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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, August 12, 2008
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2008–0080]

RIN 0579–AC81

Citrus Canker; Movement of Fruit From a Quarantined Area; Bag Markings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the interstate movement of fruit from an area quarantined for citrus canker to extend the temporary exception that allows fruit to be packed for interstate movement in bags that are clearly marked with only a limited distribution statement, if those bags are then packed in a box that is marked with both the limited distribution statement and the statement ''Limited Permit: USDA–APHIS–PPQ.'' We are extending the ending date for this temporary exemption from August 1, 2008, to August 1, 2010. This action provides for the continued use of existing inventories of bags in which regulated fruit are packed while maintaining safeguards against the movement of regulated fruit to commercial citrus-producing States.

DATES: This interim rule is effective July 31, 2008. We will consider all comments that we receive on or before September 29, 2008.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0080* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0080, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0080.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Senior Staff Officer, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737–1231; 301–734–8899.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by the bacterium *Xanthomonas citri* subsp. *citri* that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas. Citrus canker is only known to be present in the United States in the State of Florida.

The regulations to prevent the interstate spread of citrus canker are contained in §§ 301.75–1 through 301.75–14 of ''Subpart—Citrus Canker'' (7 CFR 301.75–1 through 301.75–17, referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide, among other things, conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing. These regulations are promulgated pursuant to the Plant Protection Act (7 U.S.C. 7701 *et seq.*).

On June 21, 2007, we published in the **Federal Register** (72 FR 34180–34191, Docket No. APHIS–2007–0022) a proposal to amend the citrus canker regulations by modifying the conditions under which fruit may be moved interstate from quarantined areas. Among other things, we proposed to require that boxes in which fruit are packed be marked with the statement ''Limited Permit: USDA–APHIS–PPQ'' in addition to the limited distribution statement, ''Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States,'' that the regulations already required. We also proposed that only fruit that has been treated, inspected, and found free of visible symptoms of citrus canker would be allowed to leave packinghouses in boxes marked with the limited permit statement.

We proposed adding the limited permit statement in order to help ensure that only fruit that was handled in accordance with all of the requirements in § 301.75–7 would be moved interstate. In addition, the limited permit statement indicates under whose authority the distribution of the fruit to commercial citrus-producing States is prohibited, thus further assuring that packers and handlers comply with the limited distribution requirement. It was also our understanding that boxes and other containers in which fruit would be moving interstate would be large enough to bear the proposed limited permit statement, by adding either a sticker or stamp to the existing inventory of boxes or containers.

We received comments on the proposed rule stating that bags of fruit, which are typically packed in boxes, also bore the limited distribution statement but that it was not practical to add the limited permit statement using a sticker or stamp, as the surface area of the label on bags was not large enough to accommodate the additional limited permit statement. Existing inventories of

bags would have to be destroyed, and new bags would have to be printed.

On November 19, 2007, we published in the **Federal Register** (72 FR 65171–65204, Docket No. APHIS–2007–0022) a final rule that required the limited permit and limited distribution statements on all boxes and containers in which regulated fruit is packaged for interstate movement, but provided a temporary exception for the use of bags that are marked only with the limited distribution statement. This exception was intended to allow industry to exhaust its existing inventory of bags pre-marked with the limited distribution statement.

The regulations in paragraph (a)(5)(ii) of § 301.75–7 have provided that, until August 1, 2008, fruit that meets all the requirements of § 301.75–7 may be packed in bags that are clearly marked with the statement ''Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States,'' as long as the bags of fruit are packed in boxes that are marked with both the limited permit and limited distribution statements. Fruit that does not meet all the requirements of § 301.75–7 may not be packed in either bags or boxes that are marked with the limited distribution statement.

We determined that this requirement would ensure that fruit moved interstate meets the requirements of § 301.75–7 and would provide protection against the distribution of fruit to commercial citrus-producing States because the bags must be packed in boxes that are marked with both the limited permit statement and the limited distribution statement, and because bagged fruit is not unloaded from the boxes in which it is shipped until it reaches the point of sale. Since the final rule became effective on November 19, 2007, there have been no instances where bags of fruit have been unloaded from the boxes in which they were shipped and distributed prior to the final point of sale. This requirement has provided an effective means of ensuring that the information regarding the permitted distribution of the fruit is apparent to enforcement personnel, distributors, and consumers.

Recently, regulated entities have informed us that the existing inventory of bags marked only with the limited distribution statement has not yet been depleted. They have requested an additional 2 years to use their remaining inventory. Given that the provisions allowing the use of the existing bags have been working successfully, this interim rule extends the temporary exception until August 1, 2010, to allow for the depletion of the existing inventory of such bags. This action maintains the current safeguards against the movement of regulated fruit to commercial citrus-producing States. Because this exception will eventually expire, when regulated entities deplete their existing inventory of bags marked only with the limited distribution statement, they will replenish their inventory with bags marked with both the limited permit statement and the limited distribution statement, thus making clear under whose authority the distribution of the fruit to commercial citrus-producing States is prohibited.

Immediate Action

This rule extends until August 1, 2010, a temporary exception that is scheduled to end on August 1, 2008. That exception allows fruit to be packed for interstate movement in bags if those bags are clearly marked with the limited distribution statement and if those bags are then packed in a container that is marked with both the limited permit statement and the limited distribution statement. Immediate action is warranted to alleviate what would otherwise be the negative economic effects on citrus packers who would have no practical option to comply with the regulations other than destroying their current inventory of bags pre-marked with the limited distribution statement and having replacement bags printed with both the limited permit and limited distribution statements. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

We are amending the regulations to extend the temporary exception that allows fruit to be packed for interstate movement in bags that are clearly marked with only a limited distribution statement, if those bags are then packed in a box that is marked with both the limited distribution statement and the statement ''Limited Permit: USDA–APHIS–PPQ.'' We are extending the ending date for this temporary exemption from August 1, 2008, to August 1, 2010. This action provides for the continued use of existing inventories of bags in which regulated fruit are packed while maintaining safeguards against the movement of regulated fruit to commercial citrus-producing States.

APHIS has determined that displaying the limited permit language on boxes or other containers containing fruit for interstate movement is a sufficient mitigation for controlling the distribution of this fruit for the interstate market. Since the final rule became effective on November 19, 2007, there have been no instances where bags of fruit have been unloaded from the boxes in which they were shipped and distributed prior to the final point of sale.

Additionally, the inventory of bags that had been printed prior to the November 19, 2007, final rule continues to be significant. The value of the current inventory of bags, in combination with the projected costs of printing new bags with the limited permit statement, has been estimated by industry to be up to $6 million. APHIS has determined that the adverse economic impact associated with having packers print new bags in order to comply with the regulations is not warranted.

The current inventory of bags printed with the limited distribution statement, but not the limited permit statement, is expected to be depleted by August 1, 2010.

APHIS does not believe small entities will be subject to significant economic impacts as a result of this interim rule, as its effect is to allow regulated entities to continue their current packing process. However, if the ending date of the exception was not extended, entities affected by the interim rule would not be able to deplete any current inventory of bags they may possess.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.75–7 [Amended]

■ 2. In § 301.75–7, paragraph (a)(5)(ii) is amended by removing the word ''2008'' and adding the word ''2010'' in its place.

Done in Washington, DC, this 28th day of July 2008.

Cindy J. Smith,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–17592 Filed 7–30–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1000

[Docket No. AMS–DA–07–0026; AO–14–A77, et al.; DA–07–02–A]

Milk in the Northeast and Other Marketing Areas; Interim Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends the manufacturing cost allowances and the butterfat yield factor used in the Class III and Class IV product-price formulas applicable to all Federal milk marketing orders. More than the required producers approved the issuance of the interim order as amended.

DATES: *Effective Date:* September 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branches, STOP 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail address: *jack.rower@usda.gov.*

SUPPLEMENTARY INFORMATION: This decision adopts provisions to amend the manufacturing (make) allowances for cheese, butter, nonfat dry milk (NFDM) and dry whey powder contained in the Class III and Class IV product-price formulas. Specifically, this decision adopts the following make allowances: cheese—$0.2003 per pound; butter—$0.1715 per pound; NFDM—$0.1678 per pound; and dry whey—$0.1991 per pound. This decision also increases the butterfat yield factor in the butterfat price formula from 1.20 to 1.211.

