactions which might result in creating new liabilities or extinguishing existing liabilities. The FDIC Cutoff Point will facilitate the orderly winding up of the institution and the FDIC's final determination of the ledger balances of the deposit accounts in those cases where the institution's normal cutoff rules prevent or impair the FDIC's ability to promptly determine the end-of-day ledger balance of the deposit or other liability. The intention is to complete internal postings of transactions presented or authorized prior to the institution's normal cutoff rules or the FDIC Cutoff Point, as applicable, according to the depository institution's normal procedures—thus, as explained below, the nature of the liability may change after the FDIC Cutoff Point. Any transaction—including sweep arrangements—would be completed for that day according to normal procedures if it involves only the movement of funds between accounts within the confines of the depository institution. Some sweep arrangements shift funds within the depository institution from a

[7] This principle draws a sharp distinction between transactions involving the transfer of funds into or out of the failed institution and transactions intended to move funds between accounts or otherwise on the books and records of the failed institution. The receiver will act to stop the inflow and outflow of cash/assets at the point at which it takes control of the failed institution; thus transactions involving the transfer of assets into or out of the failed institution may be blocked or suspended. Transactions internal to the failed institution's operations initiated prior to the FDIC Cutoff Point—including those initiated through prearranged automated instructions—will still be conducted after the point of failure as part of a necessary process to arrive at the end-of-day ledger balances and to establish the nature of the claim recognized by the receiver.

deposit account to ownership in a sweep investment vehicle. The value and nature of these claims will be determined as they rest on the books and records of the depository institution as reflected in its end-of-day ledger balances.

If the institution's ordinary cutoff time for the day's business on the day of failure *for any particular kind of transaction* precedes the FDIC Cutoff Point, the institution's ordinary cutoff time will be used. Where the institution's ordinary cutoff time for an individual kind of transaction is later than the FDIC Cutoff Point, the institution's cutoff time will be replaced by the FDIC Cutoff Point. The ''Applicable Cutoff Time'' used for any kind of transaction thus will be the earlier of the institution's ordinary cutoff time or the FDIC Cutoff Point. Different kinds of transactions may have different Applicable Cutoff Times. Transactions occurring after the Applicable Cutoff Time will be posted a subsequent day's business, if the operations of the failed institution are carried on by a successor institution or by the FDIC as receiver or insurer.

The interim rule differs from the proposed rule in cases where deposit operations are not continued after failure in order to provide consistency in the determination of deposit balances regardless of whether the deposit operations were continued. In a depository institution failure where deposit operations are not continued by a successor institution, account transactions on the day of failure also will be posted to the applicable accounts as described above. Since there is no next business day in this case, rather than posting transactions occurring after the Applicable Cutoff Time as the next day's business, such transactions will be handled depending on the nature of the transaction. In the case of a cash or other deposit occurring after the Applicable Cutoff Time, such funds—which would not be included in the end-of-day ledger balance used for claims purposes—would be disbursed to the account owner. If a cash or other withdrawal is made after the Applicable Cutoff Time, such funds—again which would not be included in the end-of-day ledger balance used for claims purposes—could be used by the receiver to satisfy a claim against the receivership.[8]

The interim rule does not establish any new operational requirements for insured institutions relative to the FDIC Cutoff Point. Also, the interim rule explicitly authorizes the FDIC, as receiver, to correct errors and omissions after the day of failure and reflect them in the end-of-day ledger balances.

Several commenters argued against the establishment of an FDIC Cutoff Point and recommended that the FDIC use end-of-day balances as normally calculated by the insured depository institution. As noted above, the FDIC will apply the institution's normal cutoff times in most cases, but establishing an FDIC Cutoff Point is essential to the efficient finalization of end-of-day ledger balances in some situations. Strictly applying a depository institution's pre-established cutoff times in all circumstances is inconsistent with the duties and responsibilities of the receiver—as articulated in the principle indicated above. In the event of failure the receiver will take control of the failed institutions and simultaneously will act to stop deposit or other transactions involving creating new liabilities or extinguishing existing liabilities. In many cases, this can be done consistent with the institution's normal cutoff times, but in others it cannot and the FDIC will establish an FDIC Cutoff Point. If the receiver is successful in stopping these external transactions after it takes control there will be no new transactions to be posted affected by an FDIC Cutoff Point. In this case, the end-of-day ledger balances on the day of failure will be calculated using the failed institution's pre-established cutoff points. If the receiver is unsuccessful in stopping the external transactions, the FDIC Cutoff Point establishes a basis for posting these inadvertent transactions the following day, if that is the course of action selected by the receiver.

*Treatment of Uncollected Deposited Checks*

As proposed, in determining deposit account balances at a failed insured depository institution, the FDIC will deem all checks deposited into and posted to a deposit account by the Applicable Cutoff Time as part of the end-of-day ledger balance for insurance purposes. As detailed in the proposed rule, this treatment of uncollected deposited checks is warranted because: Depository institutions use and calculate the ledger balance in a more consistent way than other balances; it is consistent with the way that depository institutions report deposits on Call Reports and Thrift Financial Reports; it is the balance the FDIC uses to determine an institution's assessment base for calculating the institution's deposit insurance assessments;[9] it is the easiest balance for depositors to understand; and it is the most frequently used balance on financial statements provided to customers. Using ledger balances also is consistent with the definition of a deposit in the Federal Deposit Insurance Act (''FDI Act''), which includes balances both ''conditionally'' or ''unconditionally'' credited to a deposit account. 12 U.S.C. 1813(l).

Further, especially in a large depository institution failure, using end-of-day ledger balances may be the only operationally feasible means for the FDIC to make deposit insurance determinations timely and expeditiously. As discussed in more detail in the Large Bank Modernization Final Rule, the FDIC is statutorily obligated to pay insured deposits ''as soon as possible'' after an insured depository institution fails. 12 U.S.C. 1821(f)(1). The FDIC places a high priority on providing access to insured deposits promptly and, in the past, has usually been able to allow most depositors access to their deposits on the business day following closing. The largest insured institutions today are much bigger than any institution has been in the past and are growing increasingly complex. Providing prompt access to depositors if one of these institutions were to fail would prove difficult if adjustments for uncollected funds were necessary.

This treatment of uncollected deposited checks, however, will differ from the FDIC's past practice in an important way. In the past, for a check that was posted to an account but not yet collected at the time of failure—including a check already forwarded by the failed institution for collection but not yet collected—the FDIC acted as agent for the depositor and remitted or credited payments received on these checks to the depositor in full. These checks were not included in deposits on the day of failure for insurance purposes and were not subject to deposit

[8] A deposit account withdrawal in the form of an official check drawn on the failed depository institution would not be used by the receiver to satisfy the insured deposit claim. Official items are considered to be deposits for deposit insurance purposes; therefore, such official withdrawals would be treated differently from cash withdrawals.

[9] The FDIC's recent revisions to the FDIC's risk-based assessment system have made an institution's assessment base, which is used to determine its deposit insurance assessment, virtually identical with an institution's deposits as defined in the Federal Deposit Insurance Act. The revisions eliminated the ''float'' deductions previously used to compute an institution's assessment base; hence, deposits posted to a deposit account but not yet collected are now part of the assessment base. The stated rationale for eliminating the float deduction from the calculation of an institution's assessment base was that such deductions were small and decreasing as a result of legal, technological and system payment changes. 71 Fed. Reg. 69720 (Nov. 30, 2006).

insurance limits.[10] In contrast, under the interim rule, when a check is posted to an account at the failed institution as provided by the Applicable Cutoff Time, the check will be included in the end-of-day ledger balance and will be subject to deposit insurance limits, even if uncollected.[11]

Some depositors may receive less favorable treatment under the interim rule than if the FDIC were to continue to use its past approach to handling uncollected deposited checks. The increasing speed with which checks are processed as a result of electronic check processing, the use of checking account debit cards and other developments, however, should limit the effect of the final rule in this regard. Moreover, the past approach would not be feasible in a larger bank failure, and the FDIC must plan for all contingencies.

*Prearranged Instructions To ''Sweep'' Funds*

The proposed rule distinguished between internal and external sweep accounts. This distinction was created to recognize the receiver's responsibility, upon taking control of the failed institution, to stop the generation of new deposit or other transactions which might result in creating new liabilities or extinguishing existing liabilities for the depository institution or its customers to protect the appropriate distribution to claimants.

Under the interim rule, any automated sweep transaction transferring funds internally from one deposit account at the failed institution to a sweep investment vehicle at the failed institution will be completed on the day of failure. In the case of sweeps out of the failed institution into external investment vehicles, the swept funds will be treated consistent with their status in the end-of-day ledger balances. If an expected transfer to the external sweep investment vehicle is not completed prior to the FDIC Cutoff Point, the external investment will not be purchased and the funds will remain in the account identified on the end-of-day ledger balance.

Where funds are swept internally to an investment vehicle at the failed institution, the FDIC will recognize the transfer, pursuant to the account agreement, in determining the end-of-day ledger balance for deposit insurance and depositor preference purposes. This approach is consistent with the principle articulated in the interim rule that the FDIC will treat deposits and other liabilities of the failed institution on the date of failure based on the ownership and the nature of the underlying obligations as reflected in the end-of-day ledger balance. The completion of prearranged internal sweep transactions in the calculation of end-of-day deposit and other balances for insurance proposes also is consistent with how such funds currently are reported on Call and Thrift Financial Reports and are treated for assessment purposes.

Eurodollar and IBF accounts are two examples of internal sweep investment vehicles. Accounts that include a Eurodollar or IBF sweep arrangement typically begin each business day with balances only in a domestic deposit account. At the end of the business day, the customer's end-of-day ledger balance is reported as a Eurodollar account (typically associated with the bank's branch in the Cayman Islands or Bahamas) or an IBF account. At the start of the next business day, the depository institution will report the balance as being back in the domestic deposit account. The cycle typically repeats itself daily.

Usually the underlying contract for a Eurodollar sweep specifies that the obligation at the foreign branch is not payable in the United States and, hence, is not a *deposit*,[12] for deposit insurance and depositor preference purposes. Upon an institution's failure, amounts in a Eurodollar account in a foreign branch of the failed institution are treated as unsecured, non-deposit liabilities and are not eligible for insurance or depositor preference status. The same treatment will apply to sweeps to IBFs, which by statutory definition are not deposits. Eurodollar and IBF accountholders will thus be accorded general creditor status in the receivership estate.

It is important for customers to be aware that whether an account has deposit status—versus general creditor status—can be far more important for large depositors than the question of whether the account is fully insured. To illustrate, assume that $5.1 million is swept from a customer's checking account into a Eurodollar account. Further, assume that the failed institution's assets would be worth approximately eighty percent of its total deposit liabilities. In this illustration, if the funds had remained deposits the customer would have received approximately $4.1 million ($100,000 in deposit insurance plus an eighty percent dividend on the uninsured portion of the deposit), thus losing $1 million. However, since Eurodollar accounts are not deposits for purposes of either FDIC insurance or depositor preference, in this situation the customer would lose the entire $5.1 million upon the institution's failure.

Institutions do not pay deposit insurance assessments on liabilities denominated, as of an institution's end-of-day ledger balance, as foreign deposits or IBF deposits. Some of the commenters who addressed sweep account issues raised in the proposed rule acknowledged that sweep products (particularly those involving the transfer of funds from deposit accounts to non-U.S. deposits, securities repos, fed funds and money market mutual funds) result in obligations of the insured institution that would not be eligible for insurance and do not have deposit preference status. One commenter stated that, ''[m]ost of these products are designed for and used by corporate and institutional customers who are sophisticated enough to understand the business terms,'' thus suggesting that such customers are aware of the potential consequences in the event of failure of the institution.

Under the interim rule, the sweep to an IBF (for example, as described in the *Adagio* decision) will be completed for that day by the receiver on the day of failure and the account holders, who hold end-of-day ledger IBF accounts after the sweep, will be deemed to be general creditors of the receivership, rather than depositors, under the deposit preference statute.[13]

[10] FDIC Adv. Op. 95–2 (Jan. 23, 1995).

[11] The FDIC's treatment of uncollected checks is subject to the FDIC's rights and obligations under the FDI Act. *See, e.g.*, 12 U.S.C. 1822(d); *FDIC* v. *McKnight*, 769 F.2d 658 (10th Cir. 1985); *cert. denied sub nom., All Souls Episcopal Church* v. *FDIC*, 475 U.S. 1010 (1986). Although the FDIC will immediately honor uncollected checks through the payment of deposit insurance and the issuance of receivership certificates, if a check is ultimately uncollectible, the ledger balance of the depositor will be adjusted accordingly, and the FDIC will seek reimbursement from the depositor and adjust the depositor's receivership claim (if any) as necessary.

[12] The definition of ''deposit'' in the FDI Act expressly excludes: ''Any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless (i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at an office located in any State; and (ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State.'' 12 U.S.C. 1813(l)(5)(A). Also, the FDI Act defines IBF obligations as non-deposits, which are not eligible for deposit insurance or deposit preference status. 12 U.S.C. 1813(l)(5)(B).

[13] Rights are fixed as reflected in the depository institution's end-of-day ledger balances. Those rights would not be changed if, for example, it was impractical to reprogram the bank's computers before a liability swept to a foreign branch of an insured institution as of the day of the institution's failure and was treated by the computer as having

Repo sweep arrangements are another example of sweep arrangements that are generally conducted via internal transfers on the institution's books. Repo sweeps can differ considerably in documentation, actual execution, and timing. The FDIC, to the extent consistent with the principles articulated in the interim rule, will carry out repo sweeps in reaching end-of-day ledger balances. If as of the end-of-day ledger balance the repo sweep customer is the legal owner of identified securities subject to a repurchase agreement, the FDIC will acknowledge that ownership interest.

Based on industry information, as reflected in some comment letters, money market mutual fund sweeps may be structured in a variety of ways. In some cases the money market mutual funds shares are held directly in the name of the sweep account holder, but in other cases the money market mutual fund account is either in the name of the depository institution or in the name of the transfer agent for the mutual fund. Shares are sold or allocated to the individual sweep customer depending on the particulars of the sweep arrangement. Further, some money market mutual fund sweep arrangements result in a ''same-day'' purchase of fund shares while ''next-day'' sweeps delay the purchase of fund shares by the customer until the day following the investment decision.

Regardless of the internal mechanics of the money market mutual fund sweep arrangement, under the interim rule the FDIC will treat funds swept in connection with a money market mutual fund sweep arrangement consistent with the account where the funds are reported as reflected in the end-of-day ledger balances. The results of this determination may be affected by whether the sweep arrangement contemplated the movement of funds outside the institution. If an expected transfer is not completed on the day of failure due to the application of the second principle discussed above (that the receiver will stop the generation of new deposit or other transactions which might result in creating new liabilities or extinguishing existing liabilities for the depository institution or its customers), the account holder's rights will be fixed based on where the funds actually reside as of the end-of-day ledger balance. As with the treatment of other sweep products, this treatment is consistent with the principle that the FDIC will treat deposits and other liabilities of the failed institution on the date of failure based on the ownership and the nature of the underlying obligations as reflected in the end-of-day ledger balance.

Money market mutual fund sweeps are the most prevalent case involving a sweep investment vehicle designed to move outside of the depository institution, and have them come to rest in a separate legal entity. Another example is where funds are swept from a deposit account at a depository institution to an account or product at an affiliate of the institution, even if the transfer is accomplished through a book-entry at the depository institution. When the sweep investment vehicle rests outside the depository institution, under the interim rule the status of the funds as of the institution's day of failure will depend on whether the funds have been used to purchase the sweep investment vehicle prior to the FDIC Cutoff Point. For some sweep arrangements the purchase may not be completed for that day prior to the FDIC Cutoff Point. For example, an institution could have an arrangement to transfer funds from a customer's demand deposit account into an account at an affiliated depository institution, to be conducted each day late in the evening. In this case, under the interim rule if the funds had not been transferred to the sweep investment vehicle as of the FDIC Cutoff Point, they still will be considered to be a deposit for insurance purposes. This treatment is in furtherance of the FDIC's obligation as receiver to stop the generation of new deposit or other transactions that might result in creating new liabilities or extinguishing existing liabilities for the depository institution after the institution has failed.

In some cases it will not be practicable to stop automatically generated sweeps from occurring after the FDIC Cutoff Point, requiring the necessary adjustments post closing.

*Sweeps Alternative*

Under the interim rule, the receiver will establish the value and nature of claims based on the end-of-day ledger balance for each account. In the proposed rule the FDIC asked whether certain swept funds, if assessed insurance premiums, also should be eligible to be treated as deposits for purposes of FDIC deposit insurance and depositor preference. Based in part on the comments received on this issue, the FDIC has decided not to change current practices.

been swept back to a deposit account at a bridge bank or assuming bank serving as the successor to the failed institution.

**VII. Request for Comments**

The FDIC invites interested parties to submit comments during a 60-day comment period on all aspects of the interim rule, including whether insured depository institutions should be required to disclose to sweep account customers that swept funds will not be treated as deposits if the institution were to fail. More specifically, comments are requested on § 360.8(e) of the interim rule which, as indicated above, is subject to an extended delayed effective date:

> In all sweep account contracts and account statements reflecting sweep account balances, institutions must prominently disclose whether swept funds are deposits within the meaning of 12 U.S.C. 1813(l). If the funds are not deposits, the institution must further disclose the status such funds would have if the institution failed—for example, general creditor status or secured creditor status. Such disclosures must be consistent with how the institution reports such funds on its Call Reports or Thrift Financial Reports.

As noted above, several commenters stated that sweep customers generally are aware of how the swept funds would be treated in the event of failure. Over the past year, FDIC staff held meetings with groups of corporate treasurers to discuss the potential implications of the proposed rule. During these meetings, corporate treasurers stated that many institutions provided some disclosure to sweep customers about the potential consequences of these transactions. However, it was evident those disclosures did not result in a consistent understanding of how these funds would be treated in the event of failure.

This interim rule clearly states the FDIC's intent to use for claims purposes end-of-day ledger balances as normally reflected on the books and records of the insured depository institution. Prior to this end-of-day ledger balance calculation, funds could have been swept from a deposit account into a sweep investment vehicle. The movement of funds from a deposit account into a sweep investment vehicle not considered to be a deposit for insurance purposes can have significant implications for the sweep customers. In the case of a Eurodollar sweep, for example, the swept funds would have general creditor standing with a considerably higher loss exposure relative to an uninsured deposit claim.

The FDIC is concerned that the treatment of swept funds in the event of failure is not clearly understood by sweep customers. A better understanding of this treatment by sweep customers is important to avoid

misconceptions which may arise in the event of failure. While many institutions currently provide some disclosures to sweep customers, the FDIC believes the significance of the consequences to depositors of some sweep transactions necessitates consistent disclosures by institutions providing sweep services. In this context, it is particularly important for institutions to disclose to sweep customers that the completion of some sweep transactions may result in their funds being subject to treatment as general creditor claims.

In the Large Bank Modernization Final Rule—the companion to this interim rule—the FDIC discusses several important objectives including: (1) Providing liquidity to depositors, (2) enhancement of market discipline, (3) equity in the treatment of depositors of insured institutions and (4) preservation of franchise value in the event of failure. These objectives can be undermined if sweep customers do not have a clear understanding of the treatment of swept funds in the event of failure.

*Specifically the FDIC is interested in responses to the following questions:*

- What disclosures are currently being made in connection with sweep account arrangements which allow the sweep customer to ascertain the treatment of such funds in the event of failure?
- What form do these disclosures take, when are they provided, and what is their frequency?
- Are the disclosures consistent with how such funds are reported on Call or Thrift Financial Reports?

## VIII. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. No commenters suggested that the proposed rule was unclear, and the interim rule is substantively similar to the proposed rule.

## IX. Paperwork Reduction Act

*OMB Number:* New Collection.

*Frequency of Response:* On occasion.

*Affected Public:* Insured depository institutions offering sweep account products.

*Estimated Number of Respondents:* 1,170 to 1,970.

*Estimated Time per Response:* 25–49 hours per respondent.

*Estimated Total Annual Burden:* 28,870–84,400 hours.

*Background/General Description of Collection:* The interim rule contains collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (''PRA''). In particular, the interim rule requires, subject to an extended delayed effective date, depository institutions offering sweep products to disclose whether the swept funds are deposits for insurance purposes and, if not, how these funds would be treated in the event of failure. The collections of information contained in this section of the interim rule have been submitted to OMB for review.

*Estimated costs:* Compliance with the disclosure requirement will require insured depository institutions offering sweep products, which do not currently provide adequate disclosures, to modify their sweep account documentation, including customer account statements, to include new language indicating whether swept funds are a deposit for insurance purposes and, if not, how such funds would be treated in the event of failure. Further, additional documentation may be provided to sweep customers as part of a statement mailing on a one-time basis. Implementation cost will be mitigated by the delayed effective date of this requirement. Sweep account documents must be reprinted periodically in any case, and the cost of including the disclosure requirement should be minimal. Further, most insured depository institutions already make certain disclosures to customers, and the new requirements would simply replace these disclosures. After implementation, on-going cost should be negligible. Future printings of sweep account documentation will have to be conducted in any case to replenish stock, and the disclosure requirement should not add to the cost of such printings given its brief nature. Customer account statements would continue to be provided according to normal business practices. Further, staff training must be conducted periodically, and the disclosure requirement should not materially add to the length or complexity of this training.

The exact number of insured depository institutions offering sweep products is unknown. It is the FDIC's experience that the vast majority of large institutions offer some sweep arrangement as part of their cash management services. The prevalence of sweep offerings among smaller community banks is far less prevalent. This analysis assumes that all insured depository institutions with total assets of at least $2 billion offer at least one sweep product (370 institutions). It is further assumed that between 10 and 20 percent of the remaining 8,000 insured institutions also offer a sweep product (800 to 1,600 institutions). The total number of respondents is estimated to be between 1,170 and 1,970.

Implementation costs will vary based on the size, nature and scope of the depository institutions sweep programs. It is estimated that compliance costs for the very largest and super-regional banking organizations are between $25,000 and $50,000 while smaller regional organizations were placed at $10,000 to $20,000. Other large organizations (those with at least $2 billion in total assets) were assigned a cost estimate of $1,500 to $3,000. Costs for community banks were estimated to be between $1,000 and $2,000. Under these assumptions, the overall disclosure costs are estimated to be between $1.73 million and $3.46 million at the lower end of the number of institutions believed to be engaging in sweep operations (1,170). If as many as 1,970 depository institutions maintain sweep operations the total costs are estimated to range between $2.53 million and $5.06 million.

Based on the above cost estimates the number of hours needed to meet the disclosure requirements per institution is calculated as follows. $1.73 million ÷ 1,170 institutions = $1,480 per institution. Assuming an hourly cost of $60 for employee time generates the minimum time estimate of 25 hours per institution. The upper range of the cost estimate is $2,960 which is equivalent to 49 hours ($3.46 million ÷ 1,170 institutions ÷ $60 hourly employee cost = 49 hours). Total hours are estimated at a minimum as: ($1.73 million ÷ $60 hourly employee cost = 28,870 hours) and at the upper range as: ($5.06 million ÷ $60 hourly employee cost = 84,400 hours).

*Comments:* In addition to the questions raised elsewhere in this Preamble, comment is solicited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses; and (5) estimates of capital or start-up costs

and costs of operation, maintenance, and purchases of services to provide information.

*Addresses:* Interested parties are invited to submit written comments to the FDIC concerning the Paperwork Reduction Act implications of this proposal. Such comments should refer to ''Processing of Deposit Accounts, 3064–AD26.'' Comments may be submitted by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: comments@FDIC.gov.* Include ''Processing of Deposit Accounts, 3064–AD26'' in the subject line of the message.
- *Mail:* Executive Secretary, Attention: Comments, FDIC, 550 17th St., NW., Room F–1066, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (EST).
- A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

*Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

## X. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires a federal agency publishing a notice of proposed rulemaking to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. 5 U.S.C. 603(a). As defined in regulations issued by the Small Business Administration (13 CFR 121.201), a ''small entity'' includes a bank holding company, commercial bank or savings association with assets of $165 million or less (collectively, small banking organizations). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the proposed rule would not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b).

In publishing the proposed rule the FDIC certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification was that the proposed rule would establish the FDIC's practice for determining deposit account balances at a failed insured depository institution and would impose no requirements on insured depository institutions.

The interim rule imposes a disclosure requirement on all insured depository institutions offering one or more sweep account products. This requirement is subject to an extended delayed effective date to allow the FDIC to consider specific comments on the disclosure requirement before insured depository institutions must comply with it. Preliminarily, the FDIC believes the disclosure requirement in the interim rule will not have a substantial impact on a substantial number of small banking organizations, mainly because such entities are much less likely than larger insured depository institutions to offer sweep-account products. Such products are typically offered by insured depository institutions serving large commercial and institutional customers. The FDIC welcomes comments on whether and, if so, to what extent small banking organizations will be affected by the disclosure requirement in the interim rule.

## XI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the interim rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

## List of Subjects in 12 CFR Part 360

Banks, Banking, Savings associations.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 360 of title 12 of the Code of Federal Regulations as follows:

## PART 360—RESOLUTION AND RECEIVERSHIP RULES

■ 1. The authority citation for part 360 continues to read as follows:

**Authority:** 12 U.S.C. 1819(a) Tenth, 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

■ 2. Add new § 360.8 to read as follows:

### § 360.8. Method for determining deposit and other liability account balances at a failed insured depository institution.

(a) *Purpose.* The purpose of this section is to describe the process the FDIC will use to determine deposit and other liability account balances for insurance coverage and receivership purposes at a failed insured depository institution.

(b) *Definitions.*—(1) The *FDIC cutoff point* means the point in time established by the FDIC after it has been appointed receiver of a failed insured depository institution and takes control of the failed institution.

(2) The *applicable cutoff time* for a specific type of deposit account transaction means the earlier of either the failed institution's normal cutoff time for that specific type of transaction or the FDIC cutoff point.

(3) *Close-of-business account balance* means the closing end-of-day ledger balance of a deposit or other liability account on the day of failure of an insured depository institution determined by using the applicable cutoff times. This balance may be adjusted to reflect steps taken by the receiver to ensure that funds are not received by or removed from the institution after the FDIC cutoff point.

(c) *Principles.*—(1) In making deposit insurance determinations and in determining the value and nature of claims against the receivership on the institution's date of failure the FDIC, as insurer and receiver, will treat deposits and other liabilities of the failed institution according to the ownership and nature of the underlying obligations based on end-of-day ledger balances for each account using, except as expressly provided otherwise in this section, the depository institution's normal posting procedures.

(2) In its role as receiver of a failed insured depository institution, in order to ensure the proper distribution of the failed institution's assets under the FDI Act (12 U.S.C. 1821(d)(11)) as of the FDIC Cutoff Point, the FDIC will use its best efforts to take all steps necessary to stop the generation, via transactions or transfers coming from or going outside the institution, of new liabilities or extinguishing existing liabilities for the depository institution.

(3) End-of-day ledger balances are subject to corrections for posted

transactions that are inconsistent with the above principles.

(d) *Determining closing day balances.*—(1) In determining account balances for insurance coverage and receivership purposes at a failed insured depository institution, the FDIC will use close-of-business account balances as may be adjusted for funds that are received by or removed from the institution after the FDIC cutoff point.

(2) A check posted to the close-of-business account balance but not collected by the depository institution will be included as part of the balance, subject to the correction of errors and omissions and adjustments for uncollectible items that the FDIC may make in its role as receiver of the failed depository institution.

(3) In determining close-of-business account balances, the FDIC will recognize contractual, automated transfers (or sweeps) of funds from a deposit account to a non-deposit account or investment vehicle at the institution scheduled to take place before the final calculation of the institution's end-of-day ledger balances for that day.

(4) For deposit insurance and receivership purposes in connection with the failure of an insured depository institution, a depositor's and other liability-holder's rights will be determined as of the point the close-of-business account balance is calculated. These rights may be adjusted as necessary to account for funds that are received by or removed from the institution after the FDIC cutoff point.

(e) Effective July 1, 2009, in all sweep account contracts and account statements reflecting sweep account balances, institutions must prominently disclose whether swept funds are deposits within the meaning of 12 U.S.C. 1813(l). If the funds are not deposits, the institution must further disclose the status such funds would have if the institution failed—for example, general creditor status or secured creditor status. Such disclosures must be consistent with how the institution reports such funds on its Call Reports or Thrift Financial Reports.

By order of the Board of Directors.

Dated at Washington, DC, this 17th day of June, 2008.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E8–15493 Filed 7–16–08; 8:45 am]

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## FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Part 360

**RIN 3064–AD26**

## Large-Bank Deposit Insurance Determination Modernization

**AGENCY:** Federal Deposit Insurance Corporation (''FDIC'').

**ACTION:** Final rule.

**SUMMARY:** The FDIC is adopting a final rule requiring the largest insured depository institutions to adopt mechanisms that would, in the event of the institution's failure: provide the FDIC with standard deposit account and other customer information; and allow the placement and release of holds on liability accounts, including deposits. The final rule applies only to insured depository institutions having at least $2 billion in domestic deposits and either: more than 250,000 deposit accounts (currently estimated to be 152 institutions); or total assets over $20 billion, regardless of the number of deposit accounts (currently estimated to be 7 institutions).

The FDIC is adopting the final rule concurrently with its adoption of an interim rule establishing practices for determining deposit and other liability account balances at a failed insured depository institution. With exceptions indicated in the final rule, institutions subject to this final rule will have eighteen months from the effective date of the final rule to implement its requirements.

**EFFECTIVE DATE:** August 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** James Marino, Project Manager, Division of Resolutions and Receiverships, (202) 898–7151 or *jmarino@fdic.gov,* Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349 or *jdinuzzo@fdic.gov;* or Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839 or *chencke@fdic.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The final rule requires the largest insured depository institutions to adopt mechanisms that would, in the event of the institution's failure: (1) Provide the FDIC with standard deposit account and other customer information; and (2) allow the placement and release of holds on liability accounts, including deposits. These requirements were addressed in two advance notices of proposed rulemaking issued in 2005 and 2006, respectively the ''2005 ANPR'' and the ''2006 ANPR''.[1] Also, in January of this year the FDIC published a proposed rule composed of two parts, addressing in part two the issues involved in the final rule and addressing in part one issues involving the FDIC's practices for determining deposit and other liability account balances at a failed insured depository institution (''proposed rule'').[2]

The FDIC received twenty-one comments on the proposed rule. (The comment letters may be viewed on the FDIC's Web site at *http://www.fdic.gov/regulations/laws/federal/2008/08comAD26.html.*)

Based in part on those comments, the FDIC has decided to finalize the proposed rule by issuing two separate rulemakings—(1) the final rule, covering part two of the proposed rule and (2) a separate interim rule, covering part one of the proposed rule (''Interim Rule on Processing Deposit Accounts'').

Throughout the preamble the terms ''deposit'' (or ''domestic deposit''), ''foreign deposit'' and ''international banking facility deposit'' identify liabilities having different meanings for deposit insurance purposes. A ''deposit'' is used as defined in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)) (''Section 3(l)''). A deposit includes only deposit liabilities payable in the United States, typically those deposits maintained in a domestic office of an insured depository institution. Only deposits meeting these criteria are eligible for insurance coverage. Insured depository institutions may maintain deposit liabilities in a foreign branch (''foreign deposits''), but these liabilities are not deposits in the statutory sense (for insurance or depositor preference purposes) for the time that they are payable solely at a foreign branch or branches. Insured depository institutions also may maintain liabilities in an international banking facility (IBF). An ''international banking facility deposit,'' as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), also is excluded from the definition of ''deposit'' in Section 3(l) and the depositor preference statute (12 U.S.C. 1821(d)(11)).

The FDIC anticipates questions regarding implementation of the functionality required by this rule. Questions and requests for telephonic meetings may be submitted via e-mail to *depositclaims@fdic.gov.*

[1] 70 FR 73652 (Dec. 13, 2005) and 71 FR 74857 (Dec. 13, 2006).

[2] 73 FR 2364 (January 14, 2008).

## II. Overview

The final rule applies to large FDIC-insured institutions, defined as ''Covered Institutions.'' The definition includes insured depository institutions having at least $2 billion in domestic deposits and at least either: (1) 250,000 deposit accounts; or (2) $20 billion in total assets, regardless of the number of deposit accounts. In summary, *Covered Institutions* are required to adopt mechanisms that would, in the event of the institution's failure:

- Allow automatic posting of provisional holds on large liability accounts in any percentage specified by the FDIC on the day of failure.
- Provide the FDIC with deposit and customer account data in a standard format.
- Allow automatic removal of the provisional holds and posting of the results of insurance determinations as specified by the FDIC.

## III. The Proposed Rule

*Definition of Institutions Covered*

Under the proposed rule a *Covered Institution* was defined as any insured depository institution having at least $2 billion in domestic deposits and at least either: (1) 250,000 deposit accounts; or (2) $20 billion in total assets, regardless of the number of deposit accounts.[3] All other insured depository institutions were designated as *Non-Covered Institutions* and, thus, were not subject to this part of the proposed rule.[4]

*Continuation of Business Operations*

As discussed in the proposed rule, in the event of failure a *Covered Institution's* legal entity status will terminate. In most cases, however, it is expected that a new entity will carry on the *Covered Institution's* business operations.[5] The new legal entity under which business operations will be continued is the *Successor Institution,* which could include an established or new insured depository institution or a bridge bank operated by the FDIC. Through the proposed rule the FDIC intended to provide a means to facilitate access to deposit funds and maintain the franchise value of the failed *Covered Institution* or a *Successor Institution.* Thus, in most cases, core business operations would continue post failure, although some operations might be suspended temporarily.

*Process Overview*

As discussed in part one of the proposed rule, in the event of failure, the FDIC would complete daily account processing to generate the end-of-day deposit ledger balances used by the FDIC for insurance purposes. Under part two of the proposed rule, after completion of the failed *Covered Institution's* final daily processing, the *Successor Institution* would place provisional holds on selected[6] deposit accounts, foreign deposit accounts and certain other liability accounts subject to a sweep arrangement. Provisional holds, once posted, would allow depositors access to the remaining balance in their accounts the day following failure, yet guard against the possibility of an uninsured depositor or unsecured general creditor receiving more than allowed under deposit insurance rules or the depositor preference statute.[7] The FDIC would use a standard set of depositor and customer data to make deposit insurance determinations. These determinations would be provided to the *Successor Institution,* probably several days after failure. The *Successor Institution* would then remove the provisional holds as specified by the FDIC and, if necessary, replace them with additional holds or debits based upon the deposit insurance determinations. The FDIC would continue to notify the *Successor Institution* to remove additional holds as information is received from depositors to complete the insurance determination.

*Provisional Holds*

*General description.* The proposed rule would have required *Covered Institutions* to have in place an automated process for implementing provisional holds concurrent with or immediately following the daily deposit account processing on the day of failure. After the placement of provisional holds, all other holds previously placed by the institution would still remain in effect.[8] The proposal did not require development of mechanisms to stop or alter interest accrual for the affected accounts.

*Account-by-account application.* Provisional holds would be applied to individual accounts in an automated fashion. Commonly owned accounts would not have been aggregated by ownership for the purposes of calculating or placing provisional holds. Provisional holds would extend to all non-closed deposit accounts held in domestic and foreign offices, as well as certain sweep account arrangements.[9]

*The nature of a provisional hold.* As explained in the proposed rule, the provisional hold is intended to bar access to some or all of a customer's account pending the results of the insurance determination. The proposed rule offered for comment the following three options for implementing provisional holds.

- *Persistent hold.* A ''persistent'' provisional hold would be applied once (on or immediately after the day of failure) and stay on the deposit account until it is removed at the order of the FDIC. Once applied, the persistent hold would reduce the customer's available balance.
- *Memo hold.* A memo-type provisional hold remains effective only intra-day and does not affect the batch deposit posting process. The memo type provisional hold amount is calculated immediately after end-of-day balances are available on the day of failure and the same amount is applied on a daily basis until changed or removed at the instruction of the FDIC. Once applied, a memo-type provisional hold would

[3] For the purposes of the criteria in the text, an ''insured depository institution'' includes all institutions defined as such in the FDI Act. 12 U.S.C. 1813(c)(2). Other applicable terms would be as defined in the Reports of Condition and Income (Call Report) instructions (for insured banks) and Thrift Financial Reports (TFR) instructions (for insured savings associations): ''deposit accounts'' mean the total number of deposit accounts (including retirement accounts), ''domestic deposits'' mean total deposits held in domestic offices (for insured banks) or deposits (for insured savings associations), and ''total assets'' means the reported amount of total assets.

[4] The criteria for a Covered Institution apply to separately chartered insured depository institutions. Commonly owned depository institutions are not aggregated for the purposes of these criteria. Furthermore, a holding company may own insured depository institutions that are both Covered and Non-Covered.

[5] The provisional hold functionality and other requirements of the proposed rule were to be developed in this context. It is possible a *Covered Institution* may be liquidated in the event of failure. The decision to liquidate or continue the deposit operations of a *Covered Institution* would be made on a case-by-case basis depending on the individual circumstances at the time.

[6] The FDIC will supply the business rules upon which a provisional hold will be placed. These business rules will be based upon current balance and account product types.

[7] Uninsured depositors are entitled to a pro rata distribution of the receivership proceeds with respect to their claim. The FDIC—at its discretion-may immediately distribute receivership proceeds in the form of advance dividends at failure. Advance dividends are based on the expected recovery to uninsured depositors.

[8] Provisional holds could overlap preexisting holds if the entire account is held or the unheld account balance before posting the provisional hold is less than the amount of the provisional hold. In such cases posting the provisional hold would have to be constructed so that it did not cause the account to become ''overdrawn'' and trigger service fees against the account.

[9] Non-closed deposit accounts include those that are open, dormant, inactive, abandoned, restricted, frozen or blocked, in the process of closing or subject to escheatment.

reduce the customer's available intra-day balance.

• *Holding balances in an alternate account.* Rather than placing an account hold, balances could be removed from the account to which a provisional hold is to be applied and otherwise ''held'' in a work in progress (WIP) or suspense account. Since balances are removed from the affected account, they would not be available to the customer until the provisional hold was removed and the balance restored to the original account.

*Provisional holds for deposit accounts.* Under the proposed rule, on the day of failure the FDIC would specify a deposit account balance (the ''account balance threshold'') that would determine whether a provisional hold would be placed on a particular deposit account.[10] No provisional hold would be placed on a deposit account with a balance less than or equal to the account balance threshold. For a deposit account above the account balance threshold, the FDIC would specify, again on the day of failure, a percentage (the ''provisional hold percentage'') that would be multiplied by the account balance *in excess* of the account balance threshold.[11] The product of this multiplication would equal the dollar amount of the provisional hold. The proposed rule would have required a *Covered Institution* to adopt systems allowing the hold to be calculated and placed. The account balance threshold as well as the provisional hold percentage could vary for the following four categories, as the *Covered Institution* customarily defines them:

1. Consumer demand deposit, negotiable order of withdrawal (''NOW'') and money market deposit accounts (''MMDA'').
2. Other consumer deposit accounts (time deposit and savings accounts, excluding NOW accounts and MMDAs).
3. Non-consumer demand deposit, NOW accounts and MMDAs.
4. Other non-consumer deposit accounts (time deposit and savings accounts, excluding NOW accounts and MMDAs).

*Provisional holds for foreign deposits.* For foreign deposits the provisional hold methodology was proposed to be the same as for deposit accounts, except that the account balance thresholds and the provisional hold percentages could have varied based on the country in which the account is located.

*Provisional holds for IBF deposits.* For IBF deposits the provisional hold methodology was proposed to be the same as for deposit accounts, except that the account balance thresholds and the provisional hold percentages could have been different.

*Provisional holds for deposit accounts with prearranged, automated sweep features.* As discussed in part one of the proposed rule, certain deposit accounts have a feature to ''sweep'' funds periodically according to predefined rules into another deposit account, a foreign deposit or an alternative investment vehicle.[12] The deposit account through which the customer has primary access to deposited funds—usually a demand deposit account—is the ''base sweep account.'' The investable or excess account balance is swept periodically into a ''sweep investment vehicle.'' Sweep investment vehicles may include, but are not limited to: (1) A deposit account at the same institution or an affiliated insured depository institution, (2) a foreign or IBF deposit, (3) repurchase agreements, (4) federal funds, (5) commercial paper and (6) a proprietary or third-party money market mutual fund.

The proposed rule would have subjected some sweep accounts to the same provisional hold requirements as a deposit account. These were defined as ''Class A'' sweep accounts and included:

• Base sweep accounts where the sweep investment vehicle is another deposit account in an office of the same institution. Both the base sweep account and the sweep investment vehicle are deposits that would have been subject to the provisional hold requirements of a deposit account.

• Base sweep accounts where funds are wired from the *Covered Institution* to a separate legal entity other than the *Covered Institution* (e.g., a proprietary or third-party money market mutual fund). In this case, funds residing in the base sweep account (if any) would have been subject to a provisional hold as any other deposit account held in a domestic office. No provisional hold would have been required for funds residing outside the *Covered Institution* in the sweep investment vehicle.

The proposed rule defined all other sweep accounts as ''Class B'' sweep accounts requiring a dual provisional hold methodology. For the fund balance remaining in the base sweep account as of the institution's customary end-of-day on the day of failure, the provisional hold methodology would have been the same as applied to other deposit accounts. For the funds residing in the sweep investment vehicle as of the institution's customary end-of-day, the provisional hold methodology would have had a separate account balance threshold and provisional hold percentage.[13] The proposed rule would have required the balance threshold as well as the provisional hold percentage to vary for different types of sweep investment vehicles.[14]

The proposed rule would not have required mechanisms to stop the processing of any prearranged deposit account sweep transactions in the event of failure. The provisional holds process described above would have allowed for the transfer of balances from a deposit account to a sweep investment vehicle. The provisional holds would have applied to liability accounts as they were designated on the books and records of the institution at its customary end-of-day.

*Provisional holds for deposit accounts which accept automated credits from funds invested within the Covered Institution.* Certain customers may provide the depository institution with instructions each day or periodically to invest funds in a non-deposit investment vehicle within the institution (e.g., an overnight time account at the Cayman Island branch), whereby such funds are automatically credited to the customer's deposit account the following day (''automated credit account''). The proposed rule would have required a dual provisional hold methodology for automated credit accounts. For the fund balance remaining in the automated credit account as of the institution's customary end-of-day the provisional hold methodology would have been the same as applied to other deposit accounts. For the funds residing in the investment vehicle as of the institution's customary end-of-day, the provisional hold methodology would have had the

[10] The account balance threshold could be any dollar amount specified by the FDIC, including zero.

[11] The provisional hold percentage could be any percentage specified by the FDIC, from 0 to 100 percent.

[12] Sweep accounts as described here do not include zero balance account (ZBA) arrangements that move funds to and from a master (or concentration) deposit account and one or more subsidiary deposit accounts at the same bank. Such deposit account arrangements are not intended to provide a yield on excess deposit balances nor do they change the customer's insurance status. ZBAs would be subject to the provisional hold methodology for deposit accounts described above.

[13] Some Covered Institutions may allow a single base sweep account to be associated with multiple investment vehicles. In this case a separate provisional hold methodology would have been developed for each investment vehicle.

[14] Some alternative investment vehicles are deposits held in foreign offices. These foreign deposits would be subject only to the provisional hold methodology for the sweep alternative investment. Such foreign deposits would be excluded from the provisional hold methodology designed for non-sweep deposits held in the same foreign office.

capability of a separate account balance threshold and provisional hold percentage.[15] The account balance threshold, as well as the provisional hold percentage, would have been required to vary for different types of investment vehicles. These account balance thresholds and provisional hold percentages could be different from those applied to: (1) Funds automatically swept into a similar or identical investment vehicle or (2) funds held in a similar or identical investment vehicle that does not provide for an automated crediting of funds.[16]

*Account balance used for provisional hold calculation.* The proposed rule would have required the account balance threshold and provisional hold percentage to be applied against the end-of-day ledger balance as calculated by the institution, in the event of failure.

*Provisional hold duration.* Under the proposed rule, the methodology for implementing a provisional hold process was required to hold funds until removed by the *Successor Institution* as instructed by the FDIC. Provisional holds would have been removed when the results of the deposit insurance determination are available, generally anticipated being several days after failure, depending on the size and complexity of the failed institution's deposit base.

*Provisional hold designation.* The proposed rule would have required provisional holds to be labeled ''FDIC PHold''.

*Provisional hold customer disclosure.* The proposed rule requested comment on whether the FDIC should require the provisional hold, once placed, to be apparent if the customer views account information on-line or through other means.

*Security level and mechanism for manual removal of provisional holds.* The proposed rule would have required the *Covered Institution* to create policies, procedures and systems reasonably capable of preventing the alteration of FDIC provisional holds or other FDIC hold amounts except under the specific written direction of the FDIC.

*Timeliness of the provisional holds process.* The proposed rule would have required a *Covered Institution* to have the capability of placing provisional holds on the applicable accounts prior to the *Successor Institution* opening for business the following day, but in no case later than 9 a.m. local time the day following the day of the depository institution failure.

*Exception for systems with a small number of accounts.* The proposed rule requested comment on whether a *Covered Institution* having multiple account systems through which provisional holds will be placed may apply them manually in certain cases. Some account systems may service a relatively small number of accounts making the manual application of provisional holds feasible. If used, the proposed rule would have required approval by the FDIC in response to a written request, including a justification for the manual process and its relative effectiveness for posting provisional holds in the event of failure.

*Institutional contacts.* The proposed rule would have required a *Covered Institution* to notify the FDIC of the person(s) responsible for producing the standard deposit data download and administering provisional holds, both while this functionality is being constructed and on an on-going basis. The *Covered Institution* would have been responsible for ensuring such contact information is current.

*Removal of Provisional Holds*

*General process.* As specified in the proposed rule, the FDIC would begin forwarding insurance determination results to the *Successor Institution* once a substantial number of the insurance determinations have been made, which should be within a few days after failure. These results would have been required to be incorporated into the institution's deposit systems as soon as practicable, perhaps as quickly as the day following the receipt of the standard depositor and customer data sets. The results would contain instructions for the removal of provisional holds as well as replacement transactions, which could include the placement of new holds or account debits and credits.

*Removal of provisional holds.* As proposed, the *Successor Institution* would be required to remove provisional holds in batch as specified by the FDIC. On the day(s) provisional holds are to be removed, the FDIC would provide the *Successor Institution* with a file listing the accounts subject to removal of the provisional hold. A file format was specified and would be provided to the *Successor Institution* through FDIC*connect* or Direct Connect, depending on the size of the file. The file would be encrypted using an FDIC-supplied algorithm.

*Provisional Hold Replacement Transactions*

*Debiting and crediting accounts after provisional holds are removed.* As specified in the proposed rule, on the day a provisional hold removal file is provided to the *Successor Institution,* the FDIC also would provide a file or set of files either in ACH format or in a tab- or pipe-delimited format listing the accounts subject to debit or credit transactions, which reflect the results of the insurance determination process. A file format was specified and would be provided to the *Successor Institution* through FDIC*connect* or Direct Connect, depending on the size of the file. The file would be encrypted using an FDIC-supplied algorithm to secure data during the transport process.

*Posting of additional FDIC holds.* As specified in the proposed rule, on the day provisional holds are to be removed the FDIC also would provide the *Successor Institution* with a file listing the accounts subject to a new hold to be placed after the removal of the provisional hold. A file format was specified and would be provided to the *Successor Institution* through FDIC*connect* or Direct Connect, depending on the size of the file. The file would be encrypted using an FDIC-supplied algorithm.

*Removal of Additional FDIC Holds*

Under the proposed approach, in some cases provisional holds would be replaced by a second FDIC hold. These holds would be removed over time as further information is gathered from depositors needed to complete the insurance determination. A file format was specified.

*The Generation of Deposit Account and Customer Data in a Standard Structure*

The proposed rule would have required a *Covered Institution* to have in

[15] Some automated credit accounts may also be a base sweep account. In this case a separate provisional hold methodology must be developed for each investment vehicle. It is possible, for example, for a customer to each day provide the institution with instructions to invest a certain amount of funds in a Cayman Island branch time account where the funds would be returned to the customer's demand deposit account the following morning. Further, the customer may also have provided prearranged instructions to have excess balances residing in the same demand deposit account swept to a Cayman Island branch account where such funds also are returned to the demand account the following morning. In this case the Covered Institution must have a provisional hold methodology that: (1) Treats funds residing in the demand deposit account as of the institution's end-of-day consistent with other deposit accounts, (2) treats funds residing in the Cayman Island branch account as a result of the prearranged sweep consistent with other Cayman Island sweep investment vehicles and (3) treats funds residing in the Cayman Island branch account as a result of the daily investment instructions using a separate account balance threshold and provisional hold percentage.

[16] Some investment vehicles are foreign deposits. These funds would be subject only to the provisional hold methodology for the automated credit account. Such accounts would be excluded from the provisional hold methodology designed for non-sweep foreign deposits held in the same office.

place practices and procedures to provide the FDIC with required depositor and customer data in a standard format following the close of any day's business. *Covered Institutions* would not have been required to collect or generate new depositor or customer information. The standard data files would have been created through a mapping of pre-existing data elements and internal institution codes into standard data formats. Data was to be provided on all non-closed deposit or foreign deposit accounts as well as Class B and automated credit accounts.

*Files.* The proposed rule would have required these data to be provided in the following five separate files:

1. *Deposit file.* Data fields for each non-closed deposit or foreign deposit account, except those deposit or foreign deposit accounts serving as an investment vehicle reported in the Class B Sweep/Automated Credit file.

2. *Class B Sweep/Automated Credit file.* Data fields capturing information on funds residing in investment vehicles linked to each non-closed deposit account: (1) Involved in Class B sweep activity or (2) which accept automated credits.

3. *Hold file.*[17] Deposit hold data fields for each non-closed deposit account.

4. *Customer file.* Data fields for each customer.

5. *Deposit-customer join file.* Data necessary to link each deposit and foreign deposit with the customers who have an interest in the account.

*Possible file combinations.* The proposed rule provided that data could be submitted using one of each deposit, Class B sweep/automated credit, hold, customer, customer address and deposit-customer join files. Alternatively, data could be supplied using multiple files for each type. The number of files could correspond to the number of institutional systems of record, for example.

*File format.* Under the proposed rule depositor and customer data files would have been provided in tab- or pipe-delimited format. Further, each file name would contain the institution's FDIC Certificate Number, the file type (deposit, sweep hold, customer, customer address, join or other) and the date of the extract. The FDIC would support both ASCII and EBCDIC delimited files. All EBCDIC fields must be provided in Pic(X) format. Binary, packed or signed numeric formats would not be allowed.

*File transmission mechanism.* Under the proposed rule the data files would be provided to the FDIC in the most expeditious manner. Data which can be compressed and encrypted could be transmitted to FDIC using existing telecommunication services. Should the volume be too great to transmit in the most expeditious manner then a portable hard drive should be used and physically transported by FDIC personnel to the FDIC's data processing facilities.

*Reporting Requirements*

The proposed rule noted that the criteria defining a *Covered Institution* include the number of its deposit accounts, total domestic deposits and total assets. Total domestic deposits and total assets are reported quarterly on the Consolidated Reports of Condition and Income (insured bank) and the Thrift Financial Report (insured savings association). Savings associations report the number of deposit accounts quarterly, but banks report on the total number of deposit accounts only annually, as part of the June reporting cycle. The FDIC recommended quarterly reporting of the number of deposit accounts for all insured institutions with total assets over $1 billion.

*Testing Requirements*

The proposed rule indicated the FDIC would conduct an initial test at each *Covered Institution* sometime after the initial implementation period ends.[18] All testing would be coordinated with the financial institution and conducted at the site of their choosing if multiple sites are available. Once the initial test is completed successfully, the FDIC anticipated that it would conduct additional tests infrequently at institutions that do not make major changes to their deposit systems[19]—perhaps only once every three-to-five years. It was noted that more frequent testing may be necessary for institutions that make major acquisitions, experience financial distress (even if the distress is unlikely to result in failure) or undertake major system conversions.

The proposed rule would have required *Covered Institutions* to establish a series of test accounts on their deposit account systems that could be used for verification purposes. These accounts would be used to verify the processing of holds, debits and credits.

The FDIC also contemplated development of a XML validation service which would be provided to each *Covered Institution* for the purpose of establishing compliance with the standard data requirements for depositor and customer records. The XML schema would read a file (which has been created in the standard format), validate the accuracy and integrity of the file content and provide a report that establishes the institution's compliance with the criteria. In addition to the XML service, the FDIC also proposed providing a more readable description of the validation process to help facilitate institutional testing.

The proposed rule provided that a *Covered Institution* would be responsible for ensuring that a representative sample of data has been passed through the XML validation service. At a minimum the sampling strategy should cover a cross-section of different insurance categories and a cross section of account ledger balances maintained by the institution. The *Covered Institution* would have been required to provide the FDIC its sampling strategy along with the validation results as a part of the periodic verification process.

To reduce the frequency of FDIC testing and ensure ongoing compliance, the FDIC proposed requiring *Covered Institutions* to conduct tests in-house on a regular basis (perhaps every year) and provide the FDIC with evidence that the test was conducted and a summary of the test results.

In addition, the proposed rule would allow the FDIC to test certain other requirements inside the institution, including but not limited to the ability to place and remove provisional holds, place new holds and implement debits and credits using a data set that meets the FDIC standards.

*Implementation Requirements*

*Institutions meeting the criteria of a Covered Institution upon the effective date of the regulation.* The proposed rule would have required a *Covered Institution* to fully implement the respective requirements 18 months from the regulation's effective date.

*Institutions meeting the criteria of a Covered Institution after the effective date of the regulation.* The proposed rule would have required that any insured institution meeting the criteria

[17] The Hold file contains information on holds against each deposit account, including FDIC provisional holds. Since provisional holds may be generated after the completion of an institution's nightly deposit processing cycle, they may not be reflected fully in the Hold file generated as of the day of closing. The FDIC may require a second Hold file to be generated the day following closing to fully capture provisional holds that may not have been posted until the next deposit processing cycle.

[18] In addition to testing, the FDIC expects to require that information contact points be validated (and updated as needed) every three-to-six months.

[19] A major change to a deposit system means a change made to a Covered Institution's data environment affecting one or more of the data elements described in attached Appendices. Changes could be the result of a merger or the streamlining of a financial institution's systems of record.

of a *Covered Institution* for at least two consecutive quarters would have 18 months following the end of the two consecutive quarters in which to fully implement the respective requirements.

*Merger involving two Covered Institutions.* Under the proposed rule, the requirements were to be fully implemented within 18 months following the completion of an acquisition, although an acquisition does not delay any implementation requirements which may already have been in place for the individual institutions involved in the merger.

*Merger involving a Covered and Non-Covered Institution.* Under the proposed rule, the requirements were to be fully implemented within 18 months following the completion of an acquisition, although a merger does not delay any implementation requirements which may already have been in place for the individual institutions involved in the merger.

*Exception for troubled institutions.* Under the proposed rule, on a case-by-case basis, the FDIC could accelerate the implementation timeframe of all or part of the proposed rule for a *Covered Institution* that either: (1) Has a composite rating of 3, 4 or 5 under the Uniform Financial Institutions Rating System (commonly referred to as CAMELS) [20] or (2) is undercapitalized as defined for purposes of the prompt corrective action (''PCA'') rules.[21] In determining the accelerated implementation timeframe for such institutions, the FDIC would have been required to consider such factors as the: (1) Complexity of the institution's deposit systems and operations; (2) extent of asset quality difficulties; (3) volatility of funding sources; (4) expected near-term changes in capital levels; and (5) other relevant factors appropriate for the FDIC to consider in its roles as insurer and possible receiver of the institution. The proposed rule would have required the FDIC to consult with the *Covered Institution's* primary federal regulator in determining whether to implement this provision of the proposed rule.

*Applications for extension of implementation requirements.* The proposed rule provided that a *Covered Institution* could request an extension of the 18-month deadline for implementing the requirements. An application for such an extension would be subject to the FDIC's rules of general applicability, 12 CFR 303.251. For good cause shown, the FDIC could grant the application for an extension.

*New Deposit Accounts*

The proposed rule would not have required a unique depositor ID for customer accounts, rather the FDIC would rely upon customer information already maintained by the *Covered Institution* to link commonly owned accounts. Nevertheless, the FDIC asked whether a unique depositor ID should be assigned by *Covered Institutions* when a new account is opened and the relative costs of such a requirement.

## IV. Comments on the Proposed Rule

The FDIC received twenty-one comments on the proposed rule, the bulk of which addressed both parts of the proposed rule. Four of the comments were from banking industry trade associations (including one joint letter), two from bank regulatory authorities, ten from large insured depository institutions, one from a law firm representing broker-dealers who place brokered funds in insured depository institutions, one from a member-owned electronic funds transfer network and three from individuals. The following is a summary of the comments we received on part two of the proposed rule—Large-Bank Deposit Insurance Determination Modernization.

*General Comments*

The FDIC received a joint comment letter from three banking industry trade associations. This letter summarized their sense of the second part of the proposed rule as follows: ''The Associations support the intent of the NPR to provide in a bank failure for timely deposit insurance determination, prompt release of depositor funds, and least cost resolution. Nonetheless many of the NPR's proposals would be very costly for banks to implement. We recommend adoption of elements from the NPR only where demonstrated benefits justify the cost, and request that the FDIC make every effort to limit the burdens on banks and provide flexibility to accommodate the variety of bank systems.''

*Cost and Benefits*

Many of the large-bank and all of the bank trade association commenters expressed concern over the potential costs of implementing the provisions of the second part of the proposed rule. Several commenters also noted that the expected benefits to the FDIC are not likely to outweigh the costs, especially given the perceived extremely low likelihood of failure of any particular large bank.

Commenters emphasized that the potential implementation costs are not small. ''Indeed, even small changes to information systems require hundreds of person hours both in programming and testing to ensure proper functionality and avoid disruption with ongoing operations. Several of our member banks estimate that the cost per institution of the initial implementation and testing of the Proposal's requirements is likely to exceed $10 million and involve thousands of hours of labor. As institutions begin the implementation process, based on prior experience, these costs could increase beyond these initial estimates, perhaps substantially. Moreover, significant additional costs will be incurred to maintain and test these processes in the future.''

Several large banks provided estimates of implementation costs in their comments. These cost estimates are shown in Table 1 along with their deposit assessment base and a comparison of the estimated cost with a 1 basis point deposit insurance assessment.

Several commenters also cited the extremely low likelihood of the failure of a *Covered Institution* and that the FDIC typically is aware of financial difficulties well in advance of failure. It was noted this early warning should allow the FDIC ample time for preparation.

[20] CAMELS is an acronym drawn from the first letters of the individual components of the rating system: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk.

[21] 12 CFR Part 325.

TABLE 1.—ESTIMATED IMPLEMENTATION COSTS

| Responder | Estimated implementation cost | Assessable deposits ($ millions) | 1-Basis point annual FDIC assessment ($ millions) | Estimated cost as a % of 1 BP assessment |
|---|---|---|---|---|
| Bank A | $8–10 million | 630,000 | 63.0 | 13–16 |
| Bank B | ''total costs in the millions of dollars'' | 230,000 | 23.0 | NA |
| Bank C | ''in excess of $2 million'' | 29,000 | 2.9 | 70 |
| Bank D | $2–4 million | 17,000 | 1.7 | 120–235 |

One banking trade association noted that the proposed requirements are likely to provide no financial benefit to the FDIC. ''The proposed rule offers no financial benefit to the FDIC because the FDIC does not pay out the full amount of an uninsured deposit's recovery from a failed institution until several years after the failed institution is closed. Hence, the FDIC has ample time *after* an institution is closed to properly aggregate deposit accounts to ensure that no uninsured depositor obtains an excess recovery from the FDIC. Since the deposit-account aggregation process under the proposed rule will not be foolproof, the FDIC must still conduct a post-failure review of all deposit accounts in a failed institution to ensure that they have been properly aggregated for deposit-insurance purposes. The only way the FDIC will pay out too much to an uninsured depositor is if its initial dividend payment to uninsured depositors cannot be recovered through (1) an offset against future dividend payments or (2) if offsets against subsequent dividend payments do not fully recover the overpayment, court actions or other collection procedures.''

*Meeting the FDIC's Objectives*

A letter from a bank regulatory agency cited the importance of advance preparation in the event of a large-bank failure. The commenter noted that the proposal ''reduces the chance that policymakers will invoke the systemic risk exception of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) [22] for technical reasons rather than true concern over spillovers. This outcome has the benefit of reducing potential resource misallocations arising from implied guarantees of large-bank creditors. I further argued [in a previous comment letter] that policymakers will not achieve this desired outcome by implementing a new determination regime only at the time when banks are in trouble.'' This commenter also provided the following five observations regarding recent financial events:

1. ''Several very large financial institutions (FIs) moved from reasonably strong financial positions to what observers characterized as near failure in short periods of time.''
2. ''The market turmoil reinforced the benefits of an *ex ante* system that provide creditors of failed banks with *ex post* rapid access to their available funds.''
3. ''Responses during the recent tumult reinforce the need for bank policymakers to actively manage the implied safety net.''
4. ''Recent events reaffirm the need for policymakers to act before bad outcomes occur.''
5. ''Large financial institutions have been at the epicenter of recent events, and some of their creditors benefited most directly from the policy response.''

One large-bank commenter ''supports the FDIC's continued work on this important project. The current environment reminds us that bank failures are not necessarily a phenomenon of only the past.''

*Covered Institution Exemptions*

Several commenters recommended exemptions from the definition of a *Covered Institution.* Three potential exemptions were discussed.

*Strong financial condition.* Several commenters—including a state banking agency—suggested that a *Covered Institution* with strong financial characteristics should be exempt from the proposed requirements. The state banking agency noted that the proposed requirements would apply to only one depository institution in its state, but that this institution has consistently demonstrated strong financial characteristics. As such, commenters recommended that the FDIC consider an exemption based on such things as CAMELS ratings, debt ratings, capital levels or other financial characteristics.

*Specialty institutions.* Several commenters proposed an exemption for specialty institutions, specifically those primarily involved in credit card operations and bankers' banks. With regard to credit card banks, it was noted that the deposits of these banks consist largely of credit card overpayments and balances used to secure cards. In that these are typically low balances, the commenters argued the deposits attributed to credit card operations should be exempt from the criteria of a *Covered Institution.*

*Fewer than 250,000 deposit accounts.* Several commenters requested that the definition for a *Covered Institution* should include only those depository institutions with at least 250,000 deposit accounts. One large-bank commenter with fewer than 250,000 deposit accounts (that would be a *Covered Institution* under the criteria proposed) argued that the bank's ''insurance determination profile is no more complex than that of a small to mid-sized bank.'' It was further argued ''due to the large balances of our typical deposit accounts, the ratio of our deposit insurance coverage to our domestic assessed deposit base is substantially lower than nearly all other U.S. banks. [Our] potential exposure to the insurance fund is therefore at best modest and creates few of the complex challenges which the NPR seeks to address.''