This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The AMAA provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the $750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During February 2007, the month the initial public hearing was held, the milk of 49,712 dairy farmers was pooled on the Federal order system. Of the total, 46,729 dairy farmers, or 94 percent, were considered small businesses. During the same month, 352 plants were regulated by or reported their milk receipts to be pooled and priced on a Federal order. Of the total, 186 plants, or 53 percent, were considered small businesses.

This interim final rule amends all orders by changing the make allowances

contained in the formulas used to compute component prices and the minimum class prices in all Federal milk orders. Specifically, the make allowance for butter increases from $0.1202 to $0.1715 per pound; the make allowance for cheese increases from $0.1682 to $0.2003 per pound; the make allowance for NFDM increases from $0.1570 to $0.1678 per pound; and the make allowance for dry whey increases from $0.1956 to $0.1991 per pound. The butterfat yield factor in the butterfat price formulas is increased from 1.20 to 1.211.

The adoption of these new make allowances serves to approximate the average cost of producing cheese, butter, NFDM and dry whey for manufacturing plants located in Federal milk marketing areas.

The established criteria for the make allowance changes are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing manufactured milk products. An economic analysis has been performed that discusses impacts of the amendments on industry participants including producers and manufacturers. It can be found on the AMS Dairy Web site at *http://www.ams.usda.gov/dairy.* Based on the economic analysis, we have concluded that the amendments will not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service (AMS) 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.

This interim final rule does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information that can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior Documents in This Proceeding

Notice of Hearing: Issued February 5, 2007; published February 9, 2007 (72 FR 6179).

Supplemental Notice of Hearing: Issued February 14, 2007; published February 20, 2007 (72 FR 7753).

Notice to Reconvene Hearing: Issued March 15, 2007; published March 21, 2007 (72 FR 13219).

Notice to Reconvene Hearing: Issued May 2, 2007; published May 8, 2007 (72 FR 25986).

Tentative Partial Final Decision: Issued June 16, 2008; published June 20, 2008 (73 FR 35306).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Northeast and other orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Northeast and other marketing orders:

(a) *Findings upon the basis of the hearing record.*

A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended on an interim basis, regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary and in the public interest to make these interim amendments to the Northeast and other orders effective [insert effective date]. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The interim amendments to this order are known to handlers. The tentative partial decision containing the proposed amendments to this order was issued on June 16, 2008.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim amendments effective on [insert effective date].

Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Northeast and other marketing orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended;

(3) The issuance of the interim orders amending the Northeast and other orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

List of Subjects in 7 CFR Part 1000

Milk marketing orders.

■ For the reasons set forth in the preamble, the Agricultural Marketing Service amends Chapter X of Title 7 of the Code of Federal Regulations as follows:

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

■ 1. The authority citation for 7 CFR part 1000 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 2. Section 1000.50 is amended by:
■ A. Revising paragraph (l);
■ B. Revising paragraph (m);
■ C. Revising paragraph (n)(2);
■ D. Revising paragraph (n)(3)(i);
■ E. Revising paragraph (o); and
■ F. Revising paragraph (q)(3).
The revisions read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month, less 17.15 cents, with the result multiplied by 1.211.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, less 16.78 cents and multiplying the result by 0.99.

(n) * * *

(2) Subtract 20.03 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) * * *

(i) Subtract 20.03 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572; and

* * * * *

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 19.91 cents, with the result multiplied by 1.03.

* * * * *

(q) * * *

(3) An advanced butterfat price per pound rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 17.15 cents from this average, and multiplying the result by 1.211.

Dated: July 25, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–1482 Filed 7–28–08; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

RIN 3150–AH78

[NRC–2005–0032]

Price-Anderson Act Financial Protection Regulations and Elimination of Antitrust Reviews; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: correcting amendment.

SUMMARY: On October 27, 2005 (70 FR 61885), the Nuclear Regulatory Commission (NRC) published a final rule revising its regulations to conform with the provisions of the Energy Policy Act of 2005 that, among other things, terminated the NRC's authority and responsibility to conduct antitrust reviews of future applications to construct or operate a nuclear reactor. Inadvertently, the final rule failed to remove some references to the NRC's authority and responsibility to conduct antitrust reviews. This rule removes those provisions.

DATES: This rule is effective on July 31, 2008, and is applicable to November 28, 2005, the date the original rule became effective.

FOR FURTHER INFORMATION CONTACT: Maxwell C. Smith, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1246, *e-mail: Maxwell.Smith@nrc.gov.*

SUPPLEMENTARY INFORMATION: This document removes references to the NRC's antitrust responsibilities that it possessed prior to the enactment of section 625 of the Energy Policy Act of 2005, Public Law 109–58. For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 50.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 2 and 50.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for Part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154).

Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also

issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.309, paragraph (b)(3)(ii) is removed; paragraph (b)(3)(iii) is redesignated as (b)(3)(ii), and paragraph (b)(3)(i) is revised to read as follows:

§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

* * * * *

(b) * * *

(3) * * *

(i) The time specified in any notice of hearing or notice of proposed action or as provided by the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/or petition, which may not be less than sixty (60) days from the date of publication of the notice in the **Federal Register**; or

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 3. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 50.41 [Amended]

■ 4. In § 50.41, paragraph (c) is removed and reserved.

■ 5. Section 50.42 is revised to read as follows:

§ 50.42 Additional standard for class 103 licenses.

In determining whether a class 103 license will be issued to an applicant, the Commission will, in addition to applying the standards set forth in § 50.40, consider whether the proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized.

Dated at Rockville, Maryland, this 21st day of July, 2008.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E8–17436 Filed 7–30–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2008–0009]

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Docket No. OP–1322]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 2008–0008]

Supervisory Guidance: Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision, Treasury (OTS) (collectively, the agencies).

ACTION: Final supervisory guidance.

SUMMARY: The agencies are publishing guidance regarding the supervisory review process for capital adequacy (Pillar 2) provided in the Basel II advanced approaches final rule, which was published in the **Federal Register** on December 7, 2007 (advanced approaches final rule). The supervisory review process described in this guidance outlines the agencies' standards for satisfying the qualification requirements provided in the advanced approaches final rule; addressing the limitations of the minimum risk-based capital requirements for credit risk and operational risk; ensuring that each institution has a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining appropriate capital levels; and encouraging each institution to improve its risk identification and measurement techniques. This supervisory guidance applies to any bank, savings association, or bank holding company [1] implementing the advanced approaches final rule.

DATES: This guidance is effective September 2, 2008. Comments on the Paperwork Reduction Act portion of this document may be submitted on or before September 2, 2008.

ADDRESSES: Comments on the Paperwork Reduction Act portion of this document should be addressed to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–NEW, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, identified by OP–1322, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and

[1] Collectively referred to in the guidance as ''banks''.

Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: 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 ''Basel II Supervisory Guidance'' 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.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. A copy of the comments may also be submitted to the OMB desk officer for the Agencies: By mail to U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503 or by facsimile to 202–395–6974, *Attention:* Federal Banking Agency Desk Officer.

FOR FURTHER INFORMATION CONTACT:

OCC: Akhtarur Siddique, Lead Expert, Risk Analysis, (202) 874–4665; or Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: David Palmer, Senior Supervisory Financial Analyst, Credit Risk Section, (202) 452–2904 or Sabeth Siddique, Assistant Director, Credit Risk Section, (202) 452–3861; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Gloria Ikosi, Senior Quantitative Risk Analyst, (202) 898–3997, or Ryan Sheller, Capital Markets Specialist, (202) 898–6614; Capital Markets Policy Section, Division of Supervision and Consumer Protection; or Mark L. Handzlik, Senior Attorney, (202) 898–3990, or Michael B. Phillips, Counsel, (202) 898–3581, Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Sonja White, Senior Project Manager, (202) 906–7857, Capital Policy, or Jonathan Jones, Senior Financial Economist, (202) 906–5729, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies issued a notice of proposed rulemaking (NPR) on September 25, 2006,[2] seeking comment on a new risk-based capital adequacy framework that requires some and permits other qualifying banks to use an internal ratings-based (IRB) approach to calculate regulatory capital requirements for credit risk and certain advanced measurement approaches (AMA) to calculate regulatory capital requirements for operational risk (together, the IRB and the AMA are referred to as the ''advanced approaches''). On December 7, 2007, the agencies published the advanced approaches final rule.[3] The advanced approaches final rule is based largely on a series of publications by the Basel Committee on Banking Supervision (BCBS) that culminated in a comprehensive release in June 2006, titled, ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (New Accord). The New Accord presents a three-pillar framework for determining risk-based capital requirements for credit risk, market risk, and operational risk (Pillar 1); supervisory review of capital adequacy (Pillar 2); and market discipline through enhanced public disclosure (Pillar 3).