*Implementation Time*

Most large-banks and all bank trade association commenters argued for an extension in implementation time from the proposed 18 months to 24-to-36 months. Commenters contend the proposed requirements of the proposed rule are significantly more complex than those of the past advance notices of proposed rulemaking; particularly with regard to the provisional hold requirements on sweep accounts and foreign deposits. Several commenters also recommended an extension in implementation time for institutions recently involved in merger and assumption activities.

*Provisional Hold Exemptions*

*Sunsetting deposit systems.* One large bank suggested providing an exemption from requirements for deposit systems expected to be retired in the near future, as long as the replacement system is compliant.

*Small systems.* Several commenters requested that—for a *Covered Institution*

[22] Pub. L.102–242 (1991).

with multiple deposit systems—the FDIC should provide an exemption for systems handling a small percent of overall deposit accounts at the *Covered Institution.* As an example, the commenters proposed that a deposit system handling five percent or fewer of the *Covered Institution's* deposit accounts should be exempt from the provisional holds requirements.

*Foreign Deposit Provisional Holds*

Several large-bank and all banking trade association commenters recommended changing the provisional hold requirement on foreign deposits to be uniform across all countries in which the *Covered Institution* has deposit accounts. Commenters noted that for individual institutions all foreign deposits frequently reside on a single deposit system and that mandating different provisional hold percentages by country would be burdensome.

*Provisional Hold Flexibility*

All banking trade association and many large bank commenters approved of the flexibility to implement provisional holds using the options of a persistent hold, a memo hold or a WIP account. The commenters noted that this flexibility could reduce significantly implementation costs. Generally the commenters believed they understood what the FDIC intended to accomplish through provisional holds and requested they be provided the flexibility to implement the holds in a manner least costly for their institution.

Several commenters also requested additional flexibility regarding the placement of provisional holds on funds swept out of a deposit account into a sweep investment vehicle. It was noted that—in some cases—funds are swept into a system within the institution that does not have the capability of posting holds. In these cases commenters requested the option of placing the hold on these funds as they return to the deposit account rather than when they reside in the alternative investment vehicle. Again, the commenters argued that they understood the FDIC's intent and asked that they be allowed to implement the hold in a manner least costly for their institution.

*Provisional Hold Disclosure*

Most banking trade associations and several large-bank commenters argued it was unnecessary and unduly burdensome to require on-line or other disclosure of provisional holds. Commenters noted the FDIC has other mechanisms for distributing information to customers in the event of a bank failure that would be equally effective.

*Deposit Broker Requirements*

One commenter requested confirmation that the proposed rule would not require changes to brokered deposit recordkeeping or require brokers to develop systems to comply with the rule. The commenter noted that in addition to the more traditional brokered CD programs many brokers offer brokered money market deposit and NOW accounts.

*Unique Depositor ID*

All commenters addressing the proposal to require a unique depositor ID for newly opened accounts recommend against it. One commenter noted ''the compliance and training costs would be excessive while offsetting benefits are not apparent.''

**V. The Final Rule**

After considering the comments on the second part of the proposed rule, the FDIC has adopted a final rule in a form similar to that proposed. While there are a number of limited changes from the proposed rule, the main changes are that the final rule will:

- Permit application to the FDIC for an exemption from the requirements of the final rule if an institution has a high concentration of deposits incidental to credit card operations.
- Expand the circumstances under which a *Covered Institution* may be required to accelerate implementation of the final rule requirements to include materially deteriorating financial conditions, as discussed below.
- Provide for a uniform provisional hold strategy for foreign deposits.
- Allow application to use alternatives to persistent provisional holds.

*Costs and Benefits*

Many commenters cited the potentially high implementation costs of the final rule and noted that the expected benefits might be low, especially given the low likelihood of a *Covered Institution* failure. One banking trade association commenter suggested there would be no benefits to the FDIC.

In the proposed rule the FDIC noted that even if the likelihood of a failure among *Covered Institutions* is perceived to be low, it is not zero. Recent events have placed stress on the banking industry as a whole. The FDIC must have in place a credible plan for resolving the failure of an institution of any size at the least possible cost. The ability to provide depositors prompt access to funds and determine the insurance status of depositors in a failed institution in a timely manner is a critical element for ensuring a least-costly resolution and maintaining public confidence.

*Meeting the FDIC's legal mandates.* FDICIA was one of the most important pieces of legislation affecting the FDIC's failure resolution process. Its least-cost requirement effectively requires uninsured depositors to be exposed to losses.[23] Also, FDICIA's legislative history and the nature of the systemic risk exception provide a clear message that uninsured depositors of large institutions are to be treated on par with uninsured depositors of other institutions. The requirements being imposed in this rulemaking provide essential support for the FDIC to meet these statutory mandates—particularly given the current size and complexity of some insured depository institutions.

*Providing liquidity to depositors.* The provisional hold functionality creates a mechanism for the FDIC to provide customer access to deposit accounts immediately after failure, albeit with some FDIC hold for large accounts. The ability to continue uninterrupted the deposit operations of a *Covered Institution* in the event of failure has significant benefits for depositors and also helps preserve the institution's franchise value.

*Enhancement of market discipline.* The FDIC's legal mandates have direct implications for Too-Big-to-Fail and market discipline. If financial markets perceive that uninsured depositors in large institutions will be made whole in the event of failure, uninsured deposits will be directed toward these larger depository institutions, which could result in a significant misallocation of economic resources. Many market observers believe there are substantial benefits of improved market discipline that accrue even without serious industry distress or bank failures.

Effective market discipline also limits the size of troubled institutions and results in a more rapid course toward failure. Both serve to mitigate overall resolution losses. Lower resolution losses benefit insured institutions through lower insurance assessments.

*Equity in the treatment of depositors of insured institutions.* Without the provisions of the final rule, the FDIC is concerned that the resolution of a *Covered Institution* could be accomplished only through a significant departure from the FDIC's normal claims procedures. This departure could leave the bank closed until an insurance determination is made or require the use of shortcuts to speed the opening of the bridge institution. The use of shortcuts or other mechanisms to facilitate

[23] 12 U.S.C. 1823(c)(4).

depositor access to funds could result in disparate treatment among depositors within the failed institution and certainly different treatment relative to the closure of a *Non-Covered Institution.*

*Preservation of franchise value in the event of failure.* The sale of the franchise of a failed institution can provide significant value to mitigate failure costs and is likely to be part of a least-cost resolution. Superior Bank, FSB, one of the largest failures over the past 10 years, generated a franchise premium of $52 million, or 17 percent of current estimated FDIC losses in the failure. An ineffective claims process—especially one deviating significantly from the FDIC's normal policies and procedures—risks reducing or destroying an important asset of the receivership. Preservation of franchise value in the event of failure of a *Covered Institution* will be an important benefit of the final rule.

A banking trade association commenter suggested the FDIC delay implementation of the final rule ''until the FDIC evaluates how to relieve such cost and burden on the industry.'' The FDIC first proposed the elements of the final rule in its 2005 ANPR. A second ANPR was issued in 2006, roughly a year in advance of the January 2008 proposed rule leading to this final rule. As indicated in the proposed rule, based on the respective comments on the 2005 and 2006 ANPRs, the FDIC reduced the potential for industry burden relative to the requirements in the proposed rule. Several of the commenters on the proposed rule acknowledged this reduction in industry burden. Likewise, as a result of the comments on the proposed rule, the FDIC has further reduced the potential for industry burden as to the requirements of the final rule.

In both ANPRs and in the proposed rule the FDIC requested comment on alternative approaches that could meet the FDIC's objectives with a lower industry burden. None of these three requests for comment yielded suggestions for a different overall approach meeting the FDIC's objectives. In consideration of the extensive public comment process covering the second part of the proposed rule, the FDIC believes no further examination of costs and benefits is necessary prior to the adoption of the final rule.

*Definition of Institutions Covered*

The final rule applies to a *Covered Institution*, defined as any insured depository institution having at least $2 billion in domestic deposits and at least either: (1) 250,000 deposit accounts; or (2) $20 billion in total assets, regardless of the number of deposit accounts.[24] All other insured depository institutions are designated *Non-Covered Institutions* and, thus, are not subject to the final rule.[25]

Commenters suggested exemptions for institutions: (1) With strong financial characteristics, (2) specializing in credit card operations or services to depository institutions (bankers' banks) and (3) with fewer than 250,000 deposit accounts. As discussed below, based on the comments, the final rule provides (through an application process) for an exemption from the final rule for institutions with a high concentration of deposits incidental to credit card operations.

*Strong financial characteristics.* The financial characteristics of *Covered Institutions* vary considerably, as reflected in differing CAMELS ratings, capital levels and debt ratings. The recent difficulties experienced by the financial markets demonstrate the degree to which rapid financial deterioration is possible, even for some institutions only recently considered to be in strong health. The FDIC is concerned that the possible pace of financial deterioration-even among those historically showing strong financial characteristics-could expose the FDIC to undue risk, especially given the potential implementation times cited by commenters. Thus, the final rule provides no exception to the criteria of a *Covered Institution* based on financial characteristics.

*Credit card specialists and bankers' banks.* Some depository institutions specialize in credit card operations. As such, the preponderance of their deposits relate to overpayments on credit cards or balances held to secure a credit card. Some credit card specialists have in excess of 250,000 deposit accounts and could also have more than $2 billion in domestic deposits. Such institutions rarely hold large deposit balances in a significant number of accounts. As discussed below, under the final rule, the FDIC will permit application for an exemption from the final rule requirements if an institution has a high concentration of deposits incidental to credit card operations.

A bankers' bank specializes primarily in services to other depository institutions. Deposit balances can be large and such organizations typically have high levels of uninsured deposits. A large bankers' bank raises concerns similar to other depository institutions, perhaps to a greater extent given its stronger link to those institutions. For a bankers' bank the FDIC would be concerned about rapidly restoring deposit operations in the event of failure so that depositors can have access to their funds. Consequently, the final rule provides no exception to the criteria of a *Covered Institution* for a bankers' bank.

*Fewer than 250,000 deposit accounts.* Under the proposed rule a Covered Institution could include a depository institution with fewer than 250,000 deposit accounts, as long as it has total assets in excess of $20 billion and domestic deposits over $2 billion. These criteria expand the list of *Covered Institutions* by roughly seven compared to a more narrow definition including depository institutions with at least 250,000 deposit accounts and over $2 billion in domestic deposits. Some large depository institutions with fewer than 250,000 deposit accounts play a significant role in the financial system, some having total assets in excess of $100 billion. In the event of failure, the FDIC would be concerned about rapidly restoring deposit operations so that depositors can have access to their funds. Hence, the final rule provides no exception to the criteria of a *Covered Institution* based on the number of deposit accounts.

*Provisional Holds*

*General description.* The final rule requires *Covered Institutions* to have in place an automated process for implementing *provisional holds* concurrent with or immediately following the daily deposit account processing on the day of failure. After the placement of *provisional holds,* all other holds previously placed by the institution would still remain in effect.[26] The final rule does not require development of mechanisms to stop or

[24] For the purposes of the criteria in the text, an ''insured depository institution'' includes all institutions defined as such in the FDI Act. 12 U.S.C. 1813(c)(2). Other applicable terms would be as defined in the Reports of Condition and Income (Call Report) instructions (for insured banks) and Thrift Financial Reports (TFR) instructions (for insured savings associations): ''deposit accounts'' mean the total number of deposit accounts (including retirement accounts), ''domestic deposits'' mean total deposits held in domestic offices (for insured banks) or deposits (for insured savings associations), and ''total assets'' means the reported amount of total assets.

[25] As discussed previously, the criteria for a Covered Institution apply to separately chartered insured depository institutions.

[26] Provisional holds could overlap preexisting holds if the entire account is held or the unheld account balance before posting the provisional hold is less than the amount of the provisional hold. In such cases posting the provisional hold would have to be constructed so that it did not cause the account to become ''overdrawn'' and trigger service fees against the account.

alter interest accrual for the affected accounts.

*Account-by-account application. Provisional holds* must be applied to individual accounts in an automated fashion. Commonly owned accounts need not be aggregated by ownership for the purposes of calculating or placing provisional holds. *Provisional holds* will extend to all non-closed deposit accounts held in domestic and foreign offices, as well as certain sweep account arrangements.[27] For these purposes a deposit account also includes omnibus accounts reflected on the books and records of the *Covered Institution* used to temporarily house customer funds, such as those used in connection with sweep transactions.

*The nature of a provisional hold.* The final rule requires a persistent *provisional hold* to be applied once (on or immediately after the day of failure) and stay on the deposit account until it is removed at the order of the FDIC. Once applied, the persistent hold would reduce the customer's available balance.

The proposed rule discussed the use of memo holds and holding balances in an alternate account, such as a work in progress or suspense account. The use of these alternatives could reduce implementation costs. Under the final rule, a *Covered Institution* may apply to the FDIC to develop a *provisional holds* process involving memo holds or alternative account mechanisms. If used, the *Covered Institution* is required to obtain prior approval from the FDIC in response to a written request, including a justification for the process and its relative effectiveness for posting *provisional holds* in the event of failure.

*Provisional holds for deposit accounts.* Under the final rule, a *Covered Institution* is required to develop and implement a process whereby a *provisional hold* could be placed on each deposit account in excess of the ''account balance threshold'' specified by the FDIC on the day of failure.[28] No *provisional hold* would be placed on a deposit account with a balance less than or equal to the account balance threshold. For a deposit account above the account balance threshold, the FDIC would specify, again on the day of failure, a percentage (the ''*provisional hold percentage*'') that would be multiplied by the account balance in excess of the account balance threshold.[29] The product of this multiplication would equal the dollar amount of the *provisional hold.* The final rule requires a *Covered Institution* to adopt systems allowing the hold to be calculated and placed. The account balance threshold as well as the *provisional hold* percentage could vary for the following four categories, as the *Covered Institution* customarily defines them:

1. Consumer demand deposit, negotiable order of withdrawal (''NOW'') and money market deposit accounts (''MMDA'').
2. Other consumer deposit accounts (time deposit and savings accounts, excluding NOW accounts and MMDAs).
3. Non-consumer demand deposit, NOW accounts and MMDAs.
4. Other non-consumer deposit accounts (time deposit and savings accounts, excluding NOW accounts and MMDAs).

One commenter requested confirmation that the proposed rule would not require changes to brokered deposit recordkeeping or require brokers to develop systems to comply with the rule. The final rule does not impose any such requirements, although deposit brokers may be affected in the event of the failure of a *Covered Institution.* Under the final rule a brokered deposit would be treated as any other deposit account for *provisional hold* purposes. The implications for deposit brokers may vary depending on the ability of the underlying owners to access funds in the account or otherwise change their ownership interests. Some brokered deposit accounts may be structured as money market deposit accounts, for example, thus allowing the underlying owners check-writing access to funds in the account. If an underlying owner with an uninsured interest removes funds from the account subsequent to failure, the result might be a shortfall to other underlying owners. Responsibility for this shortfall will rest with the broker or agent in whose name the account is titled, and not the FDIC as insurer.

*Provisional holds for foreign deposits.* Under the final rule, a *Covered Institution* is required to develop and implement a process whereby a *provisional hold* could be placed on each foreign deposit account on the day of failure applying a *provisional hold* percentage to the entire account balance. For foreign deposits the *provisional hold* percentage may differ from that applied to deposit accounts. Also, the *provisional hold* percentage would not vary by account category (i.e., consumer versus non-consumer and transaction versus non-transaction) as is the case with deposit accounts.

The proposed rule would have required the *provisional hold* percentage on foreign deposits to vary by country. Several commenters noted that foreign deposits frequently are housed on a single deposit system within the institution. It was argued that the application of different *provisional hold* mechanisms based on a country would be burdensome. After considering these comments, the FDIC believes an effective *provisional hold* strategy could be implemented without the need for country-by-country distinctions.

*Provisional holds for IBF deposits.* Under the final rule, a *Covered Institution* is required to develop and implement a process whereby a *provisional hold* could be placed on each IBF deposit account on the day of failure applying a *provisional hold* percentage to the entire account balance. For IBF deposits the *provisional hold* percentage may differ from that applied to deposit or foreign deposit accounts. Also, the *provisional hold* percentage would not vary by account category (i.e., consumer versus non-consumer, and transaction versus non-transaction) as is the case with deposit accounts.

*Provisional holds for deposit accounts with prearranged, automated sweep features.* For sweep accounts[30] under the final rule the FDIC will consider a deposit account through which the customer has primary access to deposited funds—usually a demand deposit account—as the ''base sweep account.'' The investable or excess account balance is swept periodically into a ''sweep investment vehicle.''

In the case where the sweep investment vehicle is another deposit account in the same institution, both the base sweep account and the sweep investment vehicle are deposits subject to the *provisional hold* requirements of a deposit account. Some sweep arrangements channel funds through an omnibus account as an intermediate step prior to their transfer to the sweep investment vehicle. In some cases, such as with ''next-day'' money market mutual fund sweeps, customer funds

[27] As noted above, non-closed deposit accounts include those that are open, dormant, inactive, abandoned, restricted, frozen or blocked, in the process of closing or subject to escheatment.

[28] The account balance threshold could be any dollar amount specified by the FDIC, including zero.

[29] The provisional hold percentage could be any percentage specified by the FDIC, from 0 to 100 percent.

[30] Sweep accounts as described here do not include zero balance account (ZBA) arrangements that move funds to and from a master (or concentration) deposit account and one or more subsidiary deposit accounts at the same bank. Such deposit account arrangements are not intended to provide a yield on excess deposit balances nor do they change the customer's insurance status. ZBAs would be subject to the provisional hold methodology for deposit accounts described above.

will reside in the omnibus deposit account as reflected in the *Covered Institution's* end-of-day ledger balances. Under the final rule the omnibus account is subject to the *provisional hold* requirements of a deposit account.

In the case where the sweep investment vehicle is housed in a separate legal entity other than the *Covered Institution* (e.g., a proprietary or third-party money market mutual fund), funds residing in the base sweep account (if any) are subject to a *provisional hold* as any other deposit account. No *provisional hold* is required for funds residing outside the *Covered Institution* in the sweep investment vehicle.

All other sweep accounts, those where the sweep investment vehicle is not a deposit and is reflected on the books and records of the *Covered Institution*, are required by the final rule to have a dual *provisional hold* methodology. This means that, for the fund balance remaining in the base sweep account as of the institution's customary end-of-day on the day of failure, the *provisional hold* methodology will be the same as applied to other deposit accounts. But, for the funds residing in the sweep investment vehicle as of the institution's customary end-of-day, the *provisional hold* methodology will have a separate account balance threshold and *provisional hold* percentage.[31] Under the final rule the balance threshold as well as the *provisional hold* percentage may vary for different types of sweep investment vehicles.[32]

The proposed rule distinguished between Class A and Class B sweep account arrangements, where Class A sweep arrangements were those where the sweep investment vehicle is either a deposit or a money market mutual fund account while Class B covered all other sweep arrangements. In response to comments and for better clarity this distinction is not used in the final rule.

The final rule does not require mechanisms to stop the processing of any prearranged deposit account sweep transactions in the event of failure. The *provisional holds* described above would allow for the transfer of balances from a deposit account to a sweep investment vehicle. The *provisional holds* would apply to liability accounts as they are designated on the books and records of the institution at its customary end-of-day.

One commenter noted that frequently ''systems or processes for booking swept products (like securities repos, money market mutual funds or fed funds) are not like a deposit system that would have functionality for holds. In many cases, there are not 'accounts' in a sense equivalent to a deposit account. * * * Due to the structure, timing and automated processes of sweeps, there is no practical ability of a customer to access and remove such funds until the incoming side of that sweep transaction is processed and the funds are placed back into the U.S. deposit account. Bank deposit systems could utilize existing capabilities to either place holds on the domestic deposit account upon return of the funds or a bank could trap such funds prior to their being returned by routing such funds into an alternative suspense account. This method would allow the FDIC to control such funds until it releases them to the customer and would reduce the burden and cost of process and technology development.'' The final rule would allow a *Covered Institution* to apply to the FDIC to use such approaches. If used, the *Covered Institution* is required to obtain prior approval from the FDIC in response to a written request, including a justification for the process and its relative effectiveness for posting *provisional holds* in the event of failure.

*Provisional holds for deposit accounts which accept automated credits from funds invested within the Covered Institution.* The final rule requires a dual *provisional hold* methodology for automated credit accounts. For the fund balance remaining in the automated credit account as of the institution's customary end-of-day the *provisional hold* methodology would be the same as applied to other deposit accounts. For the funds residing in the investment vehicle as of the institution's customary end-of-day, the *provisional hold* methodology must have the capability of a separate account balance threshold and *provisional hold* percentage.[33] The account balance threshold as well as the *provisional hold* percentage are required to vary for different types of investment vehicles. These account balance thresholds and *provisional hold* percentages could be different from those applied to: (1) Funds automatically swept into a similar or identical investment vehicle or (2) funds held in a similar or identical investment vehicle that does not provide for an automated crediting of funds.[34]

*Account balance used for provisional hold calculation.* The final rule requires the account balance threshold and *provisional hold* percentage to be applied against the end-of-day ledger balance calculated by the institution as of the date of failure.

*Provisional hold duration.* Under the final rule, the methodology for implementing a *provisional hold* process will be required to hold funds until removed by the *Successor Institution* as instructed by the FDIC. *Provisional holds* will be removed when the results of the deposit insurance determination are available, generally anticipated being several days after failure, depending on the size and complexity of the failed institution's deposit base.

*Provisional hold designation.* The final rule requires provisional holds to be labeled ''FDIC Hold.''

*Provisional hold customer disclosure.* The majority of the commenters addressing the issue of *provisional hold* disclosure indicated it would be burdensome and unnecessary. They indicated the FDIC has other means at its disposal to notify customers the *provisional hold*s are in place. Once placed, the *provisional hold* will be reflected in the account's available balance, which can be viewed and accessed through normal channels.

The final rule does not require the development of new mechanisms so that *provisional holds*, once placed, would be apparent if the customer

[31] Some Covered Institutions may allow a single base sweep account to be associated with multiple investment vehicles. In this case a separate provisional hold methodology must be developed for each investment vehicle.

[32] Some alternative investment vehicles are deposits held in foreign offices. These foreign deposits would be subject only to the provisional hold methodology for the sweep alternative investment. Such foreign deposits would be excluded from the provisional hold methodology designed for non-sweep deposits held in the same foreign office.

[33] Some automated credit accounts may also be a base sweep account. In this case a separate provisional hold methodology must be developed for each investment vehicle. It is possible, for example, for a customer to each day provide the institution with instructions to invest a certain amount of funds in a Cayman Island branch time account where the funds would be returned to the customer's demand deposit account the following morning. Further, the customer may also have provided prearranged instructions to have excess balances residing in the same demand deposit account swept to a Cayman Island branch account where such funds also are returned to the demand account the following morning. In this case the Covered Institution must have a provisional hold methodology that: (1) Treats funds residing in the demand deposit account as of the institution's end-of-day consistent with other deposit accounts, (2) treats funds residing in the Cayman Island branch account as a result of the prearranged sweep consistent with other Cayman Island sweep investment vehicles and (3) treats funds residing in the Cayman Island branch account as a result of the daily investment instructions using a separate account balance threshold and provisional hold percentage.

[34] Some investment vehicles are foreign deposits. These funds would be subject only to the provisional hold methodology for the automated credit account. Such accounts would be excluded from the provisional hold methodology designed for non-sweep foreign deposits held in the same office.

views account information on-line or through other means.

*Security level and mechanism for manual removal of provisional holds.* The final rule requires the *Covered Institution* to create policies, procedures and systems reasonably capable of preventing the alteration of FDIC *provisional holds* or other FDIC hold amounts except under the specific written direction of the FDIC.

*Timeliness of the provisional holds process.* The final rule requires a *Covered Institution* to have the capability of placing *provisional holds* on the applicable accounts prior to the *Successor Institution* opening for business the following day, but in no case later than 9 a.m. local time the day following the day of the depository institution failure.

*Exception for systems with a small number of accounts.* The final rule allows an exception for account systems servicing a relatively small number of accounts making the manual application of *provisional holds* feasible. If used, the *Covered Institution* is required to obtain prior approval from the FDIC in response to a written request, including a justification for the manual process and its relative effectiveness for posting *provisional holds* in the event of failure.

*Institutional contacts.* The final rule requires a *Covered Institution* to notify the FDIC of the person(s) responsible for producing the standard deposit data download and administering *provisional holds*, both while this functionality is being constructed and on an on-going basis. The *Covered Institution* is responsible for ensuring such contact information is current.

*Removal of Provisional Holds*

*Removal of provisional holds.* Under the final rule, the *Successor Institution* is required to remove *provisional holds* in batch as specified by the FDIC. On the day(s) *provisional holds* are to be removed, the FDIC would provide the *Successor Institution* with a file listing the accounts subject to removal of the *provisional hold.* The file format is shown in Appendix A. The file will be in a tab-or pipe-delimited ASCII format and provided to the *Successor Institution* through FDIC*connect* or Direct Connect, depending on the size of the file. The file will be encrypted using an FDIC-supplied algorithm. The FDIC will provide the *Successor Institution* with the necessary software algorithms needed to decrypt the data files.

In addition to the batch process used to remove *provisional holds*, the *Covered Institution* is required to have in place a mechanism for manual removal of *provisional holds* on a case-by-case basis. The FDIC expects that virtually all *provisional holds* will be removed via the batch process described above; however, the removal of *provisional holds* on a case-by-case basis during the business day, which could include the day following failure, may also be necessary to provide an individual depositor access to funds.

*Provisional Hold Replacement Transactions*

*Debiting and crediting accounts after provisional holds are removed.* Under the final rule, on the day a *provisional hold* removal file is provided to the Successor Institution, the FDIC also will provide a file or set of files in a tab-or pipe-delimited ASCII format listing the accounts subject to debit or credit transactions, which reflect the results of the insurance determination process. Appendix B provides details on the debit/credit data file structure. The debit and credit transaction file will be transmitted to the *Successor Institution* through FDIC*connect* or Direct Connect, depending on the size of the file. The file will be encrypted using an FDIC-supplied algorithm.

*Posting of additional FDIC holds.* Under the final rule, on the day *provisional holds* are to be removed, the FDIC also will provide the *Successor Institution* with a file listing the accounts subject to a new hold to be placed after the removal of the provisional hold. The file format is shown in Appendix A. The file will be in a tab-or pipe-delimited ASCII format and provided to the *Successor Institution* through FDIC*connect* or Direct Connect, depending on the size of the file. The file will be encrypted using an FDIC-supplied algorithm.

*Removal of Additional FDIC Holds*

Under the final rule, in some cases *provisional holds* will be replaced by a second FDIC hold. These holds will be removed over time as further information is gathered from depositors needed to complete the insurance determination. These additional FDIC holds will be removed using the same file format described in Appendix A.

*The Generation of Deposit Account and Customer Data in a Standard Structure*

The final rule requires a *Covered Institution* to have in place practices and procedures to provide the FDIC with required depositor and customer data in a standard format following the close of any day's business. The depositor and customer data would be provided as soon as practicable, but in no case later than by the following calendar day, and must reflect the end-of-day ledger balances as customarily shown on the books and records of the *Covered Institution* as of the day data are requested. Furthermore, all other deposit account and customer data provided must be current as of the close of business on that day.

*Covered Institution*s are not required to collect or generate new depositor or customer information. The standard data files would be created through a mapping of pre-existing data elements and internal institution codes into standard data formats. Data will be provided on all non-closed deposit or foreign deposit accounts as well as sweep and automated credit accounts.

*Files.* The final rule requires these data to be provided in the following five separate files:

1. *Deposit file.* Data fields for each non-closed deposit or foreign deposit account,[35] except those accounts serving as an investment vehicle reported in the Sweep/Automated Credit file. See Appendix C for more detail.

2. *Sweep/Automated Credit file.* Data fields capturing information on funds residing in investment vehicles linked to each non-closed deposit account: (1) Involved in sweep activity where the sweep investment vehicle is not a deposit and is reflected on the books and records of the *Covered Institution* or (2) which accept automated credits. See Appendix D for more detail.

3. *Hold file.*[36] Deposit hold data fields for each non-closed deposit account. See Appendix E for more detail.

4. *Customer file.* Data fields for each customer. See Appendix F for more detail.

5. *Deposit-customer join file.* Data necessary to link each deposit and foreign deposit with the customers who have an interest in the account. See Appendix G for more detail.

*Possible file combinations.* The final rule provides that data could be submitted using one of each deposit, sweep/automated credit, hold, customer, and deposit-customer join files. Alternatively, data could be supplied using multiple files for each

[35] For these purposes a deposit account also includes omnibus accounts reflected on the books and records of the *Covered Institution* used to temporarily house customer funds, such as those used in connection with sweep transactions.

[36] The Hold file contains information on holds against each deposit account, including FDIC provisional holds. Since provisional holds may be generated after the completion of an institution's nightly deposit processing cycle, they may not be reflected fully in the Hold file generated as of the day of closing. In this case the FDIC would require a second Hold file to be generated the day following closing to fully capture provisional holds that may not have been posted until the next deposit processing cycle.

type. The number of files could correspond to the number of institutional systems of record, for example. When an institution provides multiple data files for a single deposit application, all of the files must sum to the institution's subsidiary system control totals. In addition, either a set of customer files or a single customer file must accompany the deposit file(s). See Appendix H for rules governing the possible file combinations for depositor and customer data.

*File format.* Under the final rule depositor and customer data files must be provided in tab- or pipe-delimited ASCII format. Each file name would contain the institution's FDIC Certificate Number, the file type (deposit, sweep, hold, customer, join or other) and the date of the extract. Additional data could be provided, not required by the regulation, that may be helpful to the FDIC's deposit insurance determination process. For these additional files, the names should describe the file content such as ''lookup table'' or ''product codes''. All files will be compressed and encrypted using an FDIC-supplied or specified algorithm. The FDIC would transmit the encryption algorithm over FDIC*connect.* The FDIC will support an ASCII file format.

*File transmission mechanism.* Under the final rule, the data files must be provided to the FDIC in the most expeditious manner. Data which are compressed and encrypted could be transmitted to the FDIC using FDIC*connect* or a secure FTP site which the FDIC has established for this purpose. Should the volume be too great to be transmitted electronically, then a portable hard drive should be used and physically transported by FDIC personnel to the FDIC's data processing facilities.

*Testing Requirements*

The FDIC will conduct an initial test at each *Covered Institution* sometime after the initial implementation period ends.[37] All testing will be coordinated with the financial institution and conducted at the site of their choosing if multiple sites are available. Once the initial test is completed successfully, the FDIC anticipates conducting additional tests infrequently at institutions that do not make major changes to their deposit systems[38]—perhaps only once every three-to-five years. More frequent testing may be necessary for institutions that make major acquisitions, experience financial distress (even if the distress is unlikely to result in failure) or undertake major system conversions.

*Covered Institutions* will be asked to establish a series of test accounts on their deposit account systems that could be used for verification purposes. These accounts will be used to verify the processing of holds, debits and credits.