On February 28, 2007, the agencies published in the **Federal Register** three separate documents proposing supervisory guidance related to the implementation of the advanced approaches.[4] Two of those documents provided guidance for certain aspects of Pillar 1, that is, for the IRB systems for determining the credit risk of retail and wholesale exposures, and other systems for equity and securitization exposures, and for the AMA for determining operational risk. The third document proposed guidance for Pillar 2. This final guidance document provides supervisory guidance only for Pillar 2, and it does not provide Pillar 1 guidance on the systems for determining regulatory capital requirements for credit risk or for determining regulatory capital requirements for operational risk. This document does not differ significantly from the proposed Pillar 2 guidance.

The agencies recognize that a number of institutions may need additional guidance to implement the advanced approaches final rule. Accordingly, consistent with the proposed guidance for Pillar 2, this guidance document highlights certain aspects of existing supervisory review that are being augmented or clarified to support the implementation of the supervisory assessment of overall capital adequacy under the advanced approaches final rule. In making this assessment, the agencies will consider, among other items, whether each institution (i) has satisfied the qualification requirements for implementing the advanced approaches; (ii) has a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining appropriate capital levels (internal capital adequacy assessment process—ICAAP); and (iii) maintains a satisfactory risk management and control structure, consistent with its capital position and overall risk profile.

The agencies received ten public comments on the proposed guidance

[2] 71 FR 55830.

[3] 72 FR 69288.

[4] 72 FR 9084.

from banking organizations, trade associations representing the banking or financial services industry, and other interested parties. Overall, the commenters supported the principles-based orientation of the guidance. However, some commenters recommended revisions to certain sections of the guidance that they viewed as overly prescriptive. One commenter expressed concern that the guidance appeared to suggest that increases in risk should result in greater capital, even if an institution already maintains a substantial capital buffer. To address this concern, the agencies have revised the guidance to clarify that an increase in risk may not necessarily require an increase in capital where the bank already holds capital at a level exceeding what its internal processes and supervisors regard as adequate.

Other commenters expressed concern regarding the agencies' position that liquidity risk should be addressed within the ICAAP. However, the proposed guidance was consistent with the agencies' view of liquidity risk as a material risk that can affect capital adequacy. The agencies clarified this section of the guidance to indicate that, within the ICAAP, institutions should consider the capital adequacy implications of liquidity risk. One commenter expressed the concern that each bank's ICAAP measures would be compared to (and reconciled with) Pillar 1 measures and to other institutions' ICAAP results. The agencies acknowledge that there may be limited comparability to Pillar 1 measures because a bank's ICAAP under Pillar 2 should be tailored to its individual risk profile, while Pillar 1 measures are based on certain common assumptions that may not apply to each individual bank. Accordingly, there is likely to be some limit to the comparisons that can be made across institutions.

Some commenters expressed confusion about the stress testing requirement in Pillar 1 and stress testing discussed in the Pillar 2 guidance. The agencies regard stress testing as a critical component in the identification and measurement of material risks. Although there are no prescriptive stress testing requirements in Pillar 2, institutions should use stress testing or similar exercises in their ICAAP to consider the consequences of unlikely but severe events and outcomes as an input to the capital adequacy assessment process.

Finally, one commenter indicated that it might not be practical to incorporate the ICAAP into bank management's decision-making process. The agencies believe that for the ICAAP to be meaningful and relevant, it should be consistent with the bank's other risk management practices.

Paperwork Reduction Act

A. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies are requesting comment on a proposed information collection. The Agencies are also giving notice that the proposed collection of information has been submitted to OMB for review and approval.

Comments are invited 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.

B. Proposed Information Collection

Title of Information Collection: Basel II Interagency Supervisory Guidance for the Supervisory Review Process (Pillar 2).

Frequency of Response: Event-generated.

Affected Public:

OCC: National banks.

Board: State member banks and bank holding companies.

FDIC: Insured state nonmember banks and certain subsidiaries of these entities.

OTS: Savings associations and certain of their subsidiaries.

Abstract: The notice sets forth a supervisory guidance document for implementing the supervisory review process (Pillar 2). The guidance was issued for 60 days of comment on February 28, 2007 (72 FR 9084). No comments were received on the burden estimates provided in that notice.

The Agencies believe that paragraphs 37, 41, 43, and 46 impose new information collection requirements. Section 37 states that banks should state clearly the definition of capital used in any aspect of ICAAP and document any changes in the internal definition of capital. Under section 41, banks should maintain thorough documentation of ICAAP. Section 43 specifies that boards of directors should approve the bank's ICAAP, review it on a regular basis, and approve any changes. Boards of directors are also required under Section 46 to periodically review the assessment of overall capital adequacy and to analyze how measures of internal capital adequacy compare with other capital measures (such as regulatory or accounting).

The agencies burden estimates for these information collection requirements are summarized below. Note that the estimated number of respondents listed below include both institutions for which the Basel II risk-based capital requirements are mandatory and institutions that may be considering opting-in to Basel II (despite the lack of any formal commitment by most of these latter institutions).

Estimated Burden:

OCC

Number of Respondents: 52.

Estimated Burden per Respondent: 140 hours.

Total Estimated Annual Burden: 7,280 hours.

Board

Number of Respondents: 15.

Estimated Burden per Respondent: 420 hours.

Total Estimated Annual Burden: 6,300 hours.

FDIC

Number of Respondents: 19.

Estimated Burden per Respondent: 420 hours.

Total Estimated Annual Burden: 7,980 hours.

OTS

Number of Respondents: 4.

Estimated Burden per Respondent: 420 hours.

Total Estimated Annual Burden: 1,680 hours.

The full text of the guidance follows:

Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Advanced Approaches Final Rule

1. This guidance supplements the final rule published jointly by the U.S.

Federal banking agencies[1] in the **Federal Register** on December 7, 2007 (advanced approaches rule).[2] The advanced approaches rule implements a new risk-based capital framework encompassing three pillars:

- Minimum risk-based capital requirements (Pillar 1);
- Supervisory review (Pillar 2); and
- Market discipline through enhanced public disclosures (Pillar 3).

The minimum risk-based capital requirements in Pillar 1 of the advanced approaches rule apply to a bank's calculation of minimum risk-based capital requirements for credit risk and operational risk.[3] If the bank is also subject to the market risk rule,[4] then the minimum risk-based capital requirements in that rule would apply.[5]

2. This document addresses the process for supervisory review in the advanced approaches rule. As described in this guidance, supervisory review covers three main areas:

- Comprehensive supervisory review of capital adequacy;
- Compliance with regulatory capital requirements; and
- Internal capital adequacy assessment process (ICAAP).

3. The process of supervisory review described in this guidance reflects a continuation of the longstanding approach employed by the agencies in their supervision of banks. However, because implementation of the advanced approaches rule affects certain aspects of supervisory review, this guidance highlights areas of existing supervisory review that are being augmented or more clearly defined to support implementation of the advanced approaches rule by U.S. banks.

4. The supervisory review process described in this document is intended to help ensure overall capital adequacy by:

- Confirming a bank's compliance with regulatory capital requirements;
- Addressing the limitations of minimum risk-based capital requirements as a measure of a bank's full risk profile—including risks not covered or not adequately addressed or quantified in Pillar 1;
- Ensuring that each bank is able to assess its own capital adequacy (beyond minimum risk-based capital requirements) based on its risk profile and business model; and
- Encouraging banks to develop and use better techniques to identify and measure risk.

5. This guidance neither supersedes nor alters the functioning of the existing Prompt Corrective Action requirements.[6] Similarly, this guidance does not affect any other requirements for compliance with existing regulations and supervisory standards related to risk-management practices or other areas. The supervisory review process described in this guidance supports the supervisors' existing ability to:

- Require an individual bank to take measures to prevent its capital from falling below the level needed to adequately support its risks; or
- Otherwise intervene to ensure that the bank's capital levels are adequate.

Comprehensive Supervisory Review of Capital Adequacy

6. Capital helps protect individual banks from insolvency, thereby promoting safety and soundness in the overall U.S. banking system. Minimum risk-based capital requirements establish a threshold below which a sound bank's risk-based capital must not fall. Risk-based capital ratios permit some comparative analysis of capital adequacy across banks because they are based on certain common assumptions. However, supervisors must perform a more comprehensive review of capital adequacy that considers the risks that are specific to each individual bank, including those not incorporated in risk-based capital requirements. In short, supervisors must ensure that a bank's overall capital does not fall below the level required to support its entire risk profile.

7. Supervisors generally expect banks to hold capital above their minimum risk-based capital levels, commensurate with their individual risk profiles, to account for all material risks. Going forward under the advanced approaches rule, supervisors will continue to review the overall capital adequacy of any bank through a comprehensive evaluation that considers all relevant available information. In determining the extent to which banks should hold capital in excess of risk-based capital minimums, supervisors will consider: The combined implications of a bank's compliance with qualification requirements for regulatory capital standards; the quality and results of a bank's own process for determining whether capital is adequate (the ICAAP); and the bank's risk-management processes, control structure, and other relevant information relating to the bank's risk profile and capital level.[7] This review is consistent with current supervisory practice, under which the agencies assess a bank's overall capital adequacy through a comprehensive evaluation of all relevant information.

8. The supervisory review process assesses whether a bank has a satisfactory process to determine that its overall capital is adequate, and that the bank maintains adequate capital on an ongoing basis, as underlying conditions change. For example, changes in a bank's risk profile or in relevant capital measures are areas of particular focus that are effectively addressed through the supervisory review process. Generally, a bank should hold more capital for material increases in risk that are not otherwise mitigated, unless the bank already holds capital at a level exceeding what its internal processes and supervisors would regard as adequate. Conversely, a bank may be able to reduce overall capital (to a level still above regulatory minimums) if the supervisory review supports the conclusion that the bank's inherent risk has materially declined or that it has been appropriately mitigated.

9. As a result of its comprehensive supervisory review, a bank's primary Federal supervisor may take action if it is not satisfied that capital is adequate. The primary Federal supervisor may require the bank to take actions to address identified supervisory concerns, which may include requiring the bank to hold additional capital to bring

[1] The Federal banking agencies are the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the Office of the Comptroller of the Currency; and the Office of Thrift Supervision; and are collectively referred to as ''the agencies,'' ''supervisors,'' or ''regulators'' in this guidance.

[2] 72 FR 69288. The advanced approaches rule as codified at 12 CFR part 3, Appendix C (national banks); 12 CFR part 208, Appendix F (state member banks); 12 CFR part 225, Appendix G (bank holding companies); 12 CFR part 325 Appendix D (state nonmember banks); 12 CFR part 567, Appendix C (savings associations).

[3] The term ''bank'' as used in this guidance includes banks, savings associations and bank holding companies. The terms ''bank holding company'' and ''BHC'' refer only to bank holding companies regulated by the Federal Reserve Board and do not include savings and loan holding companies regulated by the Office of Thrift Supervision.

[4] 12 CFR part 3, Appendix B (national banks), 12 CFR part 208, Appendix E (state member banks), 12 CFR part 225, Appendix E (bank holding companies), 12 CFR part 325, Appendix C (state nonmember banks). OTS intends to codify a market risk capital rule for savings associations at 12 CFR part 567, Appendix D.

[5] If a bank is subject to both the advanced approaches rule and the market risk rule, then the bank is subject to this guidance. If a bank is subject only to the market risk rule, it is not subject to this guidance.

[6] See 12 CFR part 6 (national banks); 12 CFR part 208 (state member banks); 12 CFR 325.103 (state nonmember banks); 12 CFR part 565 (savings associations). In addition, savings associations remain subject to the tangible capital requirement at 12 CFR 567.2(a)(3) and 567.9.

[7] See Part III, section 22(a)(1)–(3) of the advanced approaches rule.

capital to levels that the supervisor deems commensurate with the bank's risk profile. In addition, the primary Federal supervisor may, under its enforcement authority, require a bank to modify or enhance risk-management and internal-control processes, reduce its exposure to risk, or take any action deemed necessary to address identified supervisory concerns.

Compliance With Regulatory Capital Requirements

10. In order to use the advanced approaches rule to calculate minimum risk-based capital requirements, a bank must meet certain process and systems requirements. As part of the supervisory review process, the agencies will ensure that each bank meets these requirements. The advanced approaches rule provides an explanation of these qualification requirements for any systems and processes used.

11. A bank using the advanced approaches rule must comply with the rule's qualification requirements for both initial and ongoing qualification. A bank that falls out of compliance with the qualification requirements would be required to establish a plan to return to compliance that satisfies its primary Federal supervisor.

12. Supervisors will ensure that each bank using the advanced approaches rule complies with the qualification requirements both at the consolidated level and at any subsidiary bank that uses the advanced approaches rule. Thus, each bank that applies the advanced approaches rule must have appropriate risk-measurement and risk-management processes and systems that meet the rule's qualification requirements.

The ICAAP

13. The qualification requirements in the advanced approaches rule state that ''a bank must have a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.'' [8] Because minimum risk-based capital requirements are based on certain assumptions and address only a subset of risks faced by an individual bank, each bank must conduct an internal assessment of whether its capital is adequate, given its risk profile. A bank must conduct this assessment, using the ICAAP, in addition to its calculation of minimum risk-based capital requirements.[9] Accordingly, a bank's capital should exceed the level required by its minimum risk-based capital requirements, and also should be adequate according to its own ICAAP.

14. The fundamental objectives of a sound ICAAP are:

- Identifying and measuring material risks;
- Setting and assessing internal capital adequacy goals that relate directly to risk; and
- Ensuring the integrity of internal capital adequacy assessments.

15. Assessing overall capital adequacy through the ICAAP requires thorough identification of all material risks, measurement of those that can be reliably quantified, and systematic assessment for the limitations of minimum risk-based capital requirements. The ICAAP should address the capital implications arising from both on- and off-balance sheet positions, as well as from provisions of explicit or implicit support. Material risks include those that in isolation do not appear to be material at first, but when combined with other risks could lead to material losses. In this manner, the ICAAP should contribute broadly to the development of better risk management within the organization at both the individual entity and consolidated levels.

16. Each bank implementing the advanced approaches rule should have an ICAAP that is appropriate for its unique risk characteristics and should not rely solely upon the assessment of capital adequacy at the parent company level. This does not preclude the use of a consolidated ICAAP as an important input to a subsidiary bank's own ICAAP, provided that each entity's board and senior management ensure that the ICAAP is appropriately modified to address the unique structural and operating characteristics and risks of the subsidiary bank.

17. In general, the ICAAP will likely go beyond the assumptions built into minimum risk-based capital requirements. However, in certain instances a bank's ICAAP—when supported by proper justification and evidence—may build upon and utilize the methods, practices, and results it uses to determine minimum risk-based capital requirements. For example, in developing the ICAAP, a bank may choose to use data, ratings, or estimates from internal ratings-based approaches for credit risk; or a bank may choose to use the advanced measurement approaches as the basis for its internal assessment of operational risk. Furthermore, although the ICAAP should be a distinct and comprehensive process that produces its own capital measures, in some cases a bank may be able to demonstrate that minimum risk-based capital measures appropriately reflect certain aspects of a bank's risk profile and thus are appropriate for use in its ICAAP.

18. The design and operation of any systems used to meet the ICAAP requirements will likely differ, depending on the complexity of each bank's operations and risk profile. Many banks employ ''economic capital'' measures for some elements of risk management, such as limit setting, or for evaluating performance or determining aggregate capital needs.[10] In some cases, economic capital measures may relate directly to a bank's assessment of capital adequacy under the ICAAP; however, in other cases, a bank may be using economic capital measures that are not intended for capital adequacy assessments. In the latter case, a bank does not necessarily need to change its existing process or systems, but it may need to build upon or adjust its economic capital measures for use in the ICAAP and the bank would have to demonstrate clearly how it does so. Notably, economic capital is not the only means to meet the ICAAP requirement. Regardless of the specific implementation method(s) chosen, the bank's ICAAP should address the three ICAAP objectives listed in paragraph 14.

Identifying and Measuring Material Risks

19. The first objective of the ICAAP is to identify all material risks. Risks that can be reliably measured and quantified should be treated as rigorously as data and methods allow. The appropriate means and methods to measure and quantify those material risks are likely to vary across banks. The key point is for a bank to be able to identify all material risks and measure those that can be reliably quantified in order to determine how those risks affect the bank's overall capital adequacy.

20. Some of the risks to which a bank may be exposed include credit risk,

[8] Part III, section 22(a) (1) of the advanced approaches rule.