The FDIC also contemplates development of a XML validation service to be provided to each *Covered Institution* for the purpose of establishing compliance with the standard data requirements for depositor and customer records. The XML schema will read a file (which has been created in the standard format), validate the accuracy and integrity of the file content and provide a report that establishes the institution's compliance with the criteria. In addition to the XML service, the FDIC also will provide a description of the validation process to help facilitate institutional testing.

*Covered Institutions* will be responsible for ensuring that a representative sample of data has been passed through the XML validation service. At a minimum the sampling strategy should cover a cross-section of different insurance categories and of account ledger balances maintained by the institution. The *Covered Institution* will be required to provide the FDIC its sampling strategy along with the validation results as a part of the periodic verification process.

To reduce the frequency of FDIC testing and ensure ongoing compliance, the FDIC will require *Covered Institutions* to conduct tests in-house every year and provide the FDIC with verification that the test was conducted, a summary of the test results and certification that the functionality can be successfully implemented.

In addition, the FDIC will test certain other requirements inside the institution, including but not limited to the ability to place and remove provisional holds, place new holds and implement debits and credits using a data set that meets the FDIC standards.

*Implementation Requirements*

*Institutions meeting the criteria* of a *Covered Institution upon the effective date of the regulation.* The final rule requires a *Covered Institution* to fully implement the respective requirements no later than 18 months from the regulation's effective date.

*Institutions meeting the criteria of a Covered Institution after the effective date of the regulation.* The final rule requires that any insured institution meeting the criteria of a *Covered Institution* for at least two consecutive quarters will have 18 months following the end of the two consecutive quarters in which to fully implement the respective requirements.

*Merger involving two Covered Institutions.* Under the final rule, the requirements are to be fully implemented within 18 months following the completion of an acquisition, although an acquisition does not delay any implementation requirements which may already have been in place for the individual institutions involved in the merger.

*Merger involving a Covered and Non-Covered Institution.* Under the final rule, the requirements are to be fully implemented within 18 months following the completion of an acquisition, although a merger does not delay any implementation requirements which may already have been in place for the individual institutions involved in the merger.

*Exception for certain institutions.* Under the final rule, on a case-by-case basis, the FDIC could accelerate the implementation timeframe of all or part of the final rule for a *Covered Institution that:* (1) Has a composite rating of 3, 4 or 5 under the Uniform Financial Institutions Rating System (commonly referred to as CAMELS),[39] or in the case of an insured branch of a foreign bank, an equivalent rating, (2) is undercapitalized as defined for purposes of the prompt corrective action (''PCA'') rules[40] or (3) is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination. In determining the accelerated implementation timeframe for such institutions, the FDIC will consider such factors as the: (1) Complexity of the institution's deposit systems and operations; (2) extent of asset quality difficulties; (3) volatility of funding sources; (4) expected near-term

[37] In addition to testing, the FDIC expects to require that information contact points be validated (and updated as needed).

[38] A major change to a deposit system means a change made to a Covered Institution's data environment affecting one or more of the data elements described in attached Appendices. Changes could be the result of a merger or the streamlining of a financial institution's systems of record.

[39] CAMELS is an acronym drawn from the first letters of the individual components of the rating system: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk.

[40] 12 CFR Part 325.

changes in capital levels; and (5) other relevant factors appropriate for the FDIC to consider in its roles as insurer and possible receiver of the institution. The final rule requires the FDIC to consult with the *Covered Institution's* primary federal regulator in determining whether to implement this provision.

*Applications for extension of implementation requirements.* The final rule provides that a Covered Institution could request an extension of the 18-month deadline for implementing the requirements. An application for such an extension would be subject to the FDIC's rules of general applicability, 12 CFR 303.251. For good cause shown, the FDIC could grant the application for an extension.

One commenter requested that the FDIC provide an exemption from the proposed requirements for deposit systems which may be retired in the near future, as long as the replacement system is intended to be compliant. Such a request could be addressed as an application for extension of implementation requirements.

*New Deposit Accounts*

The proposed rule asked whether a unique depositor ID should be assigned by *Covered Institutions* when a new account is opened and to indicate the relative costs of such a requirement. Commenters generally indicated the assignment of a unique depositor ID was burdensome and unnecessary to meet the FDIC's objectives. The final rule does not include a requirement to assign a unique depositor ID when a new account is opened.

*FDIC Contact*

Applications for an exemption from the criteria of a *Covered Institution,* a request for flexibility in the use *of provisional holds,* an extension of implementation requirements or the submission of point-of-contact information should be submitted in writing to: Office of the Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429–0002.

## VI. Plain language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. No commenters suggested that the proposed rule was unclear, and the final rule is substantively similar to the proposed rule.

## VII. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the FDIC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC submitted the information collections (as more fully described below) contained in this rule to OMB for review. No collections of information will be made until OMB approval has been obtained.

*Background/General Description of Collection:* Section 360.9 contains collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) (''PRA''). In particular, the following requirements of this proposed rule constitute collections of information as defined by the PRA: (A) All notices that *Covered Institutions* must provide the FDIC of persons responsible for producing the standard data download and administering provisional holds, both while the functionality is being constructed and on an on-going basis (360.9(c)(3)); (B) written practices and procedures for providing the FDIC with required deposit account and customer data, as to all accounts held in domestic and foreign offices, in a standard format upon the close of any day's business, to be created through a mapping of pre-existing data elements into standard data formats in six separate files, as indicated in the appendices to this Part 360 (360.9(d) (1) and (2); (C) all data provided to the FDIC pursuant to 360.9(d)(3); and (D) the dollar costs and time burdens associated with information systems acquisition, modification and maintenance that respondents will need in order to respond to the information requirements. Items A, B, C, and D are reflected, to some extent, as on-going burdens and costs; Item D represents primarily implementation or ''start-up'' burdens and costs. As discussed below, the FDIC has clarified its burden estimates in order to distinguish on-going costs and burdens from implementation or start-up costs and to provide additional detail concerning the FDIC's calculations.

*Costs estimated in the proposed rule:* Compliance with the requirements of the proposed rule would have required *Covered Institutions* to implement functionality to post provisional holds, remove provisional holds, post debit and credit transactions, post additional holds and provide customer data in a standard format reconciled to supporting subsidiary systems. These requirements also were required to be supported by policies and procedures as well as notification of individuals responsible for the systems. Further, the requirements involved on-going costs for testing and general maintenance and upkeep of the functionality. Estimates of both initial implementation and on-going costs were provided.

In the proposed rule implementation costs were estimated to vary widely among the *Covered Institutions* due to considerable differences in the complexity and scope of the deposit operations across *Covered Institutions.* Some *Covered Institutions* only slightly exceeded the 250,000 deposit account threshold while several institutions had over 20 million deposit accounts. In addition, some *Covered Institutions*—most notably the largest-have proprietary deposits systems likely requiring an in-house, custom solution for the proposed requirements while most—generally the small-to-mid-sized ones—purchase deposit software from a vendor or use a servicer for deposit processing. Deposit software vendors and servicers were expected to incorporate the proposed requirements into their products or services to be available for their clients. In these cases estimated implementation costs were greatly reduced. The analysis assumed 100 of the 159 *Covered Institutions,* or 63 percent, would have reduced implementation costs due to the use of software or services from a vendor.

The cost estimates used in the proposed rule were based on comments from the 2005 and 2006 ANPRs that provided some indication of implementation and on-going costs. Further, during November 2007 the FDIC had conversations with several *Covered Institutions* and deposit software vendors, which also assisted in formulating these cost estimates.

For *Covered Institutions* with proprietary deposit systems implementation costs were estimated to vary considerably. The costs for the least complex of these institutions were estimated to range between $250,000 and $350,000.[41] For super-regional organizations implementation costs were estimated to be between $2 million and $4 million.[42] The costs for the largest, most complex *Covered Institutions* were estimated to be several

[41] Compliance with the proposed requirements would require staff time. The analysis assumed an hourly cost of $160 for Covered Institutions.

[42] The comment letter provided by the American Bankers Association dated March 13, 2007 in response to the 2006 ANPR indicated cost estimates provided by members ranged from $2 million to $6 million per institution for implementation (page 3).

times that of the super-regional organizations. For *Covered Institutions* using software or servicing provided by a vendor implementation costs were estimated to be $13,000 to $20,000 per institution. These costs primarily were due to installation of software received from the vendor.

Using this methodology overall industry implementation costs were estimated to range between $50 million and $100 million. The best estimate of implementation costs is the mid-point of this range, or $75 million. In reviewing implementation costs as part of the comments received from previous ANPRs the FDIC viewed them relative to a one basis point assessment against deposits. In this context the estimated implementation costs ranged between 11 and 21 percent of a one basis point assessment against deposits of *Covered Institutions.* The mid-point cost estimate would have been 16 percent.

On-going costs for testing, maintenance and other periodic items were estimated to range between $6,000 and $13,000 for those *Covered Institutions* using software or servicing provided by a vendor. For super-regional organizations on-going costs were estimated to be between $150,000 and $250,000. The largest, most complex *Covered Institution* was estimated to have on-going costs as high as $500,000 per year. Overall, on-going industry cost estimates ranged from $4 million to $6.5 million, or 0.8 to 1.4 percent of a one basis point assessment against the deposits of *Covered Institutions.*

*Comments:* Several commenters provided estimates for implementation. These cost estimates are discussed in the preamble to the final rule. In general, the implementation cost estimates provided by commenters were consistent with the assumptions used in the proposed rule. The largest, most complex depository institution estimated implementation costs to be $8 million to $10 million, within the range of the estimate for this institution used in the calculations for the proposed rule.

*Updated cost estimates:* The requirements of the final rule effectively are identical to the proposed rule. Further, there was considerable consistency between the cost comments provided from the proposed rule and the assumptions used by the FDIC to estimate the costs of the proposed rule. Therefore, the FDIC has not changed its estimates regarding implementation or on-going costs.

When the proposed rule was issued 159 depository institutions were estimated to meet the criteria of a *Covered Institution.* This estimate was based on Call and Thrift Financial Report data as of June 2007. Since this reporting date eight institutions included in these 159 no longer exist due to a merger or acquisition. For commercial banks the number of deposit accounts is reported only once a year in June. Based on analysis from prior years, the number of institutions potentially covered by the criteria has been about 160. While the number of potentially covered institutions is reduced each year due to merger and acquisition activity, it also has increased as new institutions grow in size to meet the criteria. In this regard, for the purposes of this cost analysis, the FDIC is assuming that since June 2007 an additional eight depository institutions (which it is unable to identify at this point) have met the requirements of a *Covered Institution.* Therefore, the FDIC is still basing its cost estimate on 159 *Covered Institutions.*

*OMB Number:* New collection.

*Frequency of Response:* On Occasion.

*Affected Public:* Insured depository institutions having at least $2 billion in domestic deposits and either at least: (i) 250,000 deposit accounts; or (ii) $20 billion in total assets.

*Estimated Number of Respondents:* 159.

*On-Going Burden Hours and Costs:*

*Estimated Time per Response:* 157 hours to 255.5 hours. These hours are calculated as follows: $4 million low-end, annualized, over-all industry estimated costs for on-going burden ÷ $160 per hour salary ÷ 159 respondents = 157 hours; and $6.5 million high-end, annualized, over-all industry estimated costs for on-going burden ÷ $160 per hour salary ÷ 159 respondents = 255.5 hours.

*Estimated Total Annual Burden:* 25,000 hours to 40,625 hours. These hours are calculated as follows: 157 hours × 159 respondents = 25,000 hours at a minimum; and 255.5 hours × 159 respondents = 40,624.5 hours at a maximum.

On-going costs for testing, maintenance and other periodic items are estimated to range between $6,000 and $13,000 for those *Covered Institutions* using software or servicing provided by a vendor. For super-regional organizations on-going costs are estimated to be between $150,000 and $250,000. The largest, most complex *Covered Institution* was estimated to have on-going costs as high as $500,000 per year. Overall, on-going industry cost estimates ranged from $4 million to $6.5 million. Placed in context, this is 0.8 to 1.4 percent of a one basis point assessment against the deposits of *Covered Institutions.* This analysis assumes a cost of $160 per hour for *Covered Institutions,* as suggested by *Covered Institutions* and vendors.

**Implementation Burden Hours and Costs—Capital Start-Up Costs**

*Estimated Time per Individual Response:* 80 hours to 75,000 hours per respondent. With regard to the one-time burden of adopting mechanisms required to facilitate provisional holds and standard data sets, the FDIC estimates a range from 80 hours for the smallest *Covered Institutions* with the least expensive systems, to 75,000 hours for the largest *Covered Institutions* with the most expensive systems. As discussed elsewhere, there is a broad range in the complexity and size among *Covered Institutions,* with the smallest having $2.5 billion in total assets and the largest having over $1.3 trillion in total assets. The FDIC estimated the range of hours per institution as follows: $13,000 overall implementation cost for the smallest, least expensive programs using vendor-provided software ÷ $160 per hour salary = 80 hours; and $12,000,000 overall implementation for the most complex, expensive programs using proprietary software ÷ $160 per hour salary = 75,000 hours. The FDIC considered this range of hours in estimating the average response time shown below.

*Estimated Time per Average Response:* 1,965 hours to 3,931 hours. The FDIC calculated the average, start-up cost of acquiring software/hardware for the industry as a whole (i.e., all *Covered Institutions*) based upon the cost estimates provided by *Covered Institutions*, vendors and servicers with a low end of $50,000,000 and a high-end of $100,000,000. The calculations are as follows: $50,000,000 ÷ $160 per hour salary ÷ 159 Covered Institutions = 1,965 hours; and $100,000,000 ÷ $160 per hour salary ÷ 159 Covered Institutions = 3,931 hours.

*Estimated Total Annual Burden:* 312,500 hours to 625,000 hours. Minimum hours calculated as: 1,965 hours × 159 respondents = 312,435 hours; maximum hours calculated as: 3,931 hours × 159 respondents = 625,029 hours.

*Estimated Total Annual Burden—Annualized:* 104,200 hours to 208,350 hours. The FDIC averaged over the three-year collection period the burden of start-up costs associated with the cost of acquiring software/hardware for the industry as a whole (i.e., all *Covered Institutions*). The calculations are as follows: 312,500 hours ÷ 3 = 104,167 hours; and 625,000 hours ÷ 3 = 208,333 hours.

*Comment Request:* The FDIC has an ongoing interest in public comments on its collections of information, including comments on: (a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information. Comments may be submitted to the FDIC by any of the following methods: By mail to the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429; by FAX at (202) 898–8788; or by e-mail to *comments@fdic.gov.* All comments should refer to ''Large Bank Deposit Insurance Modernization.'' Copies of comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

**VIII. Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. The final rule requires the largest insured depository institutions to adopt mechanisms that would, in the event of the institution's failure: (1) Provide the FDIC with standard deposit account and customer information; and (2) allow the placement and release of holds on liability accounts, including deposits. The final rule applies only to *Covered Institutions*—defined in the final rule as insured depository institutions having at least $2 billion in domestic deposits and either: (1) More than 250,000 deposit accounts; or (2) total assets over $20 billion, regardless of the number of deposit accounts. There are no small banking organizations that come within the definition of a *Covered Institution.*

**IX. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families**

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

**List of Subjects in 12 CFR Part 360**

Banks, banking, savings associations.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 360 of title 12 of the Code of Federal Regulations as follows:

## PART 360—RESOLUTION AND RECEIVERSHIP RULES

■ 1. The authority citation for part 360 continues to read as follows:

**Authority:** 12 U.S.C. 1819(a) Tenth, 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

■ 2. Add new § 360.9 to read as follows:

**§ 360.9. Large-bank deposit insurance determination modernization.**

(a) *Purpose and scope.* This section is intended to allow the deposit and other operations of a large insured depository institution (defined as a ''Covered Institution'') to continue functioning on the day following failure. It also is intended to permit the FDIC to fulfill its legal mandates regarding the resolution of failed insured institutions to provide liquidity to depositors promptly, enhance market discipline, ensure equitable treatment of depositors at different institutions and reduce the FDIC's costs by preserving the franchise value of a failed institution.

(b) *Definitions.*—(1) A *covered Institution* means an insured depository institution which, based on items as defined in Reports of Income and Condition or Thrift Financial Reports filed with the applicable federal regulator, has at least $2 billion in deposits and at least either:

(i) 250,000 deposit accounts; or

(ii) $20 billion in total assets,

regardless of the number of deposit accounts.

(2) *Deposits, number of deposit accounts and total assets* are as defined in the instructions for the filing of Reports of Income and Condition and Thrift Financial Reports, as applicable to the insured depository institution for determining whether it qualifies as a covered institution. A foreign deposit means an uninsured deposit liability maintained in a foreign branch of an insured depository institution. An *international banking facility deposit* is as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR § 204.8(a)(2)). A *demand deposit account, NOW account, money market deposit account, savings deposit account and time deposit account* are as defined in the instructions for the filing of Reports of Income and Condition and Thrift Financial Reports.

(3) *Sweep account arrangements* consist of a deposit account linked to an interest-bearing investment vehicle whereby funds are swept to and from the deposit account according to prearranged rules, usually on a daily basis, where the sweep investment vehicle is not a deposit and is reflected on the books and records of the *Covered Institution.*

(4) *Automated credit account arrangements* consist of a deposit account into which funds are automatically credited from an interest-bearing investment vehicle where the funds in the interest-bearing investment vehicle were not invested by prearranged rules.

(5) *Non-covered institution* means an insured depository institution that does not meet the definition of a covered institution.

(6) *Provisional hold* means an effective restriction on access to some or all of a deposit or other liability account after the failure of an insured depository institution.

(c) *Posting and removing provisional holds.*—(1) A covered institution shall have in place an automated process for implementing a provisional hold on deposit accounts, foreign deposit accounts and sweep and automated credit account arrangements immediately following the determination of the close-of-business account balances, as defined in § 360.8(b)(3), at the failed covered institution.

(2) The system requirements under paragraph (c)(1) must have the capability of placing the provisional holds prescribed under that provision no later than 9 a.m. local time the day following the FDIC cutoff point, as defined in § 360.8(b)(1).

(3) Pursuant to instructions to be provided by the FDIC, a covered institution must notify the FDIC of the person(s) responsible for producing the standard data download and administering provisional holds, both

while the functionality is being constructed and on an on-going basis.

(4) For deposit accounts held in domestic offices of an insured depository institution, the provisional hold algorithm must be designed to exempt accounts below a specific account balance threshold, as determined by the FDIC. The account balance threshold could be any amount, including zero. For accounts above the account balance threshold determined by the FDIC, the algorithm must be designed to calculate and place a hold equal to the dollar amount of funds in excess of the account balance threshold multiplied by the provisional hold percentage determined by the FDIC. The provisional hold percentage could be any amount, from zero to one hundred percent. The account balance threshold as well as the provisional hold percentage could vary for the following four categories, as the covered institution customarily defines consumer accounts:

(i) Consumer demand deposit, NOW and money market deposit accounts;

(ii) Other consumer deposit accounts (time deposit and savings accounts, excluding NOW and money market deposit accounts);

(iii) Non-consumer demand deposit, NOW and money market deposit accounts; and

(iv) Other non-consumer deposit accounts (time deposit and savings accounts, excluding NOW and money market deposit accounts).

(5) For deposit accounts held in foreign offices of an insured depository institution, other than those connected to a sweep or automated credit arrangement, the provisional hold algorithm will apply a provisional hold percentage to the entire account balance. For deposit accounts held in foreign offices the provisional hold percentage may differ from that applied to deposit accounts. Also, the provisional hold percentage would not vary by account category (i.e., consumer versus non-consumer and transaction versus non-transaction) as is the case with deposit accounts.

(6) For international banking facility deposits, other than those connected to a sweep or automated credit arrangements, the provisional hold algorithm will apply a provisional hold percentage to the entire account balance. For IBF deposits the provisional hold percentage may differ from that applied to deposit or foreign deposit accounts. Also, the provisional hold percentage would not vary by account category (i.e., consumer versus non-consumer, and transaction versus non-transaction) as is the case with deposit accounts.

(7) For the interest-bearing investment vehicle of a sweep arrangement, the provisional hold algorithm must be designed with the capability to place a provisional hold on the interest-bearing investment vehicle with possibly a different account balance threshold and a different hold percentage according to the type of interest-bearing investment vehicle.

(8) For the interest-bearing investment vehicle of an automated credit account arrangement, the provisional hold algorithm must be designed with the capability to place a provisional hold on the interest-bearing investment vehicle with possibly a different account balance threshold and a different hold percentage according to the type of interest-bearing investment vehicle.

(9) A covered institution may submit a request to the FDIC, using the address indicated in § 360.9(g): to develop a provisional hold process involving memo holds or alternative account mechanisms; or to exempt from the provisional hold requirements of this section those account systems servicing a relatively small number of accounts where the manual application of provisional holds is feasible. Such requests may be in the form of a letter and must include a justification for the request and address the relative effectiveness of the alternative for posting provisional holds in the event of failure. The FDIC will consider such requests on a case-by-case basis in light of the objectives of this section.

(10) The automated process for provisional holds required by paragraph (c)(1) of this section must include the capability of removing provisional holds in batch mode and, during the same processing cycle, applying debits, credits or additional holds on the deposit or other accounts from which the provisional holds were removed, as determined by the FDIC. The FDIC will provide files listing the accounts subject to: removal of provisional holds or additional holds (file format as specified in Appendix A); application of debits or credits (file format as specified in Appendix B); and application of additional holds (file format as specified in Appendix A). In addition to the batch process used to remove provisional holds, the Covered Institution is required to have in place a mechanism for manual removal of provisional holds on a case-by-case basis.

(d) *Providing a standard data format for generating deposit account and customer data.*—(1) A covered institution must have in place practices and procedures for providing the FDIC in a standard format upon the close of any day's business with required depositor and customer data for all deposit accounts held in domestic and foreign offices and interest-bearing investment accounts connected with sweep and automated credit arrangements. Such standard data files are to be created through a mapping of pre-existing data elements and internal institution codes into standard data formats. Deposit account and customer data provided must be current as of the close of business for that day.

(2) The requirements of paragraph (d)(1) of this section shall be provided in five separate files, as indicated in the Appendices C through G to this Part 360.

(3) Upon request by the FDIC, a covered institution must submit the data required by paragraph (d)(1) of this section to the FDIC, in a manner prescribed by the FDIC.

(4) In providing the data required under paragraph (d)(1) of this section to the FDIC, the *Covered Institution* must be able to reconcile the total deposit balances and the number of deposit accounts to the institution's subsidiary system control totals.

(e) *Implementation requirements.*—(1) A covered institution must comply with the requirements of this section no later than February 18, 2010.

(2) An insured depository institution not within the definition of a covered institution on the effective date of this section must comply with the requirements of this section no later than eighteen months following the end of the second calendar quarter for which it meets the criteria for a covered institution.

(3) Upon the merger of two or more non-covered institutions, if the resulting institution meets the criteria for a covered institution, that covered institution must comply with the requirements of this section no later than eighteen months after the effective date of the merger.

(4) Upon the merger of two or more covered institutions, the merged institution must comply with the requirements of this section within eighteen months following the effective date of the merger. This provision, however, does not supplant any preexisting implementation date requirement, in place prior to the date of the merger, for the individual covered institution(s) involved in the merger.

(5) Upon the merger of one or more covered institutions with one or more non-covered institutions, the merged institution(s) must comply with the requirements of this section within eighteen months following the effective

date of the merger. This provision, however, does not supplant any preexisting implementation date requirement for the individual covered institution(s) involved in the merger.

(6) Notwithstanding the general requirements of this paragraph (e), on a case-by-case basis, the FDIC may accelerate, upon notice, the implementation timeframe of all or part of the requirements of this section for a covered institution that: Has a composite rating of 3, 4, or 5 under the Uniform Financial Institution's Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating; is undercapitalized, as defined under the prompt corrective action provisions of 12 CFR part 325; or is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination. In implementing this paragraph (e)(6), the FDIC must consult with the covered institution's primary federal regulator and consider the: Complexity of the institution's deposit systems and operations, extent of the institution's asset quality difficulties, volatility of the institution's funding sources, expected near-term changes in the institution's capital levels, and other relevant factors appropriate for the FDIC to consider in its roles as insurer and possible receiver of the institution.

(7) Notwithstanding the general requirements of this paragraph (e), a covered institution may request, by letter, that the FDIC extend the deadline for complying with the requirements of this section. A request for such an extension is subject to the FDIC's rules of general applicability under 12 CFR. 303.251.

(f) A covered institution may apply to the FDIC for an exemption from the requirements of this § 360.9 if it has a high concentration of deposits incidental to credit card operations. The FDIC will consider such applications on a case-by-case basis in light of the objectives of this section.

(g) Requests for exemptions from the requirements of this section, for flexibility in the use of provisional holds or for extensions of the implementation requirements of this section and the submission of point-of-contact information should be submitted in writing to: Office of the Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429–0002.

(h) *Testing requirements.* Covered institutions must provide appropriate assistance to the FDIC in its testing of the systems required by this section. The FDIC will provide testing details to covered institutions through the issuance of subsequent procedures and/or guidelines.

■ 3. Add new Appendices A through H to Part 360 to read as follows:

## Appendix A to Part 360—Non-Monetary Transaction File Structure

This is the structure of the data file the FDIC will provide to remove or add a FDIC hold for an individual account or sub-account. The file will be in a tab- or pipe-delimited ASCII format and provided through FDICconnect or Direct Connect. The file will be encrypted using an FDIC-supplied algorithm.

| Field name | Field description | Comments | Format |
|---|---|---|---|
| 1. DP_Acct_Identifier | Account Identifier<br>The primary field used to identify the account. This field may be the Account Number. | The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account. | Character (25). |
| 2. DP_Acct_Identifier—2 | Account Identifier—2<br>If necessary, the second element used to identify the account. | | Character (25). |
| 3. DP_Acct_Identifier—3 | Account Identifier—3<br>If necessary, the third element used to identify the account. | | Character (25). |
| 4. DP_Acct_Identifier—4 | Account Identifier—4<br>If necessary, the fourth element used to identify the account. | | Character (25). |
| 5. DP _Acct_Identifier—5 | Account Identifier—5<br>If necessary, the fifth element used to identify the account. | | Character (25). |
| 6. DP_Sub_Acct_Identifier | Sub-Account Identifier<br>If available, the Sub-Account identifier for the account. | The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same. | Character (25). |
| 7. PH_Hold_Action | Hold Action<br>The requested hold action to be taken for this account or sub-account.<br>Possible values are:<br>• R = Remove.<br>• A = Add. | | Character (1). |
| 8. PH_Hold_Amt | Hold Amount<br>Dollar amount of the FDIC hold to be removed or added. | | Decimal (14,2). |
| 9. PH_Hold_Desc | Hold Description<br>FDIC hold to be removed or added. | | Character (225). |

## Appendix B to Part 360—Debit/Credit File Structure

This is the structure of the data file the FDIC will provide to apply debits and credits to an individual account or sub-account after the removal of FDIC holds. The file will be in a tab- or pipe-delimited ASCII format and provided through FDICconnect or Direct Connect. The file will be encrypted using an FDIC-supplied algorithm.

| Field name | Field description | Comments | Format |
|---|---|---|---|
| 1. DP_Acct_Identifier | Account Identifier<br>The primary field used to identify the account. This field may the Account Number. | The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account. | Character (25). |
| 2. DP _Acct_Identifier—2 | Account Identifier—2<br>If necessary, the second element used to identify the account. | | Character (25). |
| 3. DP_Acct_Identifier—3 | Account Identifier—3<br>If necessary, the third element used to identify the account. | | Character (25). |
| 4. DP _Acct_Identifier—4 | Account Identifier—4<br>If necessary, the fourth element used to identify the account. | | Character (25). |
| 5. DP _Acct_Identifier—5 | Account Identifier—5<br>If necessary, the fifth element used to identify the account. | | Character (25). |
| 6. DP_Sub_Acct_Identifier | Sub-Account Identifier<br>If available, the sub-account identifier for the account. | The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same. | Character (25). |
| 7. DC _Debit_Amt | Debit Amount<br>Dollar amount of the debit to be applied to the account or sub-account. | | Decimal (14,2). |
| 8. DC_Credit_Amt | Credit Amount<br>Dollar amount of the credit to be applied to the account or sub-account. | | Decimal (14,2). |
| 9. DC_Transaction_Desc | Debit/Credit Description<br>FDIC message associated with the debit or credit transaction. | | Character (225). |

## Appendix C to Part 360—Deposit File Structure

This is the structure for the data file to provide deposit data to the FDIC. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited ASCII format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a deposit file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit to the covered institution the encryption algorithm over FDIC*connect.*

The total deposit balances and the number of deposit accounts in each deposit file must be reconciled to the subsidiary system control totals.

The FDIC intends to fully utilize a covered institution's understanding of its customers and the data maintained around deposit accounts. Should additional information be available to the covered institution to help the FDIC more quickly complete its insurance determination process, it may add this information to the end of this data file. Should additional data elements be provided, a complete data dictionary for these elements must be supplied along with a description of how this information could be best used to establish account ownership or insurance category.

The deposit data elements provide information specific to deposit account balances and account data. The sequencing of these elements, their physical data structures and the field data format and field length must be provided to the FDIC along with the data structures identified below.

A header record will also be required at the beginning of this file. This record will contain the number of accounts to be included in this file, the maximum number of characters contained in largest account title field maintained within the deposit file and the maximum number of characters contained in largest address field maintained within the deposit file.

**Note:** Each record must contain the account title/name and current account statement mailing address. Fields 17–33 relate to the account name and address information. Some systems provide for separate fields for account title/name, street address, city, state, ZIP, and country, all of which are parsed out. Others systems may simply provide multiple lines for name, street address, city, state, ZIP, with no distinction. Populate fields that best fit the system's data, either fields 17–27 or fields 28–33.

| Field name | Field description | Comments | Format |
|---|---|---|---|
| 1. DP_Acct_Identifier | Account Identifier<br>The primary field used to identify the account. This field may be the Account Number. | The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account. | Character (25). |
| 2. DP_Acct_Identifier—2 | Account Identifier—2<br>If necessary, the second element used to identify the account. | | Character (25). |
| 3. DP_Acct_Identifier—3 | Account Identifier—3<br>If necessary, the third element used to identify the account. | | Character (25). |
| 4. DP_Acct_Identifier—4 | Account Identifier—4<br>If necessary, the fourth element used to identify the account. | | Character (25). |
| 5. DP_Acct_Identifier—5 | Account Identifier—5<br>If necessary, the fifth element used to identify the account. | | Character (25). |
| 6. DP_Sub_Acct_Identifier | Sub-Account Identifier<br>If available, the sub-account identifier for the account. | The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same. | Character (25). |
| 7. DP_Bank_No | Bank Number<br>The bank number assigned to the deposit account. | | Character (15). |
| 8. DP_Tax_ID | Tax ID<br>The tax identification number maintained on the account. | For consumer accounts, typically, this would be the primary account holder's social security number ("SSN"). For business accounts it would be the federal tax identification number ("TIN"). Hyphens are optional in this field. | Character (15). |
| 9. DP_Tax_Code | Tax ID Code<br>The type of the tax identification number. Possible values are:<br>• S = Social Security Number.<br>• T = Federal Tax Identification Number.<br>• O = Other. | Generally deposit systems have flags or indicators set to indicate whether the number is an SSN or TIN. | Character (1). |
| 10. DP_Branch | Branch Number<br>The branch or office associated with the account. | In lieu of a branch number this field may represent a specialty department or division. | Character (15). |
| 11. DP_Cost_Center | Cost Center or G/L Code<br>The identifier used for organization reporting or ownership of the account. Insert null value if the cost center is not carried in the deposit record. | This field ties to the general ledger accounts. | Character (20). |
| 12. DP_Dep_Type | Deposit Type Indicator<br>The type of deposit by office location. Possible values are:<br>• D = Deposit (Domestic).<br>• F = Foreign Deposit. | A deposit—also called a "domestic deposit"—includes only deposit liabilities payable in the United States, typically those deposits maintained in a domestic office of an insured depository institution, as defined in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)). A foreign deposit is a deposit liability in a foreign branch payable solely at a foreign branch or branches. | Character (1). |
| 13. DP_Currency_Type | Currency Type<br>The ISO 4217 currency code. | | Character (3). |

| Field name | Field description | Comments | Format |
|---|---|---|---|
| 14. DP_Ownership_Ind | Customer Ownership Indicator<br>The type of ownership at the account level. Possible values are:<br>• S = Single.<br>• J = Joint Account.<br>• P = Partnership account.<br>• C = Corporation.<br>• B = Brokered Deposits.<br>• I = IRA Accounts.<br>• U = Unincorporated Association.<br>• R = Revocable Trust.<br>• IR = Irrevocable Trust.<br>• G = Government Accounts.<br>• E = Employee Benefit Plan Accounts.<br>• O = Other. | *Single:* Accounts owned by an individual and those accounts held as Minor Accounts, Estate Accounts, Non-Minor Custodian/Guardian Accounts, Attorney in Fact Accounts and Sole Proprietorships.<br>*Joint Account:* Accounts owned by two or more individuals, but does not include the ownership of a Payable on Death Account or Trust Account.<br>*Partnership Account:* Accounts owned by a Partnership.<br>*Corporation:* Accounts owned by a Corporation (e.g. Inc., L.L.C., or P.C.).<br>*Brokered Deposits:* Accounts placed by a deposit broker who acts as an intermediary for the actual owner or sub-broker.<br>*IRA Accounts:* Accounts for which the owner has the right to direct how the funds are invested including Keoghs and other Self-Directed Retirement Accounts.<br>*Unincorporated Association:* An account owned by an association of two or more persons formed for some religious, educational, charitable, social or other non-commercial purpose.<br>*Revocable Trusts:* Including PODs and formal revocable trusts (e.g. Living Trusts, Intervivos Trusts or Family Trusts).<br>*Irrevocable Trusts:* Accounts held by a trust established by statute or written trust in which the grantor relinquishes all power to revoke the trust.<br>*Government Accounts:* Accounts owned by a government entity (e.g. City, State, County or Federal government entities and their sub-divisions).<br>*Employee Benefit Plan:* Accounts established by the administrator of an Employee Benefit Plan including defined contribution, defined benefit and employee welfare plans.<br>*Other Accounts:* Accounts owned by an entity not described above. | Character (2). |
| 15. DP_Prod_Cat | Product Category<br>The product classification. Possible values are:<br>• DDA = Non-Interest Bearing Checking accounts.<br>• NOW = Interest Bearing Checking accounts.<br>• MMA = Money Market Deposit Accounts.<br>• SAV = Other savings accounts.<br>• CDS = Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable. | Product Category is sometimes referred to as ''application type'' or ''system type''. | Character (3). |
| 16. DP_Stat_Code | Status Code<br>Status or condition of the account. Possible values are:<br>• O = Open.<br>• D = Dormant.<br>• I = Inactive.<br>• E = Escheatment.<br>• A = Abandoned.<br>• C = Closing.<br>• R = Restricted/Frozen/Blocked. | | Character (1). |

| Field name | Field description | Comments | Format |
|---|---|---|---|
| 17. DP_Acct_Title_1 | Account Title Line 1<br>Account styling or titling of the account. | These data will be used to identify the owners and beneficiaries of the account. | Character (100). |
| 18. DP_Acct_Title_2 | Account Title Line 2<br>If available, the second account title line. | | Character (100). |
| 19. DP_Acct_Title_3 | Account Title Line 3<br>If available, the third account title line. | | Character (100). |
| 20. DP_Acct_Title_4 | Account Title Line 4<br>If available, the fourth account title line. | | Character (100). |
| 21. DP_Street_Add_Ln_1 | Street Address Line 1<br>The current account statement mailing address of record. | | Character (100). |
| 22. DP_Street_Add_Ln_2 | Street Address Line 2<br>If available, the second mailing address line. | | Character (100). |
| 23. DP_Street_Add_Ln_3 | Street Address Line 3<br>If available, the third mailing address line. | | Character (100). |
| 24. DP_City | City<br>The city associated with the mailing address. | | Character (50). |
| 25. DP_State | State<br>The state abbreviation associated with the mailing address. | Use a two-character state code (official U.S. Postal Service abbreviations). | Character (2). |
| 26. DP_ZIP | ZIP<br>The ZIP + 4 code associated with the mailing address. | If the "+4" code is not available provide only the 5-digit ZIP code. Hyphens are optional in this field. | Character (10). |
| 27. DP_Country | Country<br>The country associated with the mailing address. | Provide the country name or the standard IRS country code. | Character (10). |
| 28. DP_NA_Line_1 | Name/Address Line 1<br>Alternate name/address format for the current account statement mailing address of record, first line. | Fields 28–33 are to be used if address data are not parsed to populate Fields 17–27. | Character (100). |
| 29. DP_NA_Line_2 | Name/Address Line 2<br>Alternate name/address format, second line. | | Character (100). |
| 30. DP_NA_Line_3 | Name/Address Line 3<br>Alternate name/address format, third line. | | Character (100). |
| 31. DP_NA_Line_4 | Name/Address Line 4<br>Alternate name/address format, fourth line. | | Character (100). |
| 32. DP_NA_Line_5 | Name/Address Line 5<br>Alternate name/address format, fifth line. | | Character (100). |
| 33. DP_NA_Line_6 | Name/Address Line 6<br>Alternate name/address format, sixth line. | | Character (100). |
| 34. DP_Cur_Bal | Current Balance<br>The current balance in the account at the end of business on the effective date of this file. | This balance should not be reduced by float or holds. For CDs and time deposits, the balance should reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest). The total of all current balances in this file should reconcile to the total deposit trial balance totals or other summary reconciliation of deposits performed by the institution. | Decimal (14,2). |
| 35. DP_Int_Rate | Interest Rate<br>The current interest rate in effect for interest bearing accounts. | Interest rate should be expressed in decimal format, i.e., 2.0% should be represented as 0.020000000. | Decimal (10,9). |
| 36. DP_Acc_Int | Accrued Interest<br>The amount of interest that has been earned but not yet paid to the account as of the date of the file. | | Decimal (14,2). |
| 37. DP_Lst_Int_Pd | Date Last Interest Paid<br>The date through which interest was last paid to the account. | | Date (YYYYMMDD). |
| 38. DP_Lst_Deposit | Date Last Deposit<br>The date of the last deposit transaction posted to the account. | For example, a deposit that included checks and/or cash. | Date (YYYYMMDD). |

| Field name | Field description | Comments | Format |
|---|---|---|---|
| 39. DP_Int_Term_No | Interest Term Number<br>The number of months in the current interest term. | | Decimal (3,0). |
| 40. DP_Nxt_Mat | Date of Next Maturity<br>For CD and time deposit accounts, the next date the account is to mature. | For non-renewing CDs that have matured and are waiting to be redeemed this date may be in the past. | Date (YYYYMMDD). |
| 41. DP_Open_DT | Account Open Date<br>The date the account was opened. | If the account had previously been closed and re-opened, this should reflect the most recent re-opened date. | Date (YYYYMMDD). |
| 42. DP_Sweep_Code | Sweep Code<br>Indicates if the account is a sweep account. Possible values are:<br>• Y = Yes.<br>• N = No. | | Character (1). |
| 43. DP_Hold_To_Post | Full Hold on the account: Indicator if all postings to this account are restricted. Possible values are:<br>• Y = Yes.<br>• N = No. | | Character (1). |
| 44. DP_Issue_Val_Amt | Issued Value Amount<br>The value of the current CD when issued. | For CDs only. | Decimal (14,2). |
| 45. DP_Int_CD_Cde | Type of Interest for CD<br>Possible values are:<br>• C = Rate Change Allowed.<br>• N = Rate Change Not Allowed.<br>• R = Change Rate to Default at Renewal.<br>• T = Rate Change Allowed Only During the Term. | For CDs only. | Character (1). |
| 46. DP_IRA_Cde | IRA Code<br>The type of IRA. Possible values are:<br>• C = Corporate Retirement<br>• E = Educational IRA.<br>• I = IRA Account.<br>• K = Keogh Account.<br>• R = Roth IRA Account.<br>• S = SEP Account.<br>• T = Transitional Roth IRA.<br>• V = Versa Account.<br>• H = Health Savings Account. | Optional code field to be used if available to help further identify the types of IRA accounts. | Character (1). |
| 47. DP_Deposit_Class_Type | Deposit Class Type<br>The deposit class. Possible values are:<br>• RTL = Retail.<br>• FED = Federal government.<br>• STATE = State government.<br>• COMM = Commercial.<br>• CORP = Corporate.<br>• BANK = Bank Owned.<br>• DUE TO = Other Banks. | The institution may also use more or fewer class types. | Character (10). |
| 48. DP_Product_Class_Cde | Deposit Class Codes<br>The deposit class codes. Possible values are:<br>RTL<br>• 1 = Payable on Death.<br>• 2 = Individual.<br>• 3 = Living Trust—Intervivos or Family.<br>• 4 = Irrevocable Trust (includes Educational IRAs).<br>• 5 = Estate.<br>• 6 = Attorney in Fact.<br>• 7 = Minor—(includes all variations of Uniform Gifts to Minor Accounts).<br>• 8 = Bankruptcy Personal.<br>• 9 = Pre-Need Burial.<br>• 10 = Escrow.<br>• 11 = Representative Payee/Beneficiary.<br>• 12 = Sole Proprietorship.<br>• 13 = Joint.<br>• 14 = Non-Minor Custodian/Guardian.<br>• 15 = Other Retail. | These Product Class codes are used in conjunction with the Deposit Class Types in field 51. This field is to be used in concert with fields 12 and 13 identified above to enable the financial institution to capture more detailed information concerning account types. It is the intent of the FDIC to have the financial institution map its detailed account types to the codes identified in this field. The institution may also use additional codes, but in this event the institution must supply the detailed description and code value for each additional code used. If no additional account product type detail is available then this field should be left blank. | Character (2). |

| Field name | Field description | Comments | Format |
|---|---|---|---|
| | FED<br>• 16 = FHA.<br>• 17 = Federal Government.<br>STATE<br>• 18 = City.<br>• 19 = State.<br>• 20 = County, Clerk of Court.<br>• 21 = Other State.<br>COMMERCIAL<br>• 22 = Business Escrow.<br>• 23 = Bankruptcy.<br>• 24 = Club.<br>• 25 = Church.<br>• 26 = Unincorporated Association.<br>• 27 = Unincorporated Non-Profit.<br>• • 28 = Other Commercial.<br>CORPORATION<br>• 29 = Business Trust.<br>• 30 = Business Agent.<br>• 31 = Business Guardian.<br>• 32 = Incorporated Association.<br>• 33 = Incorporated Non-Profit.<br>• 33 = Incorporated Non-Profit.<br>• 34 = Corporation.<br>• 35 = Corporate Partnership.<br>• 36 = Corporate Partnership Trust.<br>• 37 = Corporate Agent.<br>• 38 = Corporate Guardian.<br>• 39 = Pre-Need Funeral Trust.<br>• 40 = Limited Liability Incorporation.<br>• 41 = LLC partnership.<br>• 42 = Lawyer Trust.<br>• 43 = Realtor Trust.<br>• 44 = Other Corporation.<br>BANK<br>• 45 = Certified & Official Checks, Money Orders, Loan Disbursements Checks, and Expense Checks.<br>• 46 = ATM Settlement.<br>• 47 = Other Bank Owned Accounts.<br>DUE TO (Other Banks)<br>• 48 = Due to U.S. Banks.<br>• 49 = Due to U.S. Branches of Foreign Banks.<br>• 50 = Due to Other Depository Institutions.<br>• 51 = Due to Foreign Banks.<br>• 52 = Due to Foreign Branches of U.S. banks.<br>• 53 = Due to Foreign Governments and Official Institutions. | | |

## Appendix D to Part 360—Sweep/Automated Credit Account File Structure

This is the structure of the data file to provide information to the FDIC on funds residing in investment vehicles linked to each non-closed deposit account or sub-account: (1) Involved in sweep activity where the sweep investment vehicle is not a deposit and is reflected on the books and records of the covered institution or (2) which accepts automated credits. A single record should be used for each instance where funds affiliated with the deposit account are held in an alternative investment vehicle. For any alternative investment vehicle, a separate account may or may not exist. If an account exists for the investment vehicle, it should be noted in the record. If no account exists, then a null value for the Sweep/Automated Credit Account Identifiers should be provided, but the remainder of the data fields defined below should be populated.

For data provided in the Sweep/Automated Credit Account File, the total account balances and the number of accounts must be reconciled to subsidiary system control totals. The file will be in a tab- or pipe-delimited ASCII format. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over FDIC*connect.*

| Field name | Field description | Comments | Format |
|---|---|---|---|
| 1. DP_Acct_Identifier | Account Identifier<br>The primary field used to identify the account from which funds are swept or debited. The field may be the Account number. | The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account. | Character (25). |
| 2. DP_Acct_Identifier—2 | Account Identifier—2<br>If necessary, the second element used to identify the account from which funds are swept or debited. | | Character (25). |
| 3. DP_Acct_Identifier—3 | Account Identifier—3<br>If necessary, the third element used to identify the account from which funds are swept or debited. | | Character (25). |
| 4. DP_Acct_Identifier—4 | Account Identifier—4<br>If necessary, the fourth element used to identify the account from which funds are swept or debited. | | Character (25). |
| 5. DP _Acct_Identifier—5 | Account Identifier—5<br>If necessary, the fifth element used to identify the account from which funds are swept or debited. | | Character (25). |
| 6. DP_Sub_Acct_Identifier | Sub-Account Identifier<br>If available, the sub-account identifier for the account. | The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same. | Character (25). |
| 7. SW_Acct_Identifier | Sweep/Automated Credit Account Identifier.<br>The primary field used to identify the account into which funds are swept or credited. This field may be the Account Number. | Funds may be swept into an investment vehicle not represented as an account. In this case this field should be a null value.<br>The Sweep/Automated Credit Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account. | Character (25). |
| 8. SW_Acct_Identifier—2 | Sweep/Automated Credit Account Identifier—2.<br>If necessary, the second element of the account identifier used to identify the account into which funds are swept or credited. | | Character (25). |
| 9. SW_Acct_Identifier—3 | Sweep/Automated Credit Account Identifier—3.<br>If necessary, the third element of the account identifier used to identify the account into which funds are swept or credited. | | Character (25). |
| 10. SW_Acct_Identifier—4 | Sweep/Automated Credit Account Identifier—4.<br>If necessary, the fourth element of the account identifier used to identify the account into which funds are swept or credited. | | Character (25). |
| 11. SW _Acct_Identifier—5 | Sweep/Automated Credit Account Identifier–5.<br>If necessary, the fifth element of the account identifier used to identify the account into which funds are swept or credited. | | Character (25). |
| 12. SW_Sub_Acct_Identifier | Sweep/Automated Credit Sub-Account Identifier.<br>If available, the sub-account identifier for the account. | | Character (25). |

| Field name | Field description | Comments | Format |
|---|---|---|---|
| 13. SW_Type | Sweep/Automated Credit Type | The investment vehicle. Possible values are:<br>• RE = Repurchase Agreement.<br>• DD = Deposit Held in a Domestic Office.<br>• DF = Deposit Held in a Foreign Office.<br>• IBF = Deposit Held in an International Banking Facility.<br>• AI = Deposit Held in an affiliated depository institution.<br>• FF = Federal Funds.<br>• CP = Commercial Paper.<br>• OT = Other. | Character (3). |
| 14. SW_Inv_Amount | Fund Balance in Sweep/Automated Credit Investment Vehicle.<br>Dollar amount residing in the investment vehicle. | | Decimal (14,2). |
| 15. SW_Currency_Type | Currency Type<br>The ISO 4217 currency code. | | Character (3). |
| 16. SW_Hold_Amount | FDIC Hold Amount<br>Amount of FDIC hold on funds residing in the investment vehicle. | | Decimal (14,2). |
| 17. SW_Sweep_Interval | Sweep/Investment Frequency<br>The frequency with which the sweep or investment occurs. Possible values are:<br>• D = Daily.<br>• W = Weekly.<br>• BW = Bi-Weekly.<br>• M = Monthly.<br>• BM = Bi-Monthly.<br>• Q = Quarterly.<br>• O = Other. | | Character (2). |

## Appendix E to Part 360—Hold File Structure

This is the structure of the data file to provide information to the FDIC for each legal or collateral hold placed on a deposit account or sub-account. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited ASCII format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a hold data file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over FDIC*connect.*

| Field name | Field description | Comments | Format |
|---|---|---|---|
| 1. DP_Acct_Identifier | Account Identifier<br>The primary field used to identify the account. This field may be the Account Number. | The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account. | Character (25). |
| 2. DP_Acct_Identifier—2 | Account Identifier—2<br>If necessary, the second element used to identify the account. | | Character (25). |
| 3. DP_Acct_Identifier—3 | Account Identifier—3<br>If necessary, the third element used to identify the account. | | Character (25). |
| 4. DP_Acct_Identifier—4 | Account Identifier—4<br>If necessary, the fourth element used to identify the account. | | Character (25). |
| 5. DP _Acct_Identifier—5 | Account Identifier—5<br>If necessary, the fifth element used to identify the account. | | Character (25). |
| 6. DP_Sub_Acct_Identifier | Sub-Account Identifier<br>If available, the sub-account identifier for the account. | The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same. | Character (25). |
| 7. HD_Hold_Amt | Hold Amount<br>Dollar amount of the hold. | | Decimal (14,2). |
| 8. HD_Hold_Reason | Hold Reason<br>Reason for the hold. Possible values are: | | Character (2). |

| Field name | Field description | Comments | Format |
|---|---|---|---|
| | • LN = Loan Collateral Hold.<br>• LG = Court Order Hold.<br>• FD = FDIC hold.<br>• OT = Other (do not include daily operational type holds). | | |
| 9. HD_Hold_Desc | Hold Description<br>Description of the hold available on the system. | | Character (255). |
| 10. HD_Hold_Start_Dt | Hold Start Date<br>The date the hold was initiated. | | Date (YYYYMMDD). |
| 11. HD_Hold_Exp_Dt | Hold Expiration Date<br>The date the hold is to expire. | | Date (YYYYMMDD) |

## Appendix F to Part 360—Customer File Structure

This is the structure of the data file to provide to the FDIC information related to each customer who has an account or sub-account reported in the deposit data or sweep/automated credit account file. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited ASCII format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a customer file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over FDIC*connect.*

**Note:** Each record must contain the customer's name and permanent legal address. Fields 4–12 relate to the customer name for individuals only. Fields 13–14 relate to the customer name for entities other than individuals. Some systems provide for separate fields for name, street address, city, state, ZIP, and country, all of which are parsed out. Others systems may simply provide multiple lines for name, street address, city, state, ZIP, with no distinction. In this case, certain name and address data elements must be parsed and provided in the appropriate fields.

| Field name | Field description | Comments | Format |
|---|---|---|---|
| 1. CS_Cust_Identifier | Customer Identifier<br>The unique field used by the institution to identify the customer. | | Character (25). |
| 2. CS_Tax_ID | Customer Tax ID Number<br>The tax identification number on record for the customer. | Hyphens are optional in this field | Character (11). |
| 3. CS_Tax_Code | Customer Tax ID Code<br>The type of the tax identification number of the customer. Possible values are:<br>• S = Social Security Number.<br>• T = Federal Tax Identification Number.<br>• O = Other. | | Character (1). |
| 4. CS_Name_Line_1 | Individual Customer Name Line 1<br>If available, the free-form name narrative of the customer, first line. | | Character (100). |
| 5. CS_Name_Line_2 | Individual Customer Name Line 2<br>If available, the free-form name narrative of the customer, second line. | | Character (100). |
| 6. CS_Last_Name | Individual Customer Last Name<br>For individuals, the customer's last name. | This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element. | Character (50). |
| 7. CS_First_Name | Individual Customer First Name<br>For individuals, the customer's first name. | This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element. | Character (50). |
| 8. CS_Middle_Name | Individual Customer Middle Name<br>For individuals, the customer's middle name. | This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element. | Character (50). |
| 9. CS_Suffix | Individual Professional Suffix<br>For individuals, the suffix designating customer's academic, professional or honorary status, such as Esq., Ph.D., M.D., and D.D.S. | This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element. | Character (20). |
| 10. CS_Generation | Individual Generational Suffix<br>For individuals, the suffix designating the customer's generational status, such as Jr., Sr. or III. | This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element. | Character (10). |
| 11. CS_Prefix | Individual Customer Prefix<br>For individuals, the prefix of the customer, such as Rev., Dr., Mrs., Mr. or Ms. | This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element. | Character (10). |
| 12. CS_Birth_Dt | Individual Customer Birth Date<br>For individuals, the customer's birth date. | | Date (YYYYMMDD). |

| Field name | Field description | Comments | Format |
|---|---|---|---|
| 13. CS_Ent_Name_Line_1 | Entity Name Line 1<br>For entities other than individuals, the free-form name narrative of the customer, first line. | | Character (100). |
| 14. CS_Ent_Name_Line_2 | Entity Name Line 2<br>If available for entities other than individuals, the free-form name narrative of the customer, second line. | | Character (100). |
| 15. CS_Nar_Addr_Line_1 | Customer Address Line 1<br>If available, the free-form permanent legal address narrative for the customer, line one. | | Character (100). |
| 16. CS_Nar_Addr_Line_2 | Customer Address Line 2<br>If available, the free-form permanent legal address narrative of the customer, line two. | | Character (100). |
| 17. CS_Nar_Addr_Line_3 | Customer Address Line 3<br>If available, the free-form permanent legal address narrative of the customer, line three. | | Character (100). |
| 18. CS_Street_Address_1 | Street Address Line 1<br>The permanent legal address of the customer, line one. | This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. | Character (100). |
| 19. CS_Street_Address_2 | Street Address Line 2<br>The permanent legal address of the customer, line two. | This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. | Character (100). |
| 20. CS_City | City<br>The city associated with the permanent legal address. | This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. | Character (25). |
| 21. CS_State | State<br>The state abbreviation associated with the permanent legal address. | This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. Use a two-character state code (official U.S. Postal Service abbreviations). | Character (2). |
| 22. CS_ZIP | ZIP<br>The ZIP + 4 code associated with the permanent legal address. | This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. If the "+4" code is not available, provide only the 5-digit ZIP code. Hyphens are optional in this field. | Character (10). |
| 23. CS_Country | Country<br>The country associated with the permanent legal address. | This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. Provide the name of the country or the standard IRS country code. | Character (10). |
| 24. CS_Telephone | Customer Telephone Number<br>The telephone number on record for the customer. | | Character (20). |
| 25. CS_Email | Customer Email Address<br>The e-mail address on record for the customer. | | Character (150). |

## Appendix G to Part 360—Deposit-Customer Join File Structure

This is the structure of the data file to provide to the FDIC information necessary to link the records in the deposit and customer files. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited ASCII format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a join file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over FDIC*connect.*

The deposit-customer join file will have one or more records for each deposit account, depending on the number of relationships to each account. A simple individual account, for example, will be associated with only one record in the deposit-customer join file indicating the owner of the account. A joint account with two owners will be associated with two records in the deposit-customer join file, one for each owner. The deposit-customer join file will contain other records associated with a deposit account to designate, among other things, beneficiaries, custodians, trustees and agents. This methodology allows the FDIC to know all of the possible relationships for an individual account and also whether a single customer is involved in many accounts.

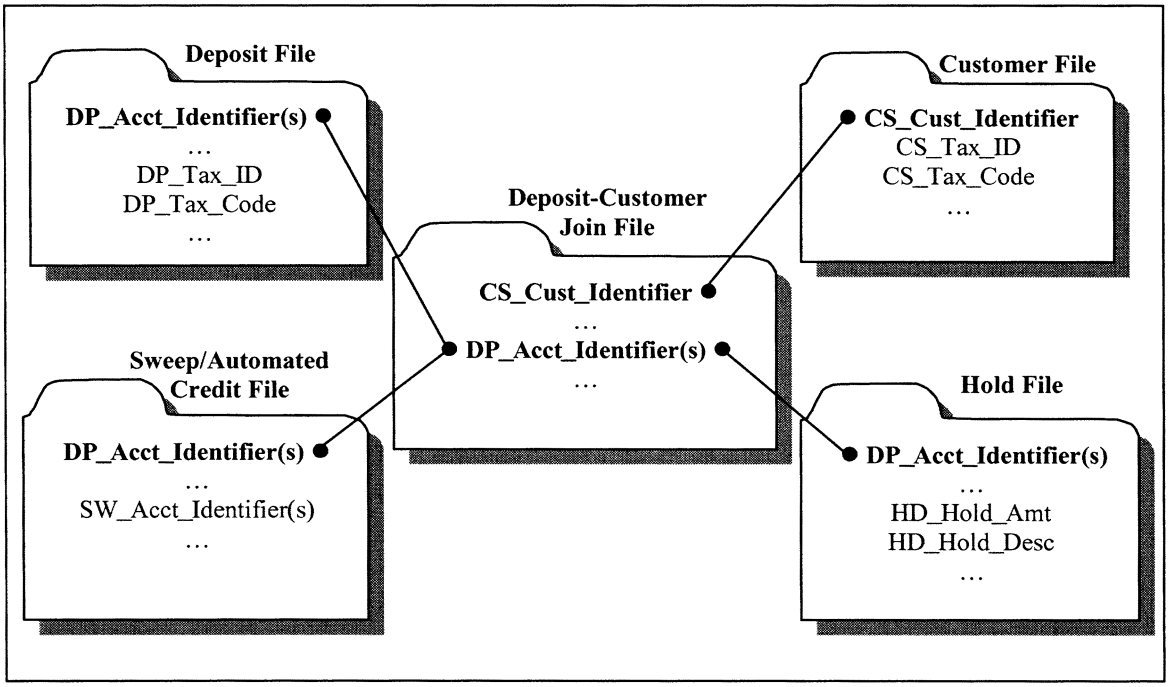
| Field name | FDIC field description | Comments | Format |
|---|---|---|---|
| 1. CS_Cust_Identifier | Customer Identifier<br>The unique field used by the institution to identify the customer. | | Character (25). |

| Field name | FDIC field description | Comments | Format |
|---|---|---|---|
| 2. DP_Acct_Identifier | Account Identifier<br>The primary field used to identify the account. This field may be the Account Number. | The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, the data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account. | Character (25). |
| 3. DP_Acct_Identifier—2 | Account Identifier—2<br>If necessary, the second element used to identify the account. | | Character (25). |
| 4. DP_Acct_Identifier—3 | Account Identifier—3<br>If necessary, the third element used to identify the account. | | Character (25). |
| 5. DP_Acct_Identifier—4 | Account Identifier—4<br>If necessary, the fourth element used to identify the account. | | Character (25). |
| 6. DP_Acct_Identifier—5 | Account Identifier—5<br>If necessary, the fifth element used to identify the account. | | Character (25). |
| 7. DP_Sub_Acct_Identifier | Sub-Account Identifier<br>If available, the sub-account identifier for the account. | The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same. | Character (25). |
| 8. CS_Rel_Code | Relationship Code<br>The code indicating how the customer is related to the account. Possible values are:<br>• ADM = Administrator.<br>• AGT = Agent/Representative.<br>• ATF = Attorney For.<br>• AUT = Authorized Signer.<br>• BNF = Beneficiary.<br>• CSV = Conservator.<br>• CUS = Custodian.<br>• DBA = Doing Business As.<br>• EXC = Executor.<br>• GDN = Guardian.<br>• MIN = Minor.<br>• PRI = Primary Owner.<br>• SEC = Secondary Owner(s).<br>• TTE = Trustee. | Institutions must map their relationship codes to the codes in the list to the left. If the institution maintains more relationships they must supply the additional relationship codes being utilized along with the code definition. | Character (5). |
| 9. CS_Bene_Code | Beneficiary Type Code<br>If the customer is considered a beneficiary, the type of account associated with this customer. Possible values are:<br>• I = IRA.<br>• T = Trust—Irrevocable.<br>• R = Trust—Revocable.<br>• M = Uniform Gift to Minor.<br>• P = Payable on Death.<br>• O = Other. | This includes beneficiaries on retirement accounts, trust accounts, minor accounts, and payable-on-death accounts. | Character (1). |

## Appendix H to Part 360—Possible File Combinations for Deposit Data

A covered institution must provide deposit data using separate deposit, sweep/automated credit, hold, customer, and deposit-customer join files. The simplest file structure involves providing one of each file. This basic file format is shown in Figure 1.

**Figure 1. Basic File Structure.**




Multiple combinations of deposit, sweep/automated credit, hold, customer, and deposit-customer join files are permissible, but only in the following circumstances:

1. Each separate deposit file must have companion sweep/automated credit and hold files covering the same deposit accounts.

2. A single customer file may be submitted covering customers affiliated with deposit accounts in one or more deposit files as long as the customer file contains information on all of the customers affiliated with the deposit files.

3. Several customer files may be submitted as long as each separate customer file contains information on all of the customers affiliated with the associated deposit files.

Figure 2 shows a permissible file configuration using a single Customer File affiliated with Deposit File A and Deposit File B. As required, Deposit File A has a companion Sweep/Automated Credit File A and Hold File A. The same is true for Deposit File B.

Another permissible combination of files is shown in Figure 3, which is a variation of the basic data file structure shown in Figure 1.