[9] Should the primary Federal supervisor exempt a bank from application of the advanced approaches rule based upon a written determination that the application of the rule is not appropriate in light of the bank's asset size, level of complexity, risk profile, or scope of operations, such exemption would likewise apply to the advanced approaches requirement that the bank have an ICAAP, but would not automatically exempt the bank from other regulatory requirements or supervisory expectations to maintain a satisfactory internal process to assess capital adequacy.

[10] The term ''economic capital'' generally refers to the capital attributed to cover the economic effects of a bank's risk taking activities. Within the banking industry, economic capital takes on a variety of definitions and is applied in a number of ways at the product, business-line, and consolidated institution level.

market risk, operational risk, interest rate risk in the banking book, and liquidity risk (as outlined below).[11] Other risks, such as reputational risk, business or strategic risk, and country risk may also be material for a bank and, in such cases, should be given equal consideration to the more formally defined risk types.[12] Additionally, if a bank employs risk mitigation techniques it should understand the risk to be mitigated and the potential effects of that mitigation (including enforceability and effectiveness).

• *Credit risk:* A bank should have the ability to assess credit risk at the portfolio level in addition to the exposure or counterparty level. In making this assessment, the bank should be particularly attentive to identifying any credit risk concentrations and ensuring that their effects are adequately assessed. The bank should consider the various types of dependence among exposures, and the credit risk effects of extreme outcomes, stress events, and shocks to assumptions about portfolio and exposure behavior. The bank also should carefully assess concentrations in counterparty credit exposures, including those that result from trading in less liquid markets, and determine the effect that these exposures might have on capital adequacy.

• *Market risk:* A bank should be able to identify risks in trading and capital markets activities resulting from a movement in market prices and rates. This determination should consider factors such as illiquidity of instruments, leverage, concentrated positions, one-way markets, non-linear or deep out-of-the money option positions as well as embedded optionality, and the potential for significant shifts in correlations or other types of dependence structures. Assessments that incorporate extreme events, idiosyncratic variations, credit migrations or changes in credit spreads, defaults, and shocks should also be tailored to capture key portfolio vulnerabilities.

• *Operational risk:* A bank should be able to assess the potential risks resulting from inadequate or failed internal processes, people, and systems, as well as from events external to the bank.[13] This assessment should include the effects of extreme events and shocks relating to operational risk. Extreme events could include a substantial or sudden increase in failed processes across business units or a significant incidence of failed internal controls.

• *Interest rate risk in the banking book:* A bank should incorporate interest rate risk in the banking book into its assessment of capital adequacy. In making this assessment, the bank should identify the risks associated with changes in interest rates that impact both on- and off-balance sheet exposures in the banking book from a short- and long-term perspective. This might include the impact of changes due to parallel yield curve shocks, yield curve twists, yield curve inversions, changes in the adjustment of rates earned and paid on different financial instruments with otherwise similar repricing characteristics (basis risk), and other relevant scenarios including some that incorporate stress events, extreme outcomes, and shocks to assumptions. The bank should be able to support any assumptions it has made with respect to the behavioral characteristics of servicing rights, non-maturity deposits, positions subject to prepayment risk, and other assets and liabilities, especially for those exposures characterized by embedded optionality.

• *Liquidity risk:* A bank should incorporate liquidity risk into the assessment of its capital adequacy. A bank should evaluate whether capital is adequate given its own funding liquidity profile and given the liquidity of the markets in which it operates. This assessment should incorporate various types of liquidity environments and include an evaluation of the potential for a material disruption in the sources of liquidity typically relied on by the bank as a result of bank-specific as well as systemic events. A bank should consider the capital adequacy implications of lacking a well-diversified funding base, relying predominantly on wholesale credit markets for its funding, or relying heavily on volatile funding sources. A bank involved in securitization activities should consider the capital adequacy implications of relying on market liquidity to distribute warehoused assets, including the potential for disruptions that would cause a bank to bring certain items onto its balance sheet. In its assessment of the impact of liquidity risk on capital adequacy, the bank should also challenge assumptions built into its definition of liquid products.

The risk factors discussed above are not an exhaustive list of those affecting any given bank. A well-developed ICAAP should include an assessment of all relevant factors that present a material source of risk to capital, and should account for concentrations within each risk type.

21. A bank should assess whether its capital is sufficient to absorb any losses that may arise from activities that expose the bank to multiple risks within and across business lines or create concentrations across risk types.[14] A bank should recognize that losses could arise in several risk dimensions at the same time, stemming from the same event or a common set of factors. For example, a localized natural disaster could generate losses from credit, market, and operational risks. Additionally, the ICAAP should focus on any complex activities that give rise to multiple risks, and to their interaction. These activities can involve instruments that may be complex, illiquid, or difficult to value. For example, securitization activities expose a bank to a variety of risks that can affect capital adequacy at the same time, including credit, market, liquidity, and reputational risks; structured products can have multiple embedded risks that interact in complex ways and can present losses in multiple risk areas across different business lines at the same time. In general, the ICAAP should include an assessment of the potential effects of convergence of risks within and across business lines and their combined impact on capital adequacy.

22. The ICAAP should take into consideration the linkage between capital adequacy and damage or potential damage to a bank's reputation. A bank might incur losses affecting capital adequacy because of damage to its reputation, or the bank might incur losses trying to prevent or mitigate damage to its reputation. In assessing the linkage between reputational risk and capital adequacy, a bank should assess risks associated with both on-balance sheet and off-balance sheet exposures and activities, as well as risks associated with affiliates, subsidiaries,

[11] Examination policies and procedures from each agency provide extensive guidance on the major risk categories. A bank's risk management processes, including its ICAAP, should be consistent with each corresponding agency's existing body of guidance, as well as with relevant interagency guidance.

[12] For example, a bank may be engaged in businesses for which periodic fluctuations in activity levels, combined with relatively high fixed costs, have the potential to create unanticipated losses that must be supported by adequate capital. Additionally, a bank might be involved in strategic activities (such as expanding business lines or engaging in acquisitions) that introduce significant elements of risk and for which additional capital would be appropriate.

[13] In many cases, a bank may capture legal risk within operational risk. Regardless of whether it is classified as its own risk type or included within another risk type, a bank should understand the impact of legal risk on capital adequacy.

[14] Concentrations may include exposures or groups of exposures that have the potential to produce losses large enough to threaten an institution's health or materially change its risk profile.

counterparties, clients, or other third parties. The assessment should include activities for which the bank acts as a sponsor or advisor, and cases in which the bank provides explicit or implicit support. A bank should also assess the risk of having to assume the losses of a third party to prevent or mitigate damage to the bank's reputation.

23. The bank's ICAAP should assess risks associated with new products, markets and activities. In making this assessment, the bank should account for any uncertainty in the valuation of new products, whether by the bank or a third party, which could be more challenging if the new products are particularly complex or do not have liquid markets. The ICAAP should take into consideration changing dynamics in markets for new products and uncertainty as to how new markets might respond to stress conditions. The ICAAP should also assess the challenges presented by new business lines or strategic acquisitions in terms of their impact on capital adequacy.

24. All measurements of risk should incorporate both quantitative and qualitative elements. Generally, a quantitative approach should form the foundation of a bank's measurement framework. Quantitative approaches that focus on most likely outcomes for budgeting, forecasting, or performance measurement purposes may not be fully applicable for assessing capital adequacy, which also should take less likely outcomes into account.

25. In some cases, quantitative tools can include the use of large historical databases. These databases are most applicable when they are fully reflective of all relevant risk characteristics, incorporate appropriate variability, and have adequate granularity and history; for example, they should include data based not just on benign but also more stressful economic periods or operating environments. When internal data are not available or do not reflect a bank's risk profile, a bank may rely on external data for risk measurements, but should ensure that external data have applicability to the bank's own activities and risk profile.

26. The confidence a bank places in the results of its ICAAP should depend on the quality and robustness of the associated risk assessments. When measuring risks, a bank should understand that estimation and measurement errors are common, and in many cases are themselves difficult to quantify. In general, the bank's ICAAP should reflect an appropriate level of conservatism to account for uncertainty in risk identification, risk mitigation or control, and risk quantification. In most cases, appropriate conservatism will result in greater capital needs.