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**Figure 2. Multiple Deposit Files, Single Customer File.**

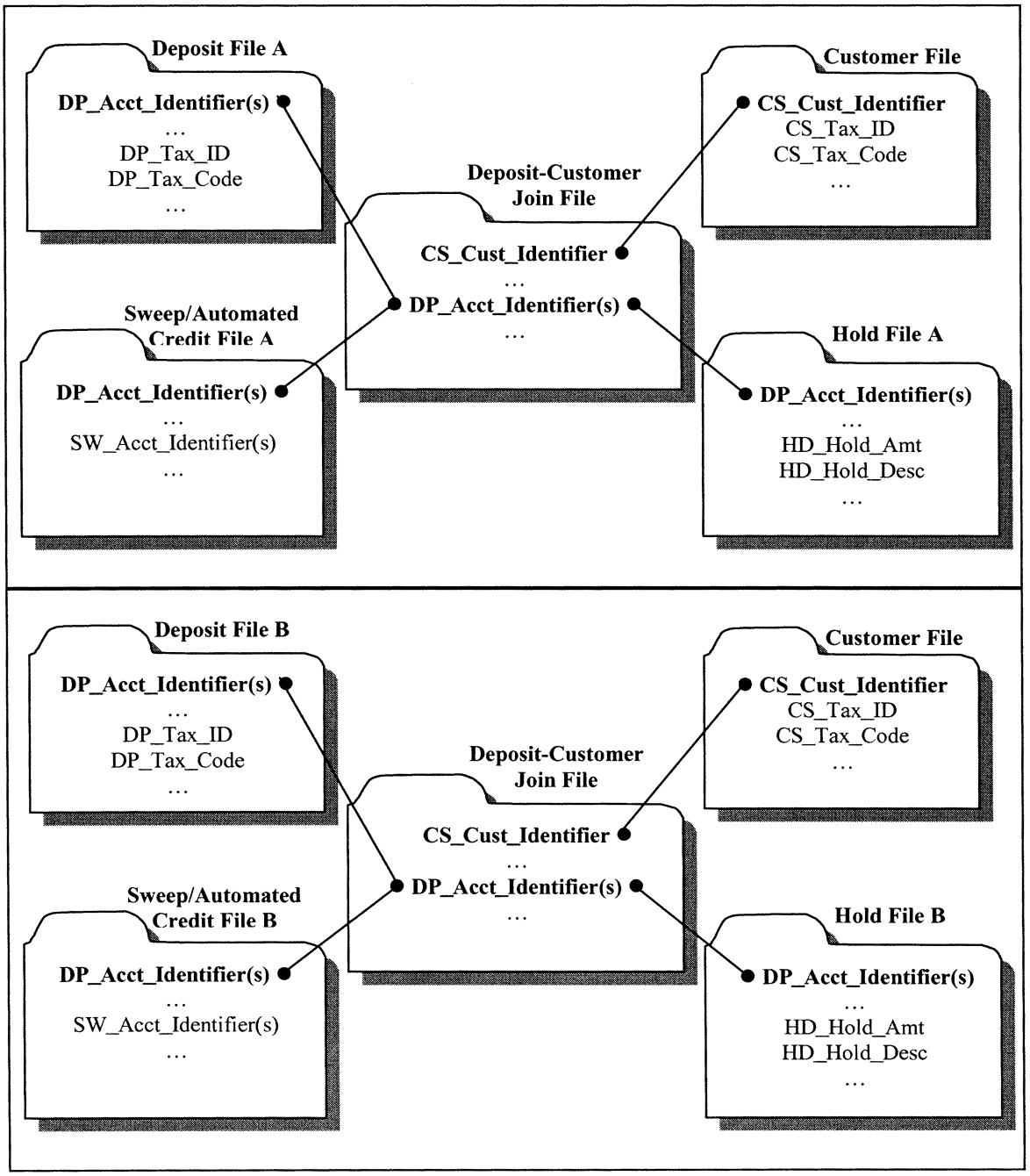
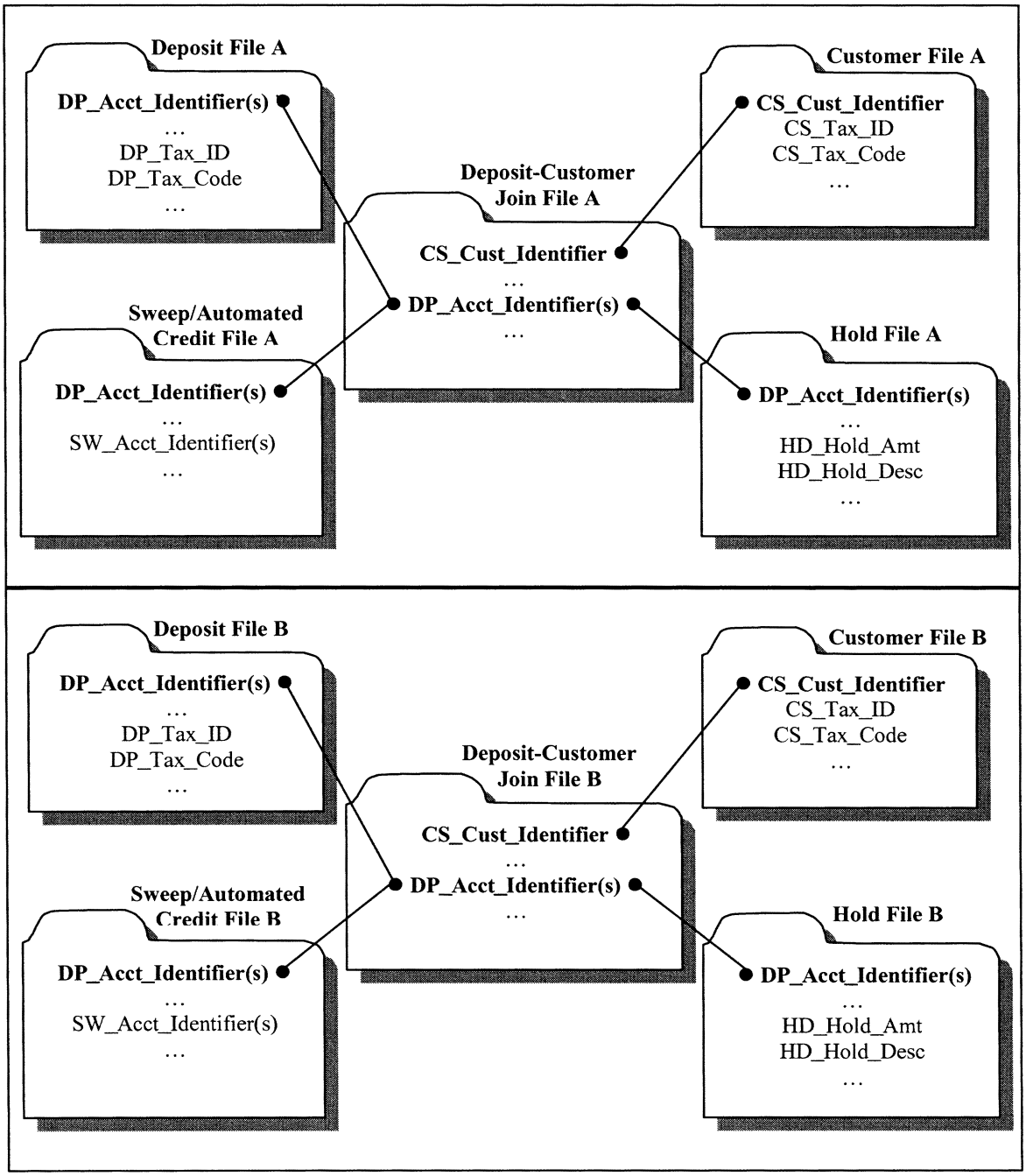


**Figure 3. Multiple File Sets.**




By order of the Board of Directors.

Dated at Washington, DC, this 17th day of June, 2008.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E8–15492 Filed 7–16–08; 8:45 am]

BILLING CODE 6714–01–C

Federal Register

Thursday,
July 17, 2008

# Part III

# Department of Transportation

## Federal Railroad Administration

49 CFR Part 214

**Railroad Workplace Safety; Adjacent-Track On-Track Safety for Roadway Workers; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 214**

**[Docket No. FRA–2008–0059, Notice No. 1]**

**RIN 2130–AB93**

## Railroad Workplace Safety; Adjacent-Track On-Track Safety for Roadway Workers

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

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

**SUMMARY:** FRA proposes to amend its regulations on railroad workplace safety to reduce further the risk of serious injury or death to roadway workers. In particular, FRA proposes to require that railroads adopt specified on-track safety procedures to protect certain roadway work groups from the movement of trains or other on-track equipment on ''adjacent track.'' FRA proposes to define ''adjacent track'' as ''any controlled track whose track center is 19 feet or less from the track center of the occupied track.'' These on-track safety procedures would be required for each adjacent track when a roadway work group with at least one of the roadway workers on the ground, is engaged in a common task with an on-track roadway maintenance machine or coupled equipment on an occupied track. FRA also proposes to require that railroads, contractors to railroads, and roadway workers comply with these procedures.

**DATES:** Written comments must be received no later than August 18, 2008. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to August 18, 2008, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

**ADDRESSES:** *Comments:* You may submit comments on this NPRM, identified by Docket No. FRA–2008–0059, Notice No. 1, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, M–33, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, M–33, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

*Instructions:* For detailed instructions on submitting comments, and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this preamble. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the ''Privacy Act'' subheading under the ''Regulatory Impact and Notices'' heading, below, in section VIII.I. of this preamble.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* anytime, or to the Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Rusk, Staff Director, Track Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS–15, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6236); or Anna Winkle, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6166 or 202–493–6052).

**SUPPLEMENTARY INFORMATION:**

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### I. Public Participation

The Administrative Procedure Act (5 U.S.C. 551–559) permits an agency to dispense with notice of rulemaking when it is otherwise not required by statute and the agency ''for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). FRA finds that the typically long periods for notice and public participation are, in this case, unnecessary and contrary to the public interest for the reasons set forth below; thus, an abbreviated comment period of 30 days is appropriate for this NPRM.

As will be detailed in this NPRM, the recent increase in roadway worker fatalities that have occurred on an adjacent track (*i.e.*, under the existing rule, any track within 25 feet of the centerline of the track to which the roadway work group was assigned to perform one or more roadway worker duties) has caused considerable concern at FRA and throughout the industry, even prompting the filing of a joint petition for emergency order under 49 U.S.C. 20104 on April 11, 2008. *See* 49 CFR part 214, subpart C (''Roadway Worker Protection Rule'' or ''RWP Rule''). FRA issued a notice of safety advisory to address the issue in May of 2004; however, it appears that the salutary effects of the safety advisory, which produced a period of 16 months with no fatalities on an adjacent track, were not long-lasting, as four fatalities have since occurred on an adjacent track where a roadway work group, with at least one of the roadway workers on the ground, was engaged in a common task with an on-track roadway maintenance machine or coupled equipment on an occupied track. FRA believes that these proposed amendments to the Roadway Worker Protection Rule are non-controversial in nature because they are based on and substantively the same as the consensus language developed

through the Roadway Worker Protection (RWP) Working Group of FRA's Railroad Safety Advisory Committee (RSAC), which is comprised of various representatives of the groups that are affected by this rule (including railroad management, railroad labor organizations, and contractors). Moreover, FRA finds that, based on the data available, any further delay in issuance of this NPRM [1] and a subsequent final rule would fail to reduce the risk of additional fatalities on adjacent track that are likely to occur late this year or early next year in the absence of further regulatory action.

In summary, FRA believes that the identification of a serious and escalating safety concern which FRA's actions to date have not been sufficient to remedy and the non-controversial nature of the proposed amendments justify a comment period of 30 days, rather than the normal 60 days, in this NPRM. FRA will consider, however, any comments received after that date to the extent possible without incurring additional expense or delay.

## II. Overview of the Existing RWP Rule

### *A. Applicability and Basic Definitions*

The RWP Rule requires each railroad that operates rolling equipment on track that is part of the general railroad system of transportation to ''adopt and implement a program that will afford on-track safety to all roadway workers whose duties are performed on that railroad.'' *See* 49 CFR 214.3, 214.303(a).[2] ''On-track safety'' is defined as ''a state of freedom from the danger of being struck by a moving railroad train or other railroad equipment, provided by operating and safety rules that govern track occupancy by personnel, trains and on-track equipment.'' *See* § 214.7. The roadway workers that must be afforded on-track safety are any employees of a railroad, or of a contractor to a railroad, whose duties include ''inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts * * *.'' *See* § 214.7, ''Roadway worker.''

### *B. Authorized Methods of Establishing On-Track Safety*

Several methods are authorized to be used to provide on-track safety for roadway workers, and many of those methods involve establishing ''working limits,'' which is defined in part as ''a segment of track with definite boundaries established in accordance with [part 214] upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track.'' *See* §§ 214.7 and 214.319. Working limits may be established on controlled track (*i.e.*, ''track upon which the railroad's operating rules require that all movements of trains must be authorized by a train dispatcher or a control operator'') through exclusive track occupancy (§ 214.321), foul time (§ 214.323), or train coordination (§ 214.325). *See* §§ 214.7 and 214.319. Regardless of which method is chosen, the working limits are only permitted to be under the control of a qualified roadway worker in charge, and all affected roadway workers must be notified and either clear of the track or provided on-track safety through train approach warning (in accordance with § 214.329) before the working limits are released to permit the operation of trains or other on-track equipment through the working limits. *See id.*

Train approach warning is another common method of establishing on-track safety in which a trained and qualified watchman/lookout provides warning to roadway worker(s) of the approach of a train or on-track equipment in sufficient time to enable each roadway worker to move to and occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum speed authorized on that track would arrive at the location of the roadway worker. *See* §§ 214.329 and 214.7 ''Watchman/lookout.'' Train approach warning is sometimes used as a temporary form of on-track safety when a roadway worker in charge needs to nullify the on-track safety previously established by working limits in order to permit a train or piece of on-track equipment to enter the roadway work group's working limits. Train approach warning permits the roadway workers to continue working for longer if the working limits span several miles and the train or equipment will not be passing by the work area for some time due to a speed restriction, the distance away, or the train or equipment halting its movement. It should be noted that switching temporarily to ''train approach warning'' is permissible only if the change was previously discussed in detail with the roadway work group either in the on-track safety job briefing prior to beginning work or in an updated on-track safety job briefing pursuant to § 214.315(d). *See* § 214.315.

### *C. Existing On-Track Safety Requirements for Roadway Work Groups with Respect to Adjacent Tracks*

Section 214.335(c) of the RWP Rule currently requires that roadway work groups engaged in ''large-scale maintenance or construction'' be provided with on-track safety in the form of ''train approach warning'' for train or equipment movements on adjacent tracks if the adjacent tracks are not already included within the working limits. Under the current definition of ''adjacent tracks,'' on-track safety as discussed above is required for any tracks with track centers spaced less than 25 feet apart from the track to which a roadway work group is assigned to perform large-scale maintenance or construction. *See* §§ 214.7, 214.335(c). The track to which the roadway work group is assigned to perform the large-scale maintenance or construction is commonly referred to as the ''occupied track.'' Thus, in triple-main track territory, if a roadway work group is occupying the middle track (*e.g.*, Main Track No. 2) in order to perform large-scale maintenance or construction, and the track centers of the tracks on either side of the occupied track are within 25 feet of the occupied track, then on-track safety is required to be established on both adjacent tracks (*e.g.*, Main Track Nos. 1 and 3). In some yards or territories, where track centers may be spaced only 12 feet apart, an occupied track (*e.g.*, Yard Track No. 3) may have up to four adjacent tracks (*e.g.*, Yard Track Nos. 1, 2, 4, and 5). In such cases, the current rule requires on-track safety to be established on all four adjacent tracks, in addition, of course, to the on-track safety required for the occupied track itself. *See* §§ 214.335(c) and 214.337(a).

Although the term ''large-scale maintenance or construction'' is not specifically defined in the regulation, FRA noted in the preamble to the 1996 final rule establishing the RWP Rule that the principle behind the reference to large-scale maintenance or construction ''is the potential for distraction, or the possibility that a

[1] While the consensus language relating to adjacent track issues that was developed through the RSAC was originally intended to be published as part of a larger NPRM, FRA has decided to propose these adjacent-track-related provisions in this separate NPRM so that an appropriate provision will be in effect in a more timely fashion than if the provision were one of many in the larger rulemaking that would need to undergo internal review and approval and public notice and comment. The remaining provisions not related to adjacent track will be proposed in a separate NPRM at a later date, as part of the larger RWP rulemaking.

[2] All references in this preamble to a section or other provision of a regulation are to a section, part or, other provision in title 49, Code of Federal Regulations unless otherwise specified.

roadway worker or roadway maintenance machine might foul the adjacent track and be struck by an approaching or passing train,'' and further stated that ''conditions in which the risk of distraction is significant'' require measures to provide on-track safety on adjacent tracks. *See* 61 FR 65959, 65971 (December 16, 1996). To further clarify what was meant by the term ''large-scale maintenance or construction,'' FRA adopted the recommendation of the Roadway Worker Safety Advisory Committee, which described large-scale track maintenance and/or renovations, such as but not limited to, ''rail and tie gangs, production in-track welding, ballast distribution, and undercutting.'' *See id.* Under such guidance, many railroads were not providing on-track safety on adjacent tracks for surfacing operations, small tie renewal operations, or similar maintenance operations that, while smaller in scale, still included one or more on-track roadway maintenance machines or coupled equipment. Fatalities occurred on the adjacent track during such operations when on-track safety was not established on the adjacent track or had been temporarily or permanently nullified or suspended to permit the passage of a train or other on-track equipment.

## III. Notice of Safety Advisory 2004–01

After the occurrence of five roadway worker fatalities in one calendar year (2003), including one on an adjacent track, FRA responded on April 27, 2004, by issuing Notice of Safety Advisory 2004–01, which was later published in the **Federal Register** on May 3, 2004. *See* 69 FR 24220. FRA issued this safety advisory to recommend certain safety practices, to review existing requirements for the protection of roadway workers from traffic on adjacent tracks, and to heighten awareness to prevent roadway workers from inadvertently fouling a track when on-track safety is not provided. *See id.* The safety advisory explained that the requirements of the RWP Rule, including the requirement to provide adjacent track on-track safety for large-scale maintenance or construction in § 214.335(c), are only minimum standards; railroads and railroad contractors are free to prescribe additional or more-stringent standards consistent with the rule. *See id.* at 24222 and § 214.301(b). FRA recommended that railroads and contractors to railroads develop and implement basic risk assessment procedures for use by roadway workers to determine the likelihood that a roadway worker or equipment would foul an adjacent track prior to initiating work activities, regardless of whether those activities were ''large-scale'' or ''small-scale.'' The safety advisory provided examples of relevant factors to consider in making such an assessment, including whether the work could be conducted by individuals positioned between the rails of a track on which on-track safety has been established, as opposed to being on the field side of such a track toward an adjacent track; whether there was a structure between the tracks to prevent intrusion (such as a fence between the tracks at a passenger train station and the tall beam of a through-plate girder bridge); the track-center distance, to ensure that the adjacent track would not be fouled if a worker were to inadvertently trip and fall; the nature of the work (inspection or repair); the sight distances; and the speed of trains on the adjacent track. *See* 69 FR 24222. FRA further noted that, upon completion of an on-site risk assessment, the on-track safety briefing required by § 214.315(a) would be the ideal instrument to implement preventive measures concerning adjacent tracks. *See id.*

In addition to the above recommendation concerning basic risk assessment, FRA recommended that railroads and contractors to railroads consider taking the following actions:

- Use of [sic] working limits for activities where equipment could foul adjacent track (whether large-scale or small-scale activities);
- Use rotation stops to mitigate the dangers associated with on-track equipment and trains passing on adjacent tracks;
- Review procedures for directing trains through adjacent track working limits, and enhance such procedures when necessary;
- Install adjacent track warning signs/devices in the operating cab of on-track machines to remind roadway maintenance machine operators to not inadvertently depart the equipment onto a track where there may be trains and other on-track equipment passing;
- Provide additional training and monitoring to [their] employees, emphasizing the need to cross tracks in a safe manner (i.e., single file and after looking in both directions);
- Reinforce to individual roadway workers that it is critical not to foul a track except in the performance of duty and only when on-track safety has been established. This training could be accomplished through training sessions, as well as daily job briefings; and
- Institute peer-intervention measures by which workers are encouraged to intervene when observing another roadway worker engaging in potentially non-compliant and unsafe activity. *See id.*

## IV. Recent Roadway Worker Accidents (1997–2008)

Since the RWP Rule went into effect on January 15, 1997, there have been nine roadway worker fatalities on an adjacent track. Seven of those fatalities have occurred on a controlled track that was adjacent to the track on which a roadway work group, with at least one of the roadway workers on the ground, was engaged in a common task with an on-track roadway maintenance machine or coupled equipment. FRA notes that there has been only one adjacent-track fatality where a roadway work group had been engaged in a common task with a lone hi-rail vehicle, defined in § 214.7 as ''a roadway maintenance machine that is manufactured to meet Federal Motor Vehicle Safety Standards and is equipped with retractable flanged wheels so that the vehicle may travel over the highway or on railroad tracks.''[3] In addition, there have been no adjacent-track fatalities where a roadway work group had been engaged in a common task with a catenary maintenance tower car on the occupied track. This is likely because the duties normally performed by an employee operating a hi-rail or a catenary maintenance tower car tend to be less distracting to on-ground roadway workers and produce less dust and noise than a typical on-track roadway maintenance machine. Given the above, FRA proposes that adjacent-track on-track safety not be required for roadway work groups engaged in a common task with a hi-rail or a catenary maintenance tower car, as discussed in the section-by-section analysis of paragraphs (b)(2) and (b)(3), respectively, in new proposed § 214.336.

Of the seven fatalities that occurred under the circumstances described above and which this rule proposes to address, three occurred during the period after the effective date of the rule and before the publication of the safety advisory on May 3, 2004, and four have occurred since that period. In the four-year period prior to May of 2004 (May 1, 2000–April 30, 2004), there has been one adjacent-track fatality known to have occurred under such circumstances, for a rate of .25 per year. In the four-year period since (May 1, 2004–April 30, 2008), there have been four adjacent-track fatalities, for a rate of

[3] In that case, the roadway workers were under the impression that adjacent-track on-track safety was in effect, but it was not, due to a miscommunications.

one per year, which is four times the rate of the previous four-year period. While FRA recognizes that even one death can make rates change dramatically when the total number of deaths is small, the increase in the rate of these deaths despite the safety advisory leads FRA to conclude that prompt regulatory action is needed to avert an escalating number of deaths. Moreover, given the extensive participation in developing these consensus regulatory provisions by representatives of all of the key interests involved in this issue, it is contrary to the public interest to wait for all of the other issues in the larger RWP rulemaking to be resolved or to engage in lengthy periods for notice and public comment before acting to prevent more deaths.

The following is a brief summary of the results of FRA's investigations of the four most recent incidents that resulted in these unfortunate fatalities:

• *October 5, 2005:* A roadway surfacing gang tamper operator, with 28 years of service, was walking up to the front of the tamper to put away the light buggies as his surfacing gang, having just completed its work, was getting ready to travel to clear the number two main track. The operator was walking east on the side of the tamper between the two main tracks when he was struck by a westbound train on the adjacent track. The track centers were spaced approximately 13 feet apart, and the train was traveling at an estimated speed of 40 miles per hour (mph).

• *March 12, 2007:* A surfacing gang was occupying the number one main track in a double-main territory. The surfacing gang foreman (the roadway worker in charge), who earlier had notified the other members of the gang of pending movement on the adjacent track, was standing in the gage of the same adjacent track when he was struck by a train. It remains unclear why he was fouling the adjacent track at the time of the incident. The track centers were spaced approximately 13 feet, 6 inches apart, and the maximum authorized speed on the adjacent track was 50 mph.

• *February 10, 2008:* A train struck a roadway worker inside an interlocking on a triple-main track territory. The worker was part of a gang that consisted of approximately 10 workers that were engaged in the repair of a crossover on the middle main track with a tamper. Foul time was being used as adjacent-track on-track protection, but this protection was removed by the roadway worker in charge, who gave permission to the dispatcher to permit a train to operate on the adjacent track through the roadway work group working limits. As the train entered the interlocking on a limited clear signal indication for a crossover move past the work area, one of the roadway workers attempted to cross the track in front of the train and was struck. The track centers were spaced approximately 13 feet apart, and the maximum authorized speed for the train on the adjacent track was 45 mph.

• *March 27, 2008:* Information at this time is preliminary, but it is understood that a surfacing gang was working on multiple-track territory. The surfacing gang foreman was standing in the foul of the adjacent track while his surfacing crew worked on the number two main track. A train operating on the same adjacent track struck the foreman. No on-track safety was in effect on the adjacent track involved at the time of the incident. The track centers were spaced approximately 14 feet, 7 inches apart, and the maximum authorized speed on the adjacent track was 70 mph.

While the above discussion focuses on those fatalities that have occurred on an adjacent track where a roadway work group, with at least one of the roadway workers on the ground, was engaged in a common task with an on-track roadway maintenance machine or coupled equipment on an occupied track, it is important to discuss some of the common circumstances in all nine of the fatalities that have occurred on an adjacent track since the rule went into effect, as these circumstances were considered by FRA in its decision to issue this NPRM. The first common circumstance is the type of track. All nine of the fatalities occurred on ''controlled'' track, rather than ''non-controlled'' track. This was taken into consideration in writing FRA's proposed definition of ''adjacent track,'' which would be included as part of proposed new § 214.336(a), would essentially replace the term ''adjacent tracks'' in § 214.7, and would be limited to controlled tracks whose track centers are spaced 19 feet or less from the track center of the occupied track.

Second, all nine of the fatalities occurred on an adjacent track that was quite closely-spaced to the track that the roadway work group was occupying. Six of the adjacent tracks had track centers that were spaced approximately 14 feet or less from the respective track centers of the tracks that the roadway work groups were occupying, and all nine of the adjacent tracks were spaced 15 feet or less from the track centers of the respective occupied tracks. This common circumstance was also taken into consideration in FRA's proposed definition of ''adjacent track,'' which would no longer include tracks with track centers that were spaced more than 19 feet (but less than 25 feet) away from the track center of the occupied track.

The third common circumstance of the nine fatalities on adjacent track is the time of year. Four of the fatalities occurred during the first quarter (January–March), none of the fatalities occurred in the second and third quarters of the year (April–June and July–September, respectively), and the other five fatalities occurred during the fourth quarter (October–December). As noted earlier in Section I., above, if this pattern continues, any further delay in issuance of this rule would fail to reduce the risk of additional fatalities on adjacent track that are likely to occur late this year or early next year in the absence of further regulatory action. Thus, FRA has decided to proceed with an NPRM with an abbreviated comment period.

## V. Joint Petition to FRA for an Emergency Order

On April 11, 2008, the Brotherhood of Maintenance of Way Employes Division (BMWED) and the Brotherhood of Railroad Signalmen (BRS) filed a joint petition requesting that FRA issue an emergency order requiring adjacent-track protection for roadway work groups. The petition notes that similar requests, which were filed on October 7, 2005, November 7, 2003, and December 21, 1999, were denied by FRA. The petitioners expressed their belief that, under the existing provisions of the rule, roadway workers will continue to suffer preventable serious injuries and death. The petitioners assert that FRA should require railroads and their contractors to establish on-track safety on adjacent tracks (''adjacent-track on-track safety'') for a wider range of work activities. In FRA's January 5, 2006 denial of the October 2005 petition, FRA noted that the RSAC working group to review and revise the RWP Rule (''RWP Working Group'') was ''committed to presenting comprehensive draft language * * * that would more closely tailor the solution to the problem.'' And while the RWP Working Group did in fact draft this language, and both the Working Group and the full RSAC were able to reach consensus on such language, BMWED and BRS are concerned that the language, which has not been published as an NPRM, would not become a final rule for a considerable period of time, leaving the possibility for further preventable fatalities. BMWED and BRS urge FRA to issue an emergency order that would adopt the adjacent-track consensus language of the RWP RSAC.

On April 18, 2008, the American Train Dispatchers Association (ATDA) filed a letter in support of the BMWED and BRS joint petition. In the letter, ATDA agreed that preventable injuries and deaths continue to occur because of a lack of positive regulation mandating adjacent-track on-track safety and urged FRA to issue an emergency order based upon the RSAC-approved and consensus-based replacement language for § 214.235(c), as indicated in the joint petition.

## VI. Current Rulemaking To Revise the RWP Rule

### *A. Overview of the RSAC*

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

- American Association of Private Railroad Car Owners (AAPRCO);
- American Association of State Highway and Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petroleum Institute;
- American Public Transportation Association (APTA);
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association (ATDA);
- Association of American Railroads (AAR);
- Association of Railway Museums;
- Association of State Rail Safety Managers (ASRSM);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- BMWED;
- BRS;
- Chlorine Institute;
- Federal Transit Administration (FTA)*;
- Fertilizer Institute;
- High Speed Ground Transportation Association (HSGTA);
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers (IBEW);
- Labor Council for Latin American Advancement*;
- League of Railway Industry Women*;
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women*;
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association (NRC);
- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB)*;
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte*;
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association, Inc.;
- Transport Canada*;
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration (TSA)*; and
- United Transportation Union (UTU).

*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on a recommendation for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

### *B. Proceedings in This Rulemaking to Date Generally*

On January 26, 2005, the RSAC formed the RWP Working Group (''Working Group'') to consider specific actions to advance the on-track safety of employees of covered railroads and their contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. The assigned task was to review the existing rule, technical bulletins, and a safety advisory dealing with on-track safety. The Working Group was to consider implications and, as appropriate, consider enhancements to the existing rule. The Working Group would report to the RSAC any specific actions identified as appropriate, and would report planned activity to the full Committee at each scheduled Committee meeting, including milestones for completion of projects and progress toward completion.

The Working Group is comprised of members from the following organizations:

- Amtrak;
- APTA;
- ASLRRA;
- ATDA;
- AAR, including members from BNSF Railway Company (BNSF), Canadian National Railway Company (CN), Canadian Pacific Railway, Limited (CP), Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), Kansas City Southern (KCS), Norfolk Southern Corporation (NS), and Union Pacific Railroad Company (UP);
- Belt Railroad of Chicago;
- BLET;
- BMWED;
- BRS;
- Federal Railroad Administration (FRA);
- Indiana Harbor Belt Railroad (IHB);
- Long Island Rail Road (LIRR);
- Metro-North Commuter Railroad Company (Metro-North);
- Montana Rail Link;
- NRC;
- Northeast Illinois Regional Commuter Railroad Corporation (Metra);
- RailAmerica, Inc.;
- Southeastern Pennsylvania Transportation Authority (SEPTA);
- United Transportation Union (UTU); and
- Western New York and Pennsylvania Railroad (WNY&P).

The Working Group held 12 multi-day meetings. The group worked diligently and was able to reach consensus on 32 separate items.

*C. Proceedings Concerning On-Track Safety Procedures for Adjacent Tracks*

One of the items on which the Working Group was able to reach consensus dealt specifically with the adjacent-track on-track safety issue in § 214.335. The consensus language developed by the Working Group for this topic, which was approved by the full RSAC and formally recommended to FRA, is as follows:

**§ 214.335 On-track safety procedures for roadway work groups.**

* * * * *

(c) On-track safety is required for adjacent controlled track within 19 feet of the centerline of the occupied track when roadway work group(s) consisting of roadway workers on the ground and on-track self-propelled or coupled equipment are engaged in a common task on an occupied track.

(1) Except as provided by paragraph (c)(3) of this section, when trains are cleared through working limits on an adjacent controlled track, or when watchman/lookout warning in accordance with § 214.329 is the form of adjacent on-track safety, roadway workers shall occupy a predetermined place of safety and all on-ground work and equipment movement activity within the fouling space of the occupied track shall cease upon notification of pending adjacent track movement (working limits) or upon receiving the watchman/lookout warning.

(2) When single or multiple movements are cleared through adjacent controlled track working limits, on-ground work and equipment movement on the occupied track may resume only after all such movements on adjacent track have passed each component of the Roadway Work Group(s). If the train stops before passing all roadway workers, the employee in charge shall communicate with the engineer prior to allowing the work to resume.

(3) When single or multiple movements are cleared through adjacent controlled track working limits at a speed no greater than 25 mph, work performed exclusively between the rails of the occupied track, or to the field side of the occupied track with no adjacent track, may continue upon notification of each roadway worker of movement on adjacent track. On-ground work shall not be performed within 25 feet to the front or 25 feet to the rear of roadway maintenance machine(s) on the occupied track during such adjacent track movement.

(d) Equipment may not foul an adjacent controlled track unless protected by working limits and there are no movements authorized through the working limits by the roadway worker in charge.

(e) The mandatory provisions for adjacent controlled track protection under this subpart are not applicable to work activities involving—

(1) A hi-rail vehicle as defined in § 214.7, provided such hi-rail vehicle is not coupled to railroad cars. Where multiple hi-rail vehicles are engaged in a common task, the on-track safety briefing shall include discussion of the nature of the work to be performed to determine if adjacent controlled track protection is necessary. Nothing in this subpart prohibits the roadway worker in charge of the hi-rail vehicle from establishing adjacent controlled track protection, as he/she deems necessary.

(2) On-ground roadway workers exclusively performing work on the field side of the occupied track.

(3) Catenary maintenance tower cars with roadway workers positioned on the ground within the gage of the occupied track for the sole purpose of applying or removing grounds. Nothing in this subpart prohibits the roadway worker in charge of the catenary maintenance tower car from establishing adjacent track protection, as he/she deems necessary.

Upon reviewing the joint petition of the BRS and BMWED for an emergency order, the consensus language of the Working Group quoted above, and the relevant accident data concerning roadway workers fouling adjacent track, FRA has decided to issue this NPRM to lower the safety risk associated with roadway workers fouling adjacent track. Although FRA's safety advisory may have had an initial effect and have raised awareness enough to help keep the number of all categories of roadway worker fatalities in 2004 and through almost six months in 2005 at zero, the effect was not sustained enough to combat the rise of roadway worker fatality incidents since late June of 2005, when the first roadway worker fatality occurred after the issuance of the safety advisory, or since October of 2005, when the first adjacent track roadway worker fatality occurred.

In light of recent roadway worker fatality trends, FRA has determined that the agency must propose a more prescriptive approach to prevent further fatalities. The need to mandate adjacent-track on-track safety was recognized by FRA, members of the Working Group, and members of the full RSAC. The consensus language developed by the Working Group and recommended by the full RSAC is expected to reduce the risk of roadway worker fatalities due to fouling an adjacent track while working in conjunction with on-track equipment on an occupied track. As part of the process in drafting the NPRM in the larger RWP rulemaking,[4] FRA circulated the consensus rule text concerning adjacent track and other items for errata review. Both AAR and BMWED submitted comments on this provision. To address these issues, and other potential ambiguities discovered upon a closer review of the rule text, FRA has reorganized and modified the consensus text in issuing this NPRM, as discussed below in the section-by-section analysis.

[4] As noted in Section I. of this document, the provisions related to adjacent track were originally intended to be published as part of a larger NPRM concerning Part 214, but have been proposed here as a separate NPRM to expedite the effective date of such provisions.

## VII. Section-by-Section Analysis

*Amendments to 49 CFR Part 214, Railroad Workplace Safety*

Subpart A—General

Section 214.7 Definitions

FRA proposes to modify this section by removing the definition of ''adjacent tracks.'' As also discussed under § 214.336, FRA proposes to convert the term ''adjacent tracks'' to the singular, then move the definition of ''adjacent track'' from § 214.7 to the only section where the term would actually be used, and finally define the new term more narrowly by limiting it to a controlled track whose track center is located 19 feet or less from the track center of the occupied track. The current definition of ''adjacent tracks'' includes any tracks, controlled *or non-controlled*, whose track centers are spaced *less than 25 feet apart.*

As discussed above in ''IV. Recent Roadway Worker Accidents (1997–2008),'' in all nine of the fatal accidents that occurred on ''adjacent tracks'' as currently defined, the adjacent track was a controlled track with a track center that was spaced 15 feet or less from the track center of the occupied track. Six of the adjacent tracks had track centers that were spaced approximately 14 feet or less from the respective track centers of the tracks that the roadway work groups were occupying. In examining whether to expand the types of work activities requiring adjacent-track on-track safety in § 214.335(c), the Working Group also considered whether the recommended amendments to the section would be over-inclusive when applied in conjunction with the existing definition of ''adjacent tracks.'' After examining the accident data, the Working Group agreed that 19 feet would be a reasonable and safe threshold to trigger the requirement to establish adjacent-track on-track safety and that it would be reasonable to cover controlled tracks within that 19-foot zone but to exclude non-controlled tracks. FRA notes that the lack of fatalities on non-controlled adjacent tracks may be attributable to the reduced operating speeds on non-controlled tracks, where railroad operating rules generally require that movements must stop short of obstructions within half the range of

vision. The Working Group discussed and the full RSAC recommended for inclusion in § 214.335(c) that on-track safety be required for ''adjacent controlled track within 19 feet of the centerline of the occupied track'' for certain work activities. FRA agrees with this analysis and has reflected it in the proposed definition of ''adjacent track.''

Subpart C—Roadway Worker Protection

Section 214.315 Supervision and Communication

Given the importance of an on-track safety job briefing in roadway workers' understanding of the nature of the work they will be conducting and the conditions under which they will conduct it, FRA also thinks that the existing requirements in § 214.315 for a job briefing ''when an employer assigns duties to a roadway worker that call for that employee to foul a track'' should be expanded to cover the new proposed procedures for adjacent-track on-track safety in § 214.336 if such procedures are required for that assignment. With a few minor changes, the text concerning the additional components of an on-track safety job briefing that is proposed in this NPRM was also consensus language developed by the Working Group and recommended by the full RSAC. The consensus language relating to adjacent-tracks was proposed as a new paragraph (a)(2) in § 214.315, to read as follows:

(2) Information about any tracks adjacent to the track to be occupied, on-track safety for such tracks, and identification of roadway maintenance machines that will foul any adjacent track. In such cases, the briefing shall include procedural instructions addressing the nature of the work to be performed and the characteristics of the work location to ensure compliance with this part.

On December 18, 2007, FRA e-mailed the Working Group members and requested an errata review of a document in which FRA had compiled all of the consensus items. In its errata review comments, AAR requested that FRA clarify that the provision is not intended to require a discussion on the on-track safety of an adjacent track unless on-track safety was required on that track by part 214. FRA agrees that this is not the intent of the proposed requirement, and has added the language ''if required by this subpart'' to the consensus rule text, which has been proposed as new paragraph (a)(3). This proposed section would still require the on-track safety job briefing to include information concerning any ''tracks adjacent'' (in the general sense of the word ''adjacent'') to the track to be fouled, so as to serve as a warning to each roadway worker of the potential danger in fouling such a track, even if no on-track safety is required for that particular track because it does not meet the definition of ''adjacent track.'' FRA has further clarified in a proposed revision to introductory paragraph (a) that this section lists only the minimum items that must be discussed in an on-track safety briefing. The words ''at a minimum'' were added, and the rest of existing paragraph (a) has been moved to proposed paragraphs (a)(1) and (a)(2).

Section 214.335 On-Track Safety Procedures for Roadway Work Groups, General

FRA proposes to amend this section by deleting paragraph (c) and replacing it with a new section to address adjacent-track on-track safety for roadway work groups, § 214.336, for the reasons discussed below. Existing paragraph (c) reads as follows:

(c) Roadway work groups engaged in large-scale maintenance or construction shall be provided with train approach warning in accordance with § 214.327 for movements on adjacent tracks that are not included within working limits.

The proposal would also amend the heading of § 214.335 to reflect the general nature of the remaining requirements in that section.

Section 214.336 Adjacent-Track On-Track Safety for Roadway Work Groups; Procedures, Training, and Recordkeeping

Paragraphs (a), Procedures; general; and (b), Exceptions to the requirement for adjacent-track on-track safety

As discussed in section II.C., above, § 214.335(c) currently requires adjacent-track on-track safety for a roadway work group only if such a work group is engaged in ''large-scale maintenance or construction.'' Under this criterion and the limited guidance provided in the preamble to the final rule, many railroads have not been providing on-track safety on adjacent tracks for surfacing operations, small tie-renewal operations, or similar maintenance operations that, while smaller in scale, still include on-track, self-propelled equipment. This proposed new section seeks to eliminate this interpretive issue by establishing new, more objective criteria for determining whether adjacent-track on-track safety is required for a roadway work group. Fatalities have occurred in connection with such operations, which many believe the existing language should be interpreted to cover.

In developing language to address the increasing number of roadway worker fatalities on an adjacent track, the Working Group considered that most of the fatalities on an adjacent track occurred when a roadway work group with at least one of the roadway workers on the ground, was engaged in a common task with on-track, self-propelled equipment on an occupied track. In those circumstances, the potential for a roadway worker in the group to be distracted from the danger of an oncoming train was great due to the noise and dust generated by operation of the roadway maintenance machines, the need to avoid entanglement in the operation of those machines, and the need to monitor the quality of the work being performed. This set of factual circumstances became the basis for the proposed new criteria for triggering the requirement to establish adjacent-track on-track safety in introductory paragraph (c)(1) of the consensus language, and in paragraph (a) of proposed new § 214.336, which, as a general rule, would require that on-track safety be established for each adjacent track when a roadway work group with at least one of the roadway workers on the ground, is engaged in a common task with an on-track roadway maintenance machine or coupled equipment on an occupied track. In particular, the on-track safety would have to be provided in accordance with § 214.319 (Working limits, generally); § 214.321 (Exclusive track occupancy); § 214.323 (Foul time); § 214.325 (Train coordination); or § 214.329 (Train approach warning provided by watchmen/lookouts). The general rule in paragraph (a) would have three exceptions described in proposed paragraph (b).

Paragraph (a) would also add definitions of two terms used in § 214.336: ''adjacent track'' and ''occupied track.'' For purposes of this section (the only section where the term is used), ''adjacent track'' would mean ''a controlled track whose track center is spaced 19 feet or less from the track center of the occupied track.'' The current definition of ''adjacent tracks'' (in § 214.7) includes any tracks, controlled *or non-controlled*, whose track centers are spaced *less than 25 feet apart*. As the term ''adjacent track'' was used several times in the recommended consensus language of § 214.335(c), and to avoid any confusion of terms, FRA proposes to remove the definition of ''adjacent tracks'' from § 214.7, to convert the term to the singular, and to adopt this new, narrower definition of ''adjacent track'' based on the roadway worker fatality data discussed above under the section-by-section analysis of § 214.7, which show that the adjacent

tracks on which the roadway worker fatalities occurred were all controlled tracks and the track centers of these controlled tracks were within 15 feet of the track centers of the occupied track.

The second proposed definition to be used for purposes of § 214.336 is ''occupied track.'' FRA proposes to define the term ''occupied track'' to mean the track on which a roadway maintenance machine or coupled equipment is located while engaged in a common task with a roadway work group. FRA replaced the consensus language of ''on-track, self-propelled or coupled equipment'' with ''on-track roadway maintenance machine or coupled equipment'' so as to use a term that is already defined in part 214. It should be noted that while the language that would trigger the requirement to establish adjacent-track on-track safety contains the term ''on-track roadway maintenance machine'' (which excludes hi-rails), the proposed definition of ''occupied track'' contains the broader term ''roadway maintenance machine'' (which includes hi-rails), since a roadway work group that is engaged in a common task with a hi-rail would still be ''occupying'' the track, regardless of whether adjacent-track on-track safety would be required during that task. The language in RSAC-recommended paragraph (a) was also modified in light of the proposed new definition of ''adjacent track,'' namely by moving references to ''controlled track'' and the 19-foot track center distance and placing them in the definition.

The Working Group also considered whether it is safe to permit work to continue under certain limited circumstances, and proposed some exceptions in paragraphs (c)(2)–(c)(3) and (e)(1)–(e)(3) of the consensus language, which the full RSAC later recommended to FRA. FRA has adopted all of the exceptions recommended by the full RSAC in this proposal and has reorganized and modified the text for clarity, in response to comments received from the AAR and the BMWED in their errata review of the consensus language, and to address other potential ambiguities discovered upon a closer review of the rule text.

In an effort to make the section easier to understand, FRA has reorganized the section into proposed paragraph (a)(1), which lists the procedures to follow for adjacent-track movements over 25 mph (*i.e.*, if a train or other on-track equipment is authorized to move on an adjacent track at a speed greater than 25 mph), and proposed paragraph (a)(2), which lists the procedures to follow when adjacent-track movements are authorized at a speed of 25 mph or less.[5] Proposed paragraph (a)(1) would require that each roadway worker in the roadway work group stop any work on the ground and stop the movement of any roadway maintenance machine or coupled equipment in the fouling space of the occupied track and the adjacent track, and occupy a predetermined place of safety. If on-track safety has been established on the adjacent track through train approach warning in accordance with § 214.329, all work would have to cease upon receiving a watchman/lookout warning. On the other hand, if working limits have been established on the adjacent track and the roadway work group has not been assigned a watchman/lookout, all work would have to cease upon receiving notification that the roadway worker in charge intends to authorize one or more train movements or other on-track equipment movements through the working limits on an adjacent track. This notification would have to occur before the roadway worker in charge releases the working limits, in order to comply with existing § 214.319(c).

In its errata review comments on the FRA document compiling all of the Working Group consensus language, AAR requested that FRA clarify whether work would be permitted to resume at a particular location after the head-end of the movement had passed or after the entire train had passed, under the RSAC-recommended § 214.335(c)(2). A review of the available accident data shows that none of the fatalities that occurred on the adjacent track were due to an employee walking into the side of the train; rather, the employees walked in front of the train's path. Thus, it is reasonable to permit work to resume after the head-end of the movement has passed the location of each component of the roadway work group (provided that the roadway workers do not later advance to a position ahead of the head-end), and the relevant language in consensus text in paragraph (c)(2) has been modified accordingly by FRA in its proposed paragraph (a)(1)(ii).

In modifying the language in consensus paragraph (c)(2) for inclusion in its proposal, FRA realized that this same paragraph did not address whether such work would be permitted to continue if a train or other on-track equipment, due to the maximum timetable speed of 25 mph, were operating at speeds no greater than 25 mph on an adjacent track, where train approach warning was the established method of adjacent-track on-track safety. As the roadway workers are presented with similar safety risks and would still receive notification of the train or other on-track equipment movements, regardless of the method of adjacent-track on-track safety established, FRA has decided to adopt clarifying language and has combined consensus paragraphs (c)(1) and (c)(2) into a new paragraph (a)(1)(ii) in this NPRM. Under the proposal, a component of a roadway work group may resume on-ground work and movement of any roadway maintenance machine or coupled equipment on the occupied track only after the head-end of all trains or other on-track equipment moving on the adjacent track (either authorized through the working limits by the roadway worker in charge or for which a watchman/lookout has provided a warning) has passed and remains ahead of that component of the roadway work group. This provision may be best explained through examples showing how the proposed requirements would apply under various factual scenarios.

For example, if a roadway worker in charge were to authorize three trains through the working limits, and only working limits were in effect, the work would not be permitted to continue until all three movements had passed the roadway work group component's location. If train approach warning procedures were also in effect under the same circumstances, the roadway work group component would be allowed to continue all work after the head-end of the first train passed, (so long as the work remained behind the head-end and would not foul the adjacent track) until receiving the warning for the second train, and so on.

On the other hand, if the train or other on-track equipment were to stop before its head-end passed all of the roadway workers in the roadway work group (or if a roadway worker in the roadway work group moved to a position on or fouling the occupied track in advance of the head-end of the adjacent-track movement), the work to be performed on or while fouling the occupied track ahead of the train or other on-track equipment on the adjacent track would be permitted to resume only if adjacent-

[5] If a roadway worker in charge, in his discretion, authorizes a train through working limits on an adjacent track at 30 mph, but the train is actually traveling at a speed of only 20 mph, the procedures in proposed paragraph (a)(1), regarding adjacent-track movements over 25 mph, would still apply. Where exclusive track occupancy is the method of on-track safety established on the adjacent track, FRA notes that existing § 214.321(d) provides that movements of trains and roadway maintenance machines within working limits shall be made only under the direction of the roadway worker having control over the working limits, and further notes that such movements shall be at restricted speed unless a higher speed has been specifically authorized by the roadway worker in charge of the working limits.

track on-track safety is currently in effect or re-established. In most cases, this would likely mean that on-track safety through train approach warning (§ 214.329) is still in effect or has been re-established on the adjacent track. In the remaining cases, this would mean that the roadway worker in charge has communicated with the train engineer or equipment operator and obtained or regained control of such train or other on-track equipment. Of course, any work that would foul the *adjacent* track on which the movement is occurring would not be permitted to resume immediately upon the head-end of the movement passing by the roadway work group component, as adjacent track on-track safety cannot be re-established for that adjacent track at least until the entire train or other on-track equipment movement has passed (and remains past) the roadway work group component's location, unless the train or other on-track equipment were stopped and under the control of the roadway worker in charge.

The proposed procedures to be followed for adjacent-track movements of 25 mph or less are the same as those procedures for adjacent-track movements over 25 mph, except that work would be permitted to continue in certain circumstances without regard to when the head-end passed the roadway work group's location, due to the low speed of the movements. In proposed paragraph (a), FRA makes clear that if an occupied track has two adjacent tracks, and one of the tracks has one or more adjacent-track movements authorized at 25 mph or less, and the other has one or more concurrent adjacent-track movements authorized at over 25 mph, the more restrictive procedures in paragraph (a)(1) would apply.

The circumstances under which work may continue during low-speed movements on adjacent tracks have been included in proposed paragraphs (a)(2)(i)-(a)(2)(ii). In both sets of circumstances, any work that would be permitted to continue after notification of an adjacent-track movement would have to be performed more than 25 feet away from the front or rear of any roadway maintenance machine that is on or fouling the occupied track. While existing § 214.341(a)(5) requires each employer to include in its on-track safety program specific provisions addressing spacing ''between machines and roadway workers to prevent personal injury,'' the rule does not prescribe a specific distance, as certain work activities may require a roadway worker to work closer to a machine than others. Many railroads that subscribe to the General Code of Operating Rules (''GCOR''), for example, have adopted a 15-foot work zone in which roadway workers are not permitted to enter without first communicating with the operator of the equipment and establishing safe work procedures. *See* GCOR Rule 136.7.3. The Working Group proposed a larger work zone of 25 feet to help lessen the distraction and danger posed by a roadway maintenance machine working on or fouling an occupied track, as both an on-ground roadway worker and an operator of a roadway maintenance machine will be performing work with the additional distraction of one or more adjacent-track movements. FRA proposes to adopt this recommendation as one of the circumstances for permitting work to continue as described in proposed paragraphs (a)(2)(i) and (a)(2)(ii).

The first set of circumstances is when work is performed exclusively while positioned between the rails of the occupied track, provided that any on-ground work is performed more than 25 feet away from the front or rear of any roadway maintenance machine that is on or fouling the occupied track during such an adjacent-track movement. The rationale for permitting work to continue between the rails is that a roadway worker who is positioned between the rails of the occupied track is in little danger of fouling the adjacent track. This proposed condition is similar to an existing provision in § 214.103(d) that permits bridge workers to perform minor repair work exclusively between the rails without any fall protection. As this condition has worked well in the bridge worker area, FRA proposes to adopt the RSAC-recommended condition in the roadway worker area.

The first set of circumstances is when work is performed exclusively while positioned between the rails of the occupied track, provided that any on-ground work is performed more than 25 feet away from the front or rear of any roadway maintenance machine that is on or fouling the occupied track during such an adjacent-track movement. The rationale for permitting work to continue between the rails is that a roadway worker who is positioned between the rails of the occupied track is in little danger of fouling the adjacent track. This proposed condition is similar to an existing provision in § 214.103(d) that permits bridge workers to perform minor repair work exclusively between the rails without any fall protection. As this condition has worked well in the bridge worker area, FRA proposes to adopt the RSAC-recommended condition in the roadway worker area.

It should be noted that paragraph (a)(2) only directly addresses the types of work that a component of a roadway work group may continue performing while waiting for the head-end of an adjacent-track movement to pass by that component's location. It does not directly address when all other work (*i.e.*, work that paragraph (a)(2) does *not* cover) may resume. Thus, roadway workers who are assigned to perform work not covered by paragraph (a)(2) must look to the procedures in paragraph (a)(1) for guidance. For example, since on-ground work that would be performed near a roadway maintenance machine (*i.e.*, within 25 feet of the front or rear of a machine that is on or fouling the occupied track) is not covered by paragraph (a)(2), such work would not be permitted to resume until the conditions in paragraph (a) had been fulfilled. That is to say, such work (as well as all other work not covered by paragraph (a)(2) that would not foul the adjacent track) would be permitted to resume only after the head-end of all movements (authorized through the working limits by the roadway worker in charge or for which a watchman/lookout has provided a warning) have passed by (and remain ahead of) the roadway work group component's location.

The second set of circumstances for permitting work to continue when a movement on the adjacent track is authorized at 25 mph or less is when work is performed to the field side of the occupied track furthest from the adjacent track where the movement is occurring, provided that there is no danger posed by an adjacent track on that side (*i.e.*, either no adjacent track is on that side or else on-track safety has been established on any adjacent track on that side), and provided that any on-ground work is performed more than 25 feet away from the front or rear of any roadway maintenance machine on or fouling the occupied track during such adjacent track-movement. Both the Working Group and FRA recognize that if there is little danger of a roadway worker fouling an adjacent track (*e.g.*, Main Track No. 1) while positioned between the rails of the occupied track (*e.g.*, Main Track No. 2), a roadway worker is in even less danger of fouling that adjacent track if he or she is positioned on the field side of the occupied track furthest from the adjacent track. If, however, there is another adjacent track present (*e.g.*, Main Track No. 3) on the field side farthest from the adjacent track on which a train or other on-track

equipment movement has been authorized (*e.g.*, Main Track No. 1), then the roadway worker would potentially be in danger for fouling the other adjacent track (*e.g.*, Main Track No. 3). FRA makes clear that even if adjacent-track on-track safety in the form of working limits had been established on the other adjacent track, the roadway worker would still be in potential danger if he or she were to foul the other adjacent track if the protection had in effect been nullified by the roadway worker in charge authorizing a train or other on-track equipment movement through the working limits on that other adjacent track.

Given the potential danger posed by concurrent movements on two adjacent tracks, it is important to note that while the proposed § 214.336 would apply to each adjacent track individually, the impact on the type of work that would be permitted to continue on the occupied track must be examined as a whole. Thus, where a roadway worker receives notification of adjacent-track movements authorized at 25 mph or less that are occurring concurrently on both adjacent tracks, FRA proposes that the roadway worker would not be permitted to work to either field side of the occupied track, as the movement on one adjacent track would not permit any work to the field side closest to it, and the movement on the other adjacent track would not permit any work to the field side closest to it. *See* proposed paragraph (a)(2)(ii). On-ground work closer than 25 feet, and all other work (including work to the field side) that would not foul *either* adjacent track, would be permitted to continue once the head-end of all movements (authorized through by the roadway worker in charge or for which a watchman/lookout has provided a warning) has passed by (and remains ahead of) the roadway work group component's location. Field-side work that would foul the closest adjacent track would not be permitted to resume until on-track safety has been re-established on the closest adjacent track; thus, work would not be permitted to resume until the entire length (*i.e.*, not just the head-end) of all movements on the closest adjacent track (authorized through the working limits by the roadway worker in charge or for which a watchman/lookout has provided a warning) has passed by (and remains ahead of) the roadway work group component's location.

The Working Group also discussed, and the RSAC recommended, three exceptions when adjacent-track on-track safety would not have to be established at all. *See* consensus paragraphs (e)(1)–(e)(3). FRA proposes to adopt all three exceptions in this NPRM. *See* proposed § 214.336(b).

The first proposed exception to the requirement for adjacent-track on-track safety would be for an on-ground roadway worker performing work while exclusively positioned on the field side of the occupied track, provided that there should essentially be no danger posed by any other adjacent track. In particular, there would be no danger posed by any other adjacent track either because there is no adjacent track on the field side of the occupied track or, even though there is an adjacent track on the field side of the occupied track, on-track safety has been established in accordance with the RWP Rule on that adjacent track.

The second exception to the requirement for adjacent-track on-track safety would be for a hi-rail vehicle on the occupied track, provided such hi-rail vehicle is not coupled to any equipment. *See* proposed § 214.336(b)(2). As discussed in section IV. of this preamble, there has been only one adjacent-track fatality where a roadway work group had been engaged in a common task with a hi-rail vehicle as defined in § 214.7, and the roadway workers in that case were under the impression that adjacent-track on-track safety was in effect when, due to a miscommunication, it was not. Given the circumstances of the one fatality and because the duties normally performed by an employee operating a hi-rail tend to be less distracting to on-ground roadway workers and produce less dust and noise than a typical on-track roadway maintenance machine, FRA proposes that adjacent-track on-track safety not be required for roadway work groups engaged in a common task with a hi-rail. The consensus language for this exception also included language indicating that where multiple hi-rails are engaged in a common task, the on-track safety briefing shall include discussion of the nature of the work to be performed to determine if adjacent-track on-track safety is necessary. FRA has removed this language in its proposal because the roadway worker in charge must always consider the nature of the work to be performed to determine the appropriate level of on-track safety. In fact, the consensus language emphasizes that nothing in this subpart prohibits the roadway worker in charge from establishing adjacent-track on-track safety as he or she deems necessary.

The third proposed exception to the requirement for adjacent-track on-track safety is for a catenary maintenance tower car with one or more roadway workers positioned on the ground exclusively within the gage of the occupied track for the sole purpose of applying or removing grounds. As discussed in section IV. of this preamble, there have been no adjacent-track fatalities where a roadway work group had been engaged in a common task with a catenary maintenance tower car on the occupied track and the duties normally performed by an employee operating a catenary maintenance tower car tend to be less distracting to on-ground roadway workers and produce less dust and noise than a typical on-track roadway maintenance machine.

In its errata review comments on the FRA document compiling all of the Working Group consensus language that was recommended to FRA by the RSAC, BMWED noted that from the manner in which the consensus exceptions (paragraphs (e)(1)–(e)(3)) were constructed, one could interpret that the roadway worker in charge of on-ground roadway workers exclusively performing work on the field side of the occupied track described in consensus paragraph (e)(2) would not be afforded the same right to establish a greater level of adjacent-track on-track safety as the roadway worker in charge of the hi-rail vehicle or catenary maintenance tower car described in paragraphs (e)(1) and (e)(3), respectively. FRA agrees that the provisions should be consistent. The section has been reorganized so that the language indicating that nothing in this subpart prohibits the roadway worker in charge from establishing adjacent-track on-track safety as he or she deems necessary has been removed from paragraphs (e)(1) and (e)(3) and moved into the body of the introductory text of proposed new paragraph (b) so as to apply to all three exceptions in proposed paragraphs (b)(1)–(b)(3). Consensus paragraph (e)(1) (now proposed paragraph (b)(2)) was also amended to remove the words ''as defined in § 214.7'' from the hi-rail exception, since each time that a term defined in § 214.7 is used in part 214, FRA intends the term to be interpreted in the manner in which it is defined in § 214.7, unless otherwise noted.

Regarding the prohibition in consensus paragraph (d) against ''equipment'' fouling an adjacent track unless protected by working limits, FRA has changed the term to ''roadway maintenance machine'' to clarify that this prohibition is meant to be broad and would include hi-rails that are part of the roadway work group. *See* proposed § 214.336(b)(3). While a hi-rail alone would not trigger the requirement to establish adjacent-track on-track safety, once a hi-rail has become part of

a roadway work group involving at least one roadway worker on the ground and ''an on-track roadway maintenance machine or coupled equipment,'' the hi-rail would be subject to this prohibition against fouling, as well as to the machine spacing requirement in consensus paragraph (c)(3). *See* proposed §§ 214.336(a)(2), 214.336(a)(3), and 214.336(b)(2). Further, FRA clarifies that the prohibition was not meant to be so broad that a roadway worker would not be permitted to use readily portable tools or equipment similar to a jackhammer, such as a pneumatic tamping gun or a spike driver, on an adjacent track while afforded on-track safety through train approach warning. FRA would urge that employers and employees use common sense in determining which tools or equipment they would permit to be used or use under train approach warning. If there is any doubt as to whether the equipment could be readily removed, the employee must not foul the track with those tools or equipment under watchman/lookout (*i.e.*, train approach warning) protection.

Paragraph (c), Training, and (d), Recordkeeping, of § 214.336

Training and recordkeeping requirements were also added to ensure compliance with this new section. Proposed new paragraph (c) provides that before an employer (''a railroad, or a contractor to a railroad, that directly engages or compensates individuals to perform any of the duties defined in [part 214]'') assigns an employee to perform roadway worker duties for which adjacent-track on-track safety is required, the employer shall provide such an employee either with training on this section or a copy of a railroad-issued bulletin, order, general order, notice, operating rule, or other document adopting the adjacent-track on-track safety requirements of this section. See § 214.7. FRA expects that each railroad would revise its on-track safety program and documents required by §§ 214.303 and 214.309 as necessary to include the requirements of this proposed new section. Issuing a bulletin, order, general order, notice, or other document adopting the adjacent-track on-track safety requirements of this section would suffice until a more permanent update is made. A contractor to a railroad would have to ensure that its employees are aware of this change and of any other changes to a railroad's operating and safety rules related to this proposed new section, and FRA would ask each railroad to cooperate with its contractors to have these documents or any other updates to its on-track safety program and documents required by §§ 214.303 and 214.309 available for contractors performing roadway worker duties on its property. The proposed requirements for providing training or a copy of a railroad-issued document (*i.e.*, that adopts the new adjacent-track on-track safety requirements) is intended to allow railroads and contractors to railroads the maximum flexibility, while still ensuring that employees are aware of the requirements prior to performing a roadway worker duty for which adjacent-track on-track safety would be required. Thus, an employee performing only the duty of a lone worker would not need to be trained by the effective date of this rule, under the proposed requirements. A railroad or a contractor to a railroad would also be able comply with this proposed training requirement by providing its employees with an extended on-track safety job briefing that discusses the new requirements prior to assigning them to perform a roadway worker duty affected by this section.

Proposed new paragraph (d) would require each employer to obtain from each affected employee a written receipt or acknowledgement of the delivery of a copy of the adjacent-track on-track safety training or document required by paragraph (c), and retain such a receipt or acknowledgement until the employee receives, pursuant to § 214.343, recurrent training that includes discussion of the procedures for adjacent-track on-track safety required by this section. If the training is received for the first time as part of an employee's recurrent training, a record kept pursuant to § 214.343(d) will serve as the receipt or acknowledgement for purposes of this section. If an employee receives training for the first time, but not as part of recurrent training and does not receive recurrent training within two years of the initial training (*e.g.*, if the employee is on extended leave or no longer works for the employer), then the record would no longer need to be kept. Further, under the proposed language, records of the written receipts or acknowledgements would need to be made available to representatives of FRA and States participating under part 212 for inspection and copying during normal business hours.

## VIII. Regulatory Impact and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This NPRM has been evaluated in accordance with existing policies and procedures, and determined not to be significant under both Executive Order 12866 and DOT policies and procedures. *See* 44 FR 11034 (Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this NPRM. Document inspection and copying facilities are available at the Federal Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2008–0059, Notice No. 1.

Certain of the requirements reflect current industry practice, or restate existing regulations, or both. As a result, in calculating the costs of this NPRM, FRA has neither included the costs of those actions that would be performed voluntarily in the absence of a regulation, nor has FRA included the costs of those actions that would be required by an existing regulation.

This evaluation includes quantitative measurements and qualitative discussions of implementation costs for this proposed rule. The costs would primarily be imposed by a small increase in job briefing time and additional resources spent to provide protection for the safe conduct of other than large-scale maintenance and construction of track adjacent to track with train movements. Training and recordkeeping costs would also accrue. The benefits would primarily accrue from a reduction in roadway worker casualties (fatalities and injuries). Business benefits stemming from avoided train delays and property damages would also accrue.

FRA estimates that the present value (PV, 7%) of the total 20-year costs which the industry would be expected to incur to comply with the requirements in this NPRM is $137.8 million. FRA also estimates the PV (7%) of the total 20-year benefits accruing to society from the implementation of the requirements is $88.1 million. FRA believes that taking into account non-quantifiable benefits, including reduced train delays and property damages resulting from roadway worker incidents, the benefits associated with this proposed rule would justify the implementation costs.