27. In many cases, risk assessments may rely to a significant degree on models that use both qualitative and quantitative inputs. The use of models can enhance the ICAAP, but it can also introduce challenges. Specifically, models may fail to work as intended or expected, or they may be used inappropriately for purposes not considered in their initial design. These concerns apply to models purchased from third-party vendors, as well as to models that are internally developed. A bank using models as part of the ICAAP should recognize these possibilities and ensure that appropriate controls, such as rigorous initial and ongoing validation and independent review, are in place to mitigate and manage any risks related to model use. A bank should apply appropriate conservatism to compensate for any risks associated with models. Additional conservatism may be necessary to account for any uncertainties in the use of models to value on- or off-balance sheet exposures or for imperfections and volatility in market-based valuations. Additional conservatism may be necessary to compensate for increased risk, for example, when models or applications are more complex, or when they have a more significant influence on the ICAAP's results.

28. To gain a fuller understanding of the risks beyond more typical quantitative measures—such as those based on certain parameter behavior or distributional assumptions—a bank should also rely on other types of quantitative exercises. For example, stress testing, including scenario analysis and sensitivity analysis, is an additional quantitative exercise that a bank should regularly apply to complement more typical quantitative measures. A bank may need to rely more heavily on such exercises when internal or demonstrably relevant external data are scarce. These exercises can help gauge the consequences of outcomes that are unlikely, but would have a considerable impact on safety and soundness.

29. In addition to quantitative approaches for assessing risk, a bank should also employ qualitative approaches that incorporate management experience and judgment. Qualitative measures should be employed not only for those cases in which scarce data or unproven quantitative methods limit a full assessment of risk, but also more generally to complement even sophisticated quantitative estimates based on extensive and high-quality data.

30. A bank should be cognizant that both quantitative and qualitative approaches have their own inherent biases and assumptions that affect risk assessment. Accordingly, a bank should recognize the biases and assumptions embedded in, and the limitations of, the approaches used.

31. An effective ICAAP is comprehensive, assessing material risks across the entire bank. Each bank should have systems capable of aggregating across risk types. A bank should understand the challenges presented by risk aggregation and the inherent uncertainty in quantitative estimates used to aggregate risks (including the difficulty in estimating concentrations across risk types as noted in paragraph 21). For example, a bank is encouraged to consider the various interdependencies among risk types, the different techniques used to identify such interdependencies, and the channels through which those interdependencies might arise—across risk types, within the same business line, and across different business lines. Consistent with paragraph 26, any associated uncertainty in aggregating capital estimates across risk types and business lines should translate into greater capital needs.

32. Management should be systematic and rigorous in considering possible effects of diversification. Assumptions about diversification should be identified at each level where diversification is recognized, supported by analysis and evidence, and remain robust over time and under different market environments, including stressed market conditions. For example, a bank calculating the dependence structure within or among risk types should consider data quality and consistency, such as the volatility of correlations over time and during periods of market stress. In general, a bank should consider a wide range of possible adverse outcomes that have the potential to affect multiple risks at the same time and to limit expected diversification benefits. Consistent with paragraph 26, uncertainty in diversification estimates should translate into greater capital needs.

Setting and Assessing Capital Adequacy Goals That Relate to Risk

33. The second objective of the ICAAP is to set and assess capital adequacy goals in relation to all material risks. Under this objective, a bank should have a well-defined process to translate estimates of risk into an assessment of capital adequacy. In practice, capital

adequacy goals may be reflected in various ways. A bank may choose to hold capital in excess of the level internal processes would regard as adequate for any number of business or strategic reasons. Excess capital may fluctuate over time. Each bank should recognize that minimum risk-based capital requirements represent a floor below which the bank's overall capital level must not fall, even if bank management believes that there is justification to maintain less capital.

34. A bank may establish its risk-tolerance level to reflect a desired level of risk coverage and/or a certain degree of creditworthiness, such as an explicit solvency standard. Accordingly, assessments of risk and capital adequacy should reflect the chosen risk tolerance of the bank. Because risk profiles and choices of risk tolerance may differ across banks, capital targets may also differ. However, if for internal capital adequacy purposes a bank were to choose to apply a level of risk coverage or a solvency standard that is less than that implied by minimum risk-based capital requirements, the bank would have to be able to: Identify and support the rationale for a lower solvency standard; demonstrate clearly that its ICAAP adequately addresses low-probability, high-severity events; and ensure that there is sufficient capital to absorb losses associated with such extreme events. Regardless of the solvency standard used, supervisors expect banks to hold capital at a level above that established by minimum risk-based capital requirements.

35. A bank should consider external conditions and other factors that influence its overall capital adequacy, including the potential impact of contingent exposures and changing economic and financial environments. The ICAAP should address the potential impact of broader market or systemic events, which could cause risk to increase beyond the bank's chosen risk-tolerance level, and have appropriate contingency plans for such outcomes. Such exercises may include stress testing, such as scenario and sensitivity analysis; however, in all cases they should incorporate both quantitative and qualitative methods.[15]

36. Through the ICAAP, a bank should ensure that adequate capital is held against all material risks, and that capital remains adequate not just at a point in time, but over time, to account for changes in a bank's strategic direction, evolving economic conditions, and volatility in the financial environment. A bank should be cognizant of the impact of market-driven valuations on the volatility of capital. Moreover, recognizing the sensitivity of capital to economic and financial cycles should be a critical component of a bank's planning for current and future capital needs. For example, a bank should consider the potential effects of a sudden, sustained economic downturn. The level of capital deemed adequate by a bank given its ICAAP might also be influenced by the bank's intention to hold additional capital to mitigate the impact of volatility in capital requirements, its need to support acquisition plans, or its decision to accommodate market perceptions of capital adequacy and their impact on funding costs.

37. In analyzing capital adequacy, a bank should evaluate the capacity of its capital to absorb losses. Because various definitions of capital are used within the banking industry, each bank should state clearly the definition of capital used in any aspect of its ICAAP. Since components of capital are not necessarily alike and have varying capacities to absorb losses, a bank should be able to demonstrate the relationship between its internal capital definition and its assessment of capital adequacy. If a bank's definition of capital differs from the regulatory definition, the bank should reconcile such differences and provide an analysis to support the inclusion of any capital instruments that are not recognized under the regulatory definition. Although common equity is generally the predominant component of a bank's capital structure, a bank may be able to support the inclusion of other capital instruments in its internal definition of capital if it can demonstrate a similar capacity to absorb losses. The bank should document any changes in its internal definition of capital, and the reason for those changes.

38. An effective capital plan recognizes a bank's short- and long-term capital needs and objectives. Accordingly, a bank should evaluate whether long-run capital targets are consistent with short-run goals, based on current and planned changes in risk profiles. In developing its capital plan, the bank also should recognize that accommodating additional capital needs can require significant lead time, can be costly, or can be quite difficult, especially during downturns or other times of stress. A bank should have contingency plans to address unexpected capital needs.

Ensuring Integrity of Internal Capital Adequacy Assessments

39. A satisfactory ICAAP comprises a complete process with proper oversight and controls, and not just an ability to carry out certain capital calculations. The various elements of a bank's ICAAP should complement and reinforce one another to achieve the overall objective of assessing capital adequacy, taking into account the bank's risk profile.

40. A bank should maintain adequate internal controls to ensure the integrity, objectivity, and consistent application of the ICAAP. Decisions regarding the design and operation of the ICAAP should reflect sound risk management, and should not be unduly influenced by competing business objectives. A bank should identify any deficiencies in its ICAAP and plan and take remedial actions to address the deficiencies in a timely manner. The principles underlying a bank's ICAAP should be incorporated into policies that are reviewed and approved at appropriate levels within the organization.

41. A bank should maintain thorough documentation of its ICAAP to ensure transparency. At a minimum, this should include a description of the bank's overall capital-management process, including the committees and individuals responsible for the ICAAP; the frequency and distribution of ICAAP-related reporting; and the procedures for the periodic evaluation of the appropriateness and adequacy of the ICAAP. In addition, where applicable, ICAAP documentation should demonstrate the bank's sound use of quantitative methods (including model selection and limitations) and data-selection techniques, as well as appropriate maintenance, controls, and validation. A bank should document and explain the role of third-party and vendor products, services and information—including methodologies, model inputs, systems, data, and ratings—and the extent to which they are used within the ICAAP. A bank should have a process to regularly evaluate the performance of third-party and vendor products, services and information. As part of the ICAAP documentation, a bank should document the assumptions, methods,

[15] The use of stress testing in identifying and measuring risk exposures and assessing capital adequacy in the ICAAP is not the same as the Pillar 1 stress testing requirement related to minimum risk-based capital requirements and qualification requirements (as described in the advanced approaches rule). The stress testing encouraged in the ICAAP guidance is intended to focus on overall capital needs and their possible fluctuations, not just fluctuations in minimum risk-based capital requirements. However, work conducted to meet the stress testing requirement under Pillar 1 may have application to or may provide a starting point for any stress testing banks decide to conduct as part of the ICAAP.

data, information, and judgment used in its quantitative and qualitative approaches.

42. The ICAAP should be enhanced and refined over time, with learning and experience (both quantitative and qualitative) contributing to its improvement. The ICAAP should evolve with changes in the risk profile and activities of the bank, as well as with advances in risk measurement and management practices. For example, a bank should incorporate in its ICAAP the introduction of new products and business lines and activities to ensure that the bank's capital plan is responsive to changes in the operational and/or business environment.

43. The board of directors and senior management have certain responsibilities in developing, implementing, and overseeing the ICAAP. The board should approve the ICAAP and its components. The board or its appropriately delegated agent should review the ICAAP and its components on a regular basis, and approve any revisions. That review should encompass the effectiveness of the ICAAP, the appropriateness of risk tolerance levels and capital planning, and the strength of control infrastructures. Senior management should continually ensure that the ICAAP is functioning effectively and as intended, under a formal review policy that is explicit and well documented. Additionally, a bank's internal audit function should play a key role in reviewing the controls and governance surrounding the ICAAP on an ongoing basis.

44. Each bank should ensure that the components of its ICAAP, including any models and their inputs, are subject to the bank's validation policies and procedures. Validation should be independent of the development, implementation, and operation of the ICAAP components, or the validation process should be subject to an independent review of its adequacy and effectiveness. Validation is generally defined as an ongoing process that includes, but is not limited to, the collection and review of developmental evidence, process verification, benchmarking, outcomes analysis, and monitoring activities used to confirm that processes are operating as designed. Validation policies and procedures should reflect the bank's business, structure, and sophistication, as well as the relative importance of each component of the ICAAP. Accordingly, a bank is encouraged to consult the agencies' existing guidance on validation.

45. A bank's ICAAP should be aligned with and be a part of the bank's wider internal governance structure and overall risk-management processes. The ICAAP should not be viewed as simply a compliance exercise. Rather, it is a dynamic and evolving process that is used by a bank to provide internal assurance that capital is adequate given the bank's risk profile. Management is responsible for ensuring that the ICAAP is fully consistent with the overall risk management framework of the bank. Information derived through the ICAAP process should influence decision making at both the consolidated and individual business-line levels, and be used to inform other management processes related to risk assessment, business planning and forecasting, pricing strategies, and performance measurement.

46. As part of the ICAAP, the board or its delegated agent, as well as appropriate senior management, should periodically review the resulting assessment of overall capital adequacy. This review, which should occur at least annually, should include an analysis of how measures of internal capital adequacy compare with other capital measures (such as regulatory, accounting-based or market-determined). Upon completion of this review, the board or its delegated agent should determine that, consistent with safety and soundness, the bank's capital takes into account all material risks and is appropriate for its risk profile. However, in the event a capital deficiency is uncovered (that is, if capital is not consistent with the bank's risk profile or risk tolerance) management should consult and adhere to formal procedures to correct the capital deficiency.

Dated: July 14, 2008.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 15, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, the 15th day of July, 2008.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: July 14, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E8–17555 Filed 7–30–08; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0821; Directorate Identifier 2008–NE–20–AD; Amendment 39–15619; AD 2008–16–01]

RIN 2120–AA64

Airworthiness Directives; General Electric Co. (GE) CF34–8E Series Turbofan Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for GE CF34–8E series turbofan engines with certain part number (P/N) full authority digital engine controls (FADECs) installed. This AD requires reprogramming the FADEC software from version 8Ev5.40 to an FAA-approved software version. This AD results from six loss of thrust control events from the same software fault scenario. We are issuing this AD to prevent loss of thrust control and controllability of the airplane.

DATES: This AD becomes effective August 15, 2008.

We must receive any comments on this AD by September 29, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Docket Management Facility, Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kenneth.steeves@faa.gov;* telephone (781) 238–7765; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: We have received reports of six events on CF34–8E turbofan engines that resulted in loss of thrust control. On March 2, 2008, the No. 1 engine on an ERJ 170 experienced a fluctuation of the interstage turbine temperature during decent that resulted in changes in thrust. The crew shut down the engine. On May 12, 2008, an ERJ 170 was at cruise when the ENG 2 Control Fault posted to the Engine Indicating and Crew Alerting System (EICAS) display. The FADEC software commanded the number two engine to idle and there was no response to throttle movement by the crew. The crew shut down the engine. Four more similar events occurred on May 29, June 10, June 14, and July 10, 2008, all resulting in loss of thrust control with an ENG 1 or 2 Control Fault message posted to the EICAS. Our investigation revealed that all events resulted from the same software fault scenario. We attribute the fault to FADEC software version 8Ev5.40. This condition, if not corrected, could result in loss of thrust control and controllability of the airplane.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other GE CF34–8E series turbofan engines of the same type design. For that reason, we are issuing this AD to prevent loss of thrust control and controllability of the airplane.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2008–0821; Directorate Identifier 2008–NE–20–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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

Examining the AD Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Under 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. The FAA amends § 39.13 by adding the following new airworthiness directive:

2008–16–01 General Electric Co.: Amendment 39–15619. Docket No. FAA–2008–0821; Directorate Identifier 2008–NE–20–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 15, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Co. (GE) CF34–8E series turbofan engines with full authority digital electronic controls (FADECs), part numbers (P/N) 4120T00P47, 4120T00P48, 111E9320G48, or 111E9320G49, installed. These engines are installed on, but not limited to, Empresa Brasileira de Aeronautica S.A. (EMBRAER) ERJ 170 series airplanes.

Unsafe Condition

(d) This AD results from six loss of thrust control events from the same software fault scenario. We are issuing this AD to prevent loss of thrust control and controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within

660 flight hours time-in-service after the effective date of this AD, unless the actions have already been done.

Removal of CF34–8E FADEC Software Version 8Ev5.40

(f) For CF34–8E engines with a FADEC, P/N 4120T00P47, 4120T00P48, 111E9320G48, or 111E9320G49, installed, do either of the following:

(1) Replace the FADEC, P/N 4120T00P47, 4120T00P48, 111E9320G48, or 111E9320G49, with a FADEC P/N not listed in paragraph (c) of this AD. Or,

(2) For CF34–8E engines with a FADEC, P/N 4120T00P47, 4120T00P48, 111E9320G48, or 111E9320G49, installed, reprogram the FADEC software to an FAA approved version.

Installation Prohibition

(g) After the effective date of this AD, don't install any FADEC, P/N 4120T00P47, 4120T00P48, 111E9320G48, or 111E9320G49, onto any CF34–8E engine.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) General Electric Alert Service Bulletin CF34–8E–AL S/B 73–A0019, dated June 17, 2008, contains information on removing software version 8Ev5.40 and installing an FAA-approved FADEC software version.

(j) Contact Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kenneth.steeves@faa.gov;* telephone (781) 238–7765; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(k) None.

Issued in Burlington, Massachusetts, on July 23, 2008.

Carlos Pestana,

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

[FR Doc. E8–17422 Filed 7–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24825; Directorate Identifier 2006–NE–17–AD; Amendment 39–15623; AD 2008–16–05]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (RRD) Dart 528, 529, 532, 535, 542, and 552 Series Turboprop Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for RRD Dart 528, 529, 532, 535, 542, and 552 Series turboprop engines. That AD currently requires a dimensional inspection of the intermediate pressure turbine (IPT) disk or an ultrasonic inspection of the seal arm contact between the high pressure turbine (HPT) and the IPT disk seal arm and reworking or replacing the IPT disk if worn beyond acceptable limits. This AD continues to require those actions. This AD results from us including an incorrect engine model and omitting an engine model from the applicability of the existing AD. We are issuing this AD to prevent HPT disk failure, which can result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective September 4, 2008. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations on February 26, 2007 (72 FR 2610, January 22, 2007).

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2007–02–07, Amendment 39–14894 (72 FR 2610, January 22, 2007), with a proposed AD. The proposed AD applies to RRD Dart 528, 529, 532, 535, 542, and 552 Series turboprop engines. We published the proposed AD in the **Federal Register** on November 9, 2007 (72 FR 63508). That action proposed to require deleting the Dart 555 series engines from the applicability paragraph of the proposed AD, and to list the Dart 552 series turboprop engines in the applicability paragraph of the proposed AD.