*B. Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket a Small Entity Impact Assessment and Evaluation that assesses the small entity impact of this NPRM. Document inspection and copying facilities are available at the Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2008–0059, Notice No. 1.

This Small Entity Impact Assessment and Evaluation concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities. In order to determine the significance of the economic impact for the final rule's Regulatory Flexibility Act (RFA) requirements, FRA invites comments from all interested parties concerning data and information regarding the potential economic impact caused by this proposed rule, during the comment period.

The U.S. Small Business Administration (SBA) stipulates in its ''Size Standards'' a ''for profit'' railroad business firm may not have more than 1,500 employees for ''Line-Haul Operating'' Railroads, and 500 employees for ''Switching and Terminal Establishments'' to be considered as a ''small entity.''[6] ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. SBA's ''size standards'' may be altered by Federal agencies upon consultation with SBA and in conjunction with public comment.

Pursuant to that authority, FRA has published a final policy that classifies ''small entities'' as being railroads that meet the line haulage revenue requirements of a Class III railroad.[7] Currently, the revenue requirements are 20 million inflation-adjusted dollars or less in annual operating revenue. The $20-million limit is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment.[8] The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA is using this definition of ''small entity'' for regulatory flexibility purposes in this rulemaking.

There are approximately 665 small railroads.[9] Potentially all small railroads could be impacted by this proposed regulation. However, because of certain characteristics that these railroads typically have, there should not be any impact on the majority of them. Most only have single-track operations. Some small railroads such as the tourist and historic railroads, operate across the lines of other railroads that would bear the burden or impact of the proposed rules requirements. Finally, others, if they do have more than a single track, typically have operations that are light enough such that the railroads have generally always performed the pertinent trackside work with the track and right-of-way taken out of service, or conducted the work during hours the track is not used.

In addition, FRA is not aware of any commuter railroads that qualify as small entities. This is likely because commuter railroad operations in the United States are part of larger governmental entities whose jurisdictions exceed 50,000 in population.

FRA is uncertain as to the number of contractors that would be affected by this issue. FRA is aware that some railroads hire contractors to conduct some of the functions of roadway workers on their railroads. However, most of the costs associated with the burdens from this rulemaking would ultimately get passed on to the pertinent railroad. Most likely, the contracts would be written to reflect that, and the contractor would bear no additional burden for the proposed requirements. In addition, FRA is uncertain as to the number of contractors that would be considered to be small entities. FRA requests any information during the rulemaking comment period related to contractors and the burdens that might impact them as a result of this proposed rulemaking.

No other small businesses (non-railroads) are expected to be impacted by this proposed rulemaking.

There are some minor recordkeeping requirements in the new section of the proposed rule. These proposed requirements relate to documenting that all affected roadway workers are trained on the new section. However, since FRA believes that no small railroads will be required to establish adjacent-track on-track safety to perform track work under the proposed requirements, these recordkeeping requirements are not expected to impact any small railroads. As noted prior, these railroads either only have a single track, and therefore no adjacent track to protect, or currently take all pertinent track out of service when performing track work.

The impacts from this regulation are primarily a result of the proposed requirements for roadway work groups to be provided on-track safety when working on a track within close proximity of an adjacent track. Again, since small railroads either do not have any adjacent track or conduct track work on the occupied track with an adjacent track when the adjacent track is out of service, there is no impact for small railroads. Since FRA does not anticipate that this proposed rule would impose any burdens on small entities, there is no alternative treatment proposed for small entities.

Having made these determinations, FRA certifies that this NPRM is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272.

*C. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 19995, 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:

[6] ''Table of Size Standards,'' U.S. Small Business Administration, January 31, 1996, 13 CFR Part 121.

[7] *See* 68 FR 24891 (May 9, 2003).

[8] For further information on the calculation of the specific dollar limit, please reference 49 CFR part 1201.

[9] 715 railroads − 50 (large freight, medium freight, passenger, and commuter railroads) = 665 small railroads.

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| Form FRA F 6180.1119—Part 214 Railroad Workplace Safety Violation Report. | 350 Safety Inspectors. | 150 forms | 4 hours | 600 | $24,000 |
| 214.303—Railroad On-Track Safety Programs: | | | | | |
| —Amendments to Programs | 718 Railroads | 20 prog. amend. + 584 prog. amend. | 20 hours: 4 hours | 2,736 | 139,536 |
| —Subsequent Years: New Programs | 5 New Railroads | 5 safety prog | 250 hours | 1,250 | 63,750 |
| 214.313—Good Faith Challenges to On-Track Safety Rules. | 20 Railroads | 80 challenges | 4 hours per challenge. | 320 | 12,800 |
| 214.315/335—Supervision and Communication Job Briefings. | 50,000 Roadway Workers. | 16,350,000 briefings | 2 minutes 30 seconds. | 640,375 | 21,800,000 |
| 214.321—Exclusive Track Occupancy—Working Limits. | 8,583 Roadway Workers. | 700,739 written authorities. | 1 minute | 11,679 | 467,160 |
| 214.325—Train Coordination: | | | | | |
| —Establishing Working Limits through Communication. | 50,00 Roadway Workers. | 36,500 communications. | 15 seconds | 152 | 6,080 |
| 214.327—Inaccessible Track: | | | | | |
| —Working Limits on Non-controlled Track: Notifications. | 718 Railroads | 50,000 occurrences or notifications. | 10 minutes | 8,333 | 333,320 |
| 214.336—Procedures for Adjacent-Track Movements Over. | | | | | |
| 25 mph (New Requirements) : Notifications/Watchmen/ Lookout Warnings. | 100 Railroads | 10,000 warnings | 15 seconds | 42 | 1,680 |
| —Roadway Worker Communication with Train Engineers or Equipment Operators. | 100 Railroads | 3,000 communications. | 1 minute | 50 | 2,000 |
| —Procedures for Adjacent-Track Movements 25 mph or less: Notifications/Watchmen/Lookout Warnings. | 100 Railroads | 3,000 warnings | 15 seconds | 13 | 520 |
| —Roadway Worker Communication with Train Engineers or Equipment Operators. | 100 Railroads | 1,500 communic. | 1 minute | 25 | 1,000 |
| —Training | 718 Railroads | 35,000 tr. empl | 5 minutes | 2,916 | [1] 0 |
| —Recordkeeping | 718 Railroads | 35,000 receipts + 35,000 coopies. | 1 minute; 3 seconds | 612 | 24,480 |
| 214.337—On-Track Safety Procedures for Lone Workers: Statements by Lone Workers. | 718 Railroads | 2,080,000 statements. | 30 seconds | 17,333 | 693,320 |
| 214.343/345/347/349/351/353/355—Training Requirements. | 50,000 Roadway Workers. | 50,000 tr. Empl | 4.5 hours | 225,000 | 9,000,000 |
| —Records of Training | 50,000 Roadway Workers. | 50,000 records | 2 minutes | 1,667 | 85,017 |
| 214.503—Good Faith Challenges; Procedures for Notification and Resolution.—Notice of Unsafe Vehicle or Non-compliance with FRA rules. | 50,000 Roadway Workers. | 125 notifications | 10 minutes | 21 | 840 |
| —Development of Resolution Procedures. | 644 Railroads | 10 procedures | 2 hours | 20 | 1,020 |
| 214.505—Req'd Environmental Control and Protection Systems for New On-Line Roadway Maintenance Machines with Enclosed Cabs. | 644 Railroads | 9 lists | 1 hour | 9 | 459 |
| 214.507—A-Built Light Weight on New Roadway Maintenance Machines. | 644 Railroads | 1,000 stickers | 5 minutes | 83 | 3,320 |
| 214.511—Req'd Audible Warning Devices for New On-Track Roadway Maintenance Machines. | 644 Railroads | 3,700 identified mechanisms. | 5 minutes | 308 | 12,320 |
| 214.513—Retrofitting of Existing On-Track Roadway Maintenance Machines: | | | | | |
| —Identification of Triggering Mechanism—Horns. | 644 Railroads | 200 mechanisms | 5 minutes | 17 | 680 |
| 214.515—Overhead Covers for Existing On-Track Roadway Maintenance Machines. | 645 Railroads | 500 requests + 500 responses. | 10 minutes; 20 minutes. | 250 | 11,837 |
| 214.517—Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured After 1990: Stenciling/Marking of Light Weight. | 644 Railroads | 500 stencils | 5 minutes | 42 | 1,680 |

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 214.518—Safe and Secure Position for Riders: | | | | | |
| —Positions identified by stencilings/markings/notices. | 644 Railroads | 1,000 stencils | 5 minutes | 83 | 3,320 |
| 214.523—Hi-Rail Vehicles | 644 Railroads | 2,000 insp. record | 60 minutes | 2,000 | 80,000 |
| —Non-Complying Conditions | 644 Railroads | 500 tags + 500 reports. | 10 minutes; 15 minutes. | 208 | 8,320 |
| 214.527—Inspection for Compliance; Repair Schedules. | 644 Railroads | 550 tags + 550 reports. | 5 minutes; 15 minutes. | 184 | 7,360 |
| 214.533—Schedule of Repairs; Subject to Availability of Parts: Compliance Records. | 644 Railroads | 250 records | 15 minutes | 63 | 3,213 |

[1] Incl. RIA.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether 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, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Nakia Poston at 202–493–6073.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Nakia Poston, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Poston at the following address: *robert.brogan@dot.gov*; *nakia.poston@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed 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. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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. Federalism Implications*

FRA has analyzed this NPRM 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 43255. This NPRM will not have a substantial direct effect on the States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among various levels of government.

One of the fundamental federalism principles, as stated in section 2(a) of Executive Order 13132, is that ''Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.'' Congress expressed its intent that there be national uniformity of regulation concerning railroad safety matters when it enacted 49 U.S.C. 20106. That section provides that all regulations prescribed by the Secretary of Transportation with respect to railroad safety matters and the Secretary of Homeland Security with respect to railroad security matters preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety or security hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. Nothing in this NPRM proposes to alter the preemptive effect of the RWP Rule.

FRA notes that the above factors have been considered throughout the development of this NPRM both internally and through consultation within the RSAC forum, as described in Sections VI and VII of this preamble. The full RSAC, which, prior to the publication of this NPRM, reached consensus on the proposed rule text and recommended the proposal to FRA, has as permanent voting members two organizations representing State and local interests: AASHTO and ASRSM. As such, these State organizations concurred with the proposed requirements, which differ in only limited respects from the requirements contained in this NPRM. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives or from any other representative.

For the foregoing reasons, FRA believes that this NPRM is in accordance with the principles and criteria contained in Executive Order 13132.

*E. Environmental Impact*

FRA has evaluated this NPRM in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (*see* 64 FR 28545 (May 26, 1999)) as required by the National Environmental Policy Act (*see* 42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this NPRM is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed

environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999). In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this NPRM is not a major Federal action significantly affecting the quality of the human environment.

*F. Unfunded Mandates Reform Act of 1995*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 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 the following:

> [B]efore 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 expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (annually adjusted 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* * *

The written statement must detail the effect on State, local, and tribal governments and the private sector. This NPRM will not result in the expenditure, in the aggregate, of $132,300,000 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 (normally published in the **Federal Register**) 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 NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

*H. Trade Impact*

The Trade Agreements Act of 1979 (Pub. L. No. 96–39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FRA has assessed the potential effect of this NPRM on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act. The requirements imposed are safety standards, which, as noted, are not considered unnecessary obstacles to trade.

*I. Privacy Act*

Anyone is able to search the electronic form of all comments received into any of FRA'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 in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

## IX. List of Subjects in 49 CFR Part 214

Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

## The Proposed Rule

In consideration of the foregoing, FRA proposes to amend part 214 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

## PART 214—[AMENDED]

1. The authority citation for part 214 is revised to read as follows:

**Authority:** 49 U.S.C. 20102–20103, 20107, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

## Subpart A—General

### § 214.7 [Amended]

2. Section 214.7 is amended by removing the definition of ''Adjacent tracks''.

## Subpart C—Roadway Worker Protection

3. Section 214.315 is amended by revising paragraph (a) to read as follows:

### § 214.315 Supervision and communication.

(a) When an employer assigns a duty to a roadway worker that calls for that employee to foul a track, the employer shall provide the employee with an on-track safety job briefing that, at a minimum, includes the following:

(1) Information on the means by which on-track safety is to be provided for each track identified to be fouled;

(2) Instruction on each on-track safety procedure to be followed; and

(3) Information about any tracks adjacent to the track to be fouled, on-track safety for such tracks, if required by this subpart, and identification of any roadway maintenance machines that will foul such tracks. In such cases, the on-track safety job briefing shall address the nature of the work to be performed and the characteristics of the work location to ensure compliance with this subpart.

* * * * *

4. Section 214.335 is amended by removing paragraph (c) and revising the section heading to read as follows:

### § 214.335 On-track safety procedures for roadway work groups, general.

* * * * *

5. New § 214.336 is added to read as follows:

### § 214.336 Adjacent-track on-track safety for certain roadway work groups; procedures, training, and recordkeeping.

(a) *Procedures; general.* Except as provided in paragraph (b) of this section, on-track safety is required for each adjacent track when a roadway work group with at least one of the roadway workers on the ground, is engaged in a common task with an on-track roadway maintenance machine or coupled equipment on an occupied track. The required on-track safety shall be in accordance with § 214.319 (Working limits, generally); § 214.321 (Exclusive track occupancy); § 214.323 (Foul time); § 214.325 (Train coordination); or § 214.329 (Train approach warning provided by watchmen/lookouts) and as more specifically described in this paragraph (a). If an occupied track has two

adjacent tracks, and one of the tracks has one or more adjacent-track movements authorized at 25 mph or less, and the other has one or more concurrent adjacent-track movements authorized at over 25 mph, the more restrictive procedures in paragraph (a)(1) of this section apply. For purposes of this section, ''*adjacent track*'' means a controlled track whose track center is spaced 19 feet or less from the track center of the occupied track, and ''*occupied track*'' means the track on which a roadway maintenance machine or coupled equipment is located while engaged in a common task with a roadway work group.

(1) *Procedures for adjacent-track movements over 25 mph.* If a train or other on-track equipment is authorized to move on an adjacent track at a speed greater than 25 mph, each roadway work group to which this section applies must comply with the following procedures:

(i) Each roadway worker in the roadway work group shall cease any on-ground work and movement of any roadway maintenance machine or coupled equipment in the fouling space of the occupied track and the adjacent track, and occupy a predetermined place of safety upon receiving—

(A) A watchman/lookout warning, if on-track safety through train approach warning (§ 214.329) has been established on the adjacent track; or

(B) A notification in accordance with § 214.319(c) that the roadway worker in charge intends to authorize one or more train or other on-track equipment movements through the working limits on the adjacent track, if adjacent-track on-track safety has been established through working limits alone.

(ii) A component of a roadway work group may resume on-ground work and movement of any roadway maintenance machine or coupled equipment on or fouling the occupied track only after the head-end of all trains or other on-track equipment moving on the adjacent track (either authorized through the working limits by the roadway worker in charge or for which a watchman/lookout has provided a warning) has passed and remains ahead of that component of the roadway work group; however, if the train or other on-track equipment stops before its head-end has passed all of the roadway workers in the roadway work group (or if a roadway worker in the roadway work group moves to a position on or fouling the occupied track in advance of the head-end of the adjacent-track movement), the work to be performed on or fouling the occupied track ahead of the train or other on-track equipment on the adjacent track may resume only—

(A) If on-track safety through train approach warning (§ 214.329) is still in effect or has been re-established on the adjacent track; or

(B) After the roadway worker in charge has communicated with the train engineer or equipment operator and obtained or regained control of such train or other on-track equipment, if adjacent-track on-track safety has been established by working limits alone.

(2) *Procedures for adjacent-track movements 25 mph or less.* If a train or other on-track equipment is authorized to move on an adjacent track at a speed of 25 mph or less, each roadway work group to which this section applies must comply with the procedures listed in paragraph (a)(1) of this section, except that the following work may continue:

(i) Work that is performed exclusively while positioned between the rails of the occupied track, provided that any on-ground work is performed more than 25 feet away from the front or rear of any roadway maintenance machine on or fouling the occupied track during such adjacent-track movement;

(ii) Work that is performed exclusively to the field side of the occupied track furthest from the adjacent track where the movement is authorized, provided that—

(A) Either no adjacent track is on that side or on-track safety has been established in accordance with this subpart on any adjacent track on that side; and

(B) Any on-ground work is performed more than 25 feet away from the front or rear of any roadway maintenance machine on or fouling the occupied track during such adjacent-track movement.

(3) *Procedures for a roadway maintenance machine or coupled equipment fouling an adjacent track.* A roadway maintenance machine or coupled equipment shall not foul an adjacent track unless working limits have been established on the adjacent track and there are no movements authorized through the working limits by the roadway worker in charge.

(b) *Exceptions to the requirement for adjacent-track on-track safety.* Adjacent-track on-track safety is not required for the work activities described in paragraphs (b)(1) through (b)(3) of this section. Nothing in this section prohibits the roadway worker in charge from establishing adjacent-track on-track safety as he or she deems necessary.

(1) One or more on-ground roadway workers performing work while exclusively positioned on the field side of the occupied track, provided that either no adjacent track is on that side or on-track safety has been established in accordance with this subpart on any such adjacent track.

(2) A hi-rail vehicle on or fouling the occupied track while engaged in a common task with one or more roadway workers on the ground, provided such hi-rail vehicle is not coupled to one or more railroad cars.

(3) A catenary maintenance tower car on or fouling the occupied track that is engaged in a common task with one or more roadway workers positioned on the ground within the gage of the occupied track for the sole purpose of applying or removing grounds.

(c) *Training.* Prior to assigning an employee to perform roadway worker duties for which adjacent-track on-track safety is required, the employer shall provide the employee with—

(1) Training on the procedures for adjacent-track on-track safety required by this section; or

(2) A copy of a railroad-issued bulletin, order, general order, notice, operating rule, or other document adopting the procedures for adjacent-track on-track safety required by this section.

(d) *Recordkeeping.* (1) Each employer shall obtain from each affected employee a written receipt or acknowledgement of the adjacent-track on-track safety training or document required by paragraph (c). If the training is received for the first time as part of an employee's recurrent training, a record kept pursuant to § 214.343(d) serves as the receipt or acknowledgement for purposes of this section.

(2) Each employer shall retain the written receipt or acknowledgement required by paragraph (d)(1) of this section—

(i) Until the employee receives, pursuant to § 214.343, recurrent training that includes discussion of the procedures for adjacent-track on-track safety required by this section; or

(ii) For two years following the date the employee was provided with the training or document required by paragraph (d)(1) of this section.

(3) Records of the written receipts or acknowledgements shall be made available to representatives of FRA and States participating under 49 CFR part 212 for inspection and copying during normal business hours.

Issued in Washington, DC, on July 9, 2008.

**Joseph H. Boardman,**

*Administrator.*

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Federal Register

Thursday,
July 17, 2008

# Part IV

# The President

## Proclamation 8273—FBI Day, 2008

Federal Register
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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8273 of July 14, 2008**

## FBI Day, 2008

**By the President of the United States of America**

**A Proclamation**

For 100 years, the committed men and women of the Federal Bureau of Investigation have worked diligently to deliver justice and keep Americans safe. On FBI Day, we recognize the Bureau's many accomplishments and pay tribute to all who have served in its ranks with valor and dedication.

The FBI traces its origins to 1908, when under the leadership of President Theodore Roosevelt and Attorney General Charles Bonaparte, a force of Special Agents was created, later to be called the Bureau of Investigation. As a Federal agency with the power to investigate crimes across State lines and enforce Federal law, the FBI has protected our country against threats from abroad and caught dangerous criminals like ''Baby Face'' Nelson, John Dillinger, Ted Kaczynski, and Ramzi Yousef. Today, the FBI is charged with guarding our Nation from terrorist attacks, combating public corruption and organized crime, resisting cyber attacks, and opposing other high-technology crimes. The FBI also has a deep commitment to civil rights, helping protect the values we cherish.

With an abiding respect for the Constitution, the men and women of the FBI bring strength, impartiality, and devotion to their pursuit of justice. They continue to uphold their motto of ''Fidelity, Bravery, Integrity.'' On FBI Day, we especially remember the fallen agents who paid the ultimate price in serving our country and keeping our Nation safe.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 26, 2008, as FBI Day. I call upon all Americans to recognize the 100th anniversary of the Federal Bureau of Investigation.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of July, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

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## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT JULY 17, 2008

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fisheries of the Northeastern United States:

Atlantic Mackerel, Squid, and Butterfish Fisheries; closure of the Trimester II Fishery for Loligo Squid; published 7-17-08

**ENVIRONMENTAL PROTECTION AGENCY**

National Emission Standards for Hazardous Air Pollutants:

Organic Liquids Distribution (Non-Gasoline); published 7-17-08

**FEDERAL COMMUNICATIONS COMMISSION**

Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; published 6-17-08

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Regulated Navigation Areas, Safety Zones, Security Zones, and Deepwater Port Facilities:

Navigable Waters of the Boston Captain of the Port Zone; published 6-17-08

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Risk Analysis Evaluating the Foot-and-Mouth Disease Status of Surrey County, England; comments due by 7-22-08; published 5-23-08 [FR E8-11659]

**AGRICULTURE DEPARTMENT**

**Natural Resources Conservation Service**

Regulations for Complying with the National Environmental Policy Act; comments due by 7-25-08; published 6-25-08 [FR E8-14122]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Application for Exempted Fishing Permits:

General Provisions for Domestic Fisheries; comments due by 7-23-08; published 7-8-08 [FR E8-15375]

Fisheries in the Western Pacific:

Precious Corals Fisheries; Black Coral Quota and Gold Coral Moratorium; comments due by 7-22-08; published 5-23-08 [FR E8-11536]

Fisheries of the Exclusive Economic Zone Off Alaska:

Bering Sea and Aleutian Islands Crab Rationalization Program; comments due by 7-21-08; published 6-20-08 [FR E8-14012]

Taking and Importing Mammals:

U.S. Navy Training in the Hawaii Range Complex; comments due by 7-23-08; published 6-23-08 [FR 08-01371]

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Ex Parte Contacts and Separation of Functions; comments due by 7-21-08; published 5-21-08 [FR E8-11326]

**ENVIRONMENTAL PROTECTION AGENCY**

Approval and Promulgation of Implementation Plans: State of Missouri; comments due by 7-21-08; published 6-20-08 [FR E8-13838]

Approval and Promulgation of Implementation Plans; State of Missouri; comments due by 7-21-08; published 6-20-08 [FR E8-13755]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Exhaust Emission Standards for 2012 and Later Model Year Snowmobiles; comments due by 7-25-08; published 6-25-08 [FR E8-14411]

National Ambient Air Quality Standards for Lead; comments due by 7-21-08; published 5-20-08 [FR E8-10808]

Proposed Tolerance Actions:

Benfluralin, Carbaryl, Diazinon, etc.; comments due by 7-21-08; published 5-21-08 [FR E8-11420]

**FEDERAL COMMUNICATIONS COMMISSION**

Service Rules for Advanced Wireless Services in 1915-1920 MHz Bands; comments due by 7-25-08; published 7-14-08 [FR E8-16032]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 7-21-08; published 6-19-08 [FR E8-13849]

Financial Education Programs that Include the Provision of Bank Products and Services; comments due by 7-23-08; published 6-23-08 [FR E8-14076]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Centers for Medicare & Medicaid Services**

Medicare Program:

Changes for Long-Term Care Hospitals Required by Certain Provisions of the Medicare, Medicaid, SCHIP Extension Act of 2007:

3-Year Moratorium on the Establishment of New Long-Term Care Hospitals and Long-Term Care Hospital Satellite Facilities etc.; comments due by 7-21-08; published 5-22-08 [FR 08-01285]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

State Long-Term Care Partnership Program: Reporting Requirements for Insurers; comments due by 7-22-08; published 5-23-08 [FR E8-11559]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Implementation of Vessel Security Officer Training Certification Requirements:

International Convention on Standards of Training, Certification and Watchkeeping; comments due by 7-21-08; published 5-20-08 [FR E8-11225]

**HOMELAND SECURITY DEPARTMENT**

Privacy Act; Systems of Records; comments due by 7-21-08; published 6-10-08 [FR E8-12785]

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Revisions to the Hospital Mortgage Insurance Program:

Technical and Clarifying Amendments; comments due by 7-25-08; published 6-25-08 [FR E8-14131]

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Utah Regulatory Program; comments due by 7-24-08; published 6-24-08 [FR E8-14267]

**POSTAL SERVICE**

Waiver of Signature Delivery Process; comments due by 7-24-08; published 7-9-08 [FR E8-15212]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness Directives:

Airbus Model A318, A319, A320, and A321 Series Airplanes; comments due by 7-24-08; published 6-24-08 [FR E8-14184]

Airbus Model A330-200, A330-300, and A340-300 Series Airplanes; comments due by 7-24-08; published 6-24-08 [FR E8-14186]

Airbus Model A330 and A340 Airplanes; comments due by 7-21-08; published 6-26-08 [FR E8-14480]

BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes; comments due by 7-21-08; published 6-20-08 [FR E8-13919]

Boeing Model 737-600, -700, -700C, -800, -900, and -900ER Series Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12685]

Boeing Model 737-300, -400, and -500 Series Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12752]

Boeing Model 737-600, -700, -800, and -900 Series Airplanes; comments due by 7-24-08; published 6-9-08 [FR E8-12829]

Boeing Model 747-100, 747-100B, 747-200B, 747-

200C, 747-200F, 747-300, 747SR, and 747SP Series Airplanes; comments due by 7-21-08; published 5-20-08 [FR E8-11330]

Boeing Model 747-400, -400D, and -400F Series Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12725]

Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, etc. Series Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12692]

Boeing Model 747 Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12712]

Boeing Model 757 Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12749]

Boeing Model 767 Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12684]

Boeing Model 777 Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12691]

Bombardier Model CL 600 2B19 (Regional Jet Series 100 & 440) Airplanes; comments due by 7-21-08; published 6-20-08 [FR E8-13922]

Bombardier Model DHC 8 400 Series Airplanes; comments due by 7-21-08; published 6-26-08 [FR E8-14482]

Dassault Model Falcon 7X Airplanes; comments due by 7-21-08; published 6-19-08 [FR E8-13712]

Diamond Aircraft Industries GmbH Model DA 42 Airplanes; comments due by 7-23-08; published 6-23-08 [FR E8-14078]

Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB 135 Airplanes, and Model EMB 145, 145ER, 145MR, 145LR, 145XR, 145MP, and 145EP Airplanes; comments due by 7-21-08; published 6-20-08 [FR E8-13923]

Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes; comments due by 7-21-08; published 6-26-08 [FR E8-14476]

Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190 Airplanes; comments due by 7-24-08; published 6-24-08 [FR E8-14187]

Pratt & Whitney Canada PW206A, PW206B, PW206B2, PW206C, PW206E, PW207C, PW207D, and PW207E Turboshaft Engines; comments due by 7-25-08; published 6-25-08 [FR E8-14320]

Turbomeca S.A. Models Arriel 1E2, 1S, and 1S1 Turboshaft Engines; comments due by 7-25-08; published 6-25-08 [FR E8-14321]

Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport; comments due by 7-21-08; published 5-21-08 [FR 08-01271]

Petitions for Exemption; Summary of Petitions Received; comments due by 7-21-08; published 7-9-08 [FR E8-15481]

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Federal Motor Vehicle Safety Standards:

Side Impact Protection; comments due by 7-24-08; published 6-9-08 [FR E8-11273]

Petition for Approval of Alternate Odometer Disclosure Requirements; comments due by 7-24-08; published 6-24-08 [FR E8-13592]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Gross Estate; Election to Value on Alternate Valuation Date; comments due by 7-24-08; published 4-25-08 [FR E8-09025]

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "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.

**H.R. 430/P.L. 110–262**

To designate the United States bankruptcy courthouse located at 271 Cadman Plaza East in Brooklyn, New York, as the "Conrad B. Duberstein United States Bankruptcy Courthouse". (July 15, 2008; 122 Stat. 2479)

**H.R. 781/P.L. 110–263**

To redesignate Lock and Dam No. 5 of the McClellan-Kerr Arkansas River Navigation System near Redfield, Arkansas, authorized by the Rivers and Harbors Act approved July 24, 1946, as the "Colonel Charles D. Maynard Lock and Dam". (July 15, 2008; 122 Stat. 2480)

**H.R. 2728/P.L. 110–264**

To designate the station of the United States Border Patrol located at 25762 Madison Avenue in Murrieta, California, as the "Theodore L. Newton, Jr. and George F. Azrak Border Patrol Station". (July 15, 2008; 122 Stat. 2482)

**H.R. 3721/P.L. 110–265**

To designate the facility of the United States Postal Service located at 1190 Lorena Road in Lorena, Texas, as the "Marine Gunnery Sgt. John D. Fry Post Office Building". (July 15, 2008; 122 Stat. 2483)

**H.R. 4140/P.L. 110–266**

To designate the Port Angeles Federal Building in Port Angeles, Washington, as the "Richard B. Anderson Federal Building". (July 15, 2008; 122 Stat. 2484)

**H.R. 4185/P.L. 110–267**

To designate the facility of the United States Postal Service located at 11151 Valley Boulevard in El Monte, California, as the "Marisol Heredia Post Office Building". (July 15, 2008; 122 Stat. 2485)

**H.R. 5168/P.L. 110–268**

To designate the facility of the United States Postal Service located at 19101 Cortez Boulevard in Brooksville, Florida, as the "Cody Grater Post Office Building". (July 15, 2008; 122 Stat. 2486)

**H.R. 5395/P.L. 110–269**

To designate the facility of the United States Postal Service located at 11001 Dunklin Drive in St. Louis, Missouri, as the "William 'Bill' Clay Post Office Building". (July 15, 2008; 122 Stat. 2487)

**H.R. 5479/P.L. 110–270**

To designate the facility of the United States Postal Service located at 117 North Kidd Street in Ionia, Michigan, as the "Alonzo Woodruff Post Office Building ". (July 15, 2008; 122 Stat. 2488)

**H.R. 5517/P.L. 110–271**

To designate the facility of the United States Postal Service located at 7231 FM 1960 in Humble, Texas, as the "Texas Military Veterans Post Office". (July 15, 2008; 122 Stat. 2489)

**H.R. 5528/P.L. 110–272**

To designate the facility of the United States Postal Service located at 120 Commercial Street in Brockton, Massachusetts, as the "Rocky Marciano Post Office Building". (July 15, 2008; 122 Stat. 2490)

**H.R. 5778/P.L. 110–273**

District of Columbia Water and Sewer Authority Independence Preservation Act (July 15, 2008; 122 Stat. 2491)

**H.R. 6040/P.L. 110–274**

To amend the Water Resources Development Act of 2007 to clarify the authority of the Secretary of the Army to provide reimbursement for travel expenses incurred by members of the Committee on Levee Safety. (July 15, 2008; 122 Stat. 2493)

**H.R. 6331/P.L. 110–275**

Medicare Improvements for Patients and Providers Act of 2008 (Passed over the President's veto: July 15, 2008; 122 Stat. 2494)

**H.R. 1019/P.L. 110–276**

To designate the United States customhouse building located at 31 Gonzalez Clemente Avenue in Mayaguez, Puerto Rico, as the "Rafael Martinez Nadal United States Customhouse Building. (July 15, 2008; 122 Stat. 2598)

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