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 provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Correct a Typographical Error in the Costs of Compliance Section

One commenter asks us to change ''turbofan engines'' in the Costs of Compliance Section to ''turboprop engines.'' The commenter states that the Dart engine is a turboprop engine, not a ''turbofan engines.''

We agree. We changed ''turbofan engines'' in the Costs to Comply section to ''turboprop engines.''

Request To Add Airplane Models to the Applicability Paragraph

The same commenter states that paragraph (c) Applicability, appears to omit some models of airplanes that might use the engines. The commenter states that the Dart engine is installed by supplemental type certificate on certain General Dynamics Convair model airplanes, and that those airplanes can still be found in the FAA's registry database.

We partially agree. We must identify in paragraph (c) Applicability, all engine models that are affected by this AD. We list the aircraft models that might use those engines to help readers to determine if they might have an affected engine. However, for clarity, we

have changed the applicability paragraph to include the General Dynamics Convair models that might use these engines under supplemental type certificates.

Change of Compliance End Dates

We changed the compliance end dates in paragraphs (f)(2)(i) from June 30, 2007, to June 30, 2008, and paragraph (f)(2)(ii) from April 30, 2008, to July 31, 2008. We changed the compliance dates to avoid unnecessary grounding of aircraft while still meeting our safety concerns.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 30 RRD Dart 528, 529, 532, 535, 542, and 552 series turboprop engines installed on airplanes of U.S. registry. We also estimate that it will take about 50 work-hours per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $50,000 per IPT disk. We estimate that 25 percent, or eight engines, will require IPT disk replacement. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $500,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14894 (72 FR 2610, January 22, 2007), and by adding a new airworthiness directive, Amendment 39–15623, to read as follows:

2008–16–05 Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc): Amendment 39–15623. Docket No. FAA–2006–24825; Directorate Identifier 2006–NE–17–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 4, 2008.

(b) This AD supersedes AD 2007–02–17, Amendment 39–14894.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Dart 528, 529, 532, 535, 542, and 552 series turboprop engines. These engines are installed on, but not limited to, Hawker Siddeley, Argosy AW.650, Fairchild Hiller F–27, F–27A, F–27B, F–27F, F–27G, F–27J, FH–227, FH–227B, FH–227C, FH–227D, FH–227E, Fokker F.27 all marks; British Aircraft Corporation Viscount 744, 745D and 810; Gulfstream G–159, General Dynamics Convair 240D or 600, or 600–240D, and 340D or 440D, or 640–340D and 640–440D airplanes.

Unsafe Condition

(d) This AD results from us including an incorrect engine model and omitting an engine model from the applicability of the existing AD. We are issuing this AD to prevent HPT disk failure, which can result in an uncontained engine failure and damage to 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.

Intermediate Pressure Turbine (IPT) Disk and High Pressure Turbine (HPT)/IPT Disk Seal Arm Inspections

(f) Within 60 days after the effective date of the AD, do either of the following:

(1) Perform a dimensional inspection of the IPT disk and repair or replace the IPT disk, if necessary using paragraph 3 of the Accomplishment Instructions of RRD service bulletin (SB) Da72–538, dated June 10, 2005; or

(2) Perform an ultrasonic inspection of the disk seal arm contact between the HPT and the IPT using paragraph 3 of the Accomplishment Instructions of RRD SB Da72–536, Revision 1, dated August 25, 2003.

(i) For RRD Dart 528, 529, 532, 535, 542 series turboprop engines if wear is outside allowable limits, before June 30, 2008, perform a dimensional inspection and repair or replace the IPT disk, if necessary. Use paragraph 3 of the Accomplishment Instructions of RRD SB Da72–538, dated June 10, 2005.

(ii) For RRD Dart 552 series turboprop engines if wear is outside allowable limits, before July 31, 2008, perform a dimensional inspection and repair or replace the IPT disk, if necessary. Use paragraph 3 of the Accomplishment Instructions of RRD SB Da72–538, dated June 10, 2005.

(iii) If wear is within allowable limits, perform a dimensional inspection of the IPT disk at the next engine shop visit or at next overhaul, whichever occurs first and repair or replace the IPT disk, if necessary. Use paragraph 3 of the Accomplishment Instructions of RRD SB Da72–538, dated June 10, 2005.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) LBA airworthiness directive D–2005–197, dated June 30, 2005, also addresses the subject of this AD.

(i) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7747, fax (781) 238–7199; *e-mail: jason.yang@faa.gov*, for more information about this AD.

Material Incorporated by Reference

(j) You must use the Rolls-Royce Deutschland Ltd & Co KG service information specified in Table 1 to perform the actions required by this AD. The Director of the Federal Register previously approved the incorporation by reference of the service information specified in Table 1 on February 26, 2007 (72 FR 2610, January 22, 2007). Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356 for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
Da72–536: Total Pages: 23	All	1	August 25, 2003.
Da72–538: Total Pages: 21	All	Original	June 10, 2005.

Issued in Burlington, Massachusetts, on July 24, 2008.

Carlos Pestana,

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

[FR Doc. E8–17423 Filed 7–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9419]

RIN 1545–BG30

Mortality Tables for Determining Present Value

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance regarding the mortality tables to be used in determining present value or making any computation for purposes of applying certain pension funding requirements. These regulations affect sponsors, administrators, participants, and beneficiaries of certain retirement plans.

DATES: *Effective date:* These regulations are effective July 31, 2008.

Applicability date: Section 1.430(h)(3)–1, which provides generally applicable mortality tables for single employer defined benefit pension plans, and § 1.431(c)(6)–1, which provides for the use of those mortality tables for multiemployer defined benefit pension plans, apply to plan years beginning on or after January 1, 2008. Section 1.430(h)(3)–2, which provides rules regarding the approval and use of substitute mortality tables for single employer defined benefit pension plans, applies to plan years beginning on or after January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Lauson C. Green or Linda S.F. Marshall at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 412 provides minimum funding requirements for defined benefit pension plans. The Pension Protection Act of 2006 (PPA), Public Law 109–280 (120 Stat. 780), makes extensive changes to those minimum funding requirements that generally apply for plan years beginning on or after January 1, 2008. Section 430, which was added by PPA, specifies the minimum funding requirements that apply to defined benefit plans that are not multiemployer plans.[1] Section 430(a) defines the minimum required contribution for a defined benefit plan that is not a multiemployer plan by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

Section 430(h)(3) provides rules regarding the mortality tables to be used under section 430. Under section 430(h)(3)(A), except as provided in section 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under section 430. Those tables are to be based on the actual experience of pension plans and projected trends in such experience. In prescribing those tables, the Secretary is required to take into account results of available independent studies of mortality of individuals covered by pension plans. This standard for issuing the mortality table under section 430(h)(3)(A) is the same as the standard for issuing updated mortality tables pursuant to the review under section 412(l)(7)(C)(ii)(III) of the mortality table used in determining a plan's current liability pursuant to section 412(l)(7)(C)(ii)(I) for plan years before the effective date of the PPA changes.

Section 430(h)(3)(C) provides rules for a plan sponsor's use of substitute mortality tables. Upon the request of a plan sponsor and approval by the Secretary, mortality tables that meet the requirements for substitute mortality tables are used in determining present value or making any computation under section 430 during the period of consecutive plan years (not to exceed 10) specified in the request. Substitute mortality tables cease to be in effect as of the earliest of the date on which there is a significant change in the participants in the plan by reason of a plan spinoff or merger or otherwise, or the date on which the plan actuary determines that those tables do not meet the requirements for substitute mortality tables. The plan sponsor's request to use substitute mortality tables is to be made at least 7 months before the first day of the first plan year for which substitute mortality tables are to apply. A request to use substitute mortality tables is deemed approved unless the Secretary denies approval for the use of those mortality tables within 180 days of the

[1] Section 302 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) sets forth funding rules that are parallel to those in section 412 of the Internal Revenue Code (Code), and section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these Treasury regulations issued under section 430 of the Code apply as well for purposes of section 303 of ERISA.

request (subject to extension of this period by mutual agreement).

Mortality tables meet the requirements for substitute mortality tables if the pension plan has a sufficient number of plan participants and the plan has been maintained for a sufficient period of time in order to have credible mortality experience, and such tables reflect the actual experience of the plan and projected trends in general mortality experience of participants in pension plans. Except as provided by the Secretary, a plan sponsor cannot use substitute mortality tables for any plan unless substitute mortality tables are established and used for each other plan maintained by the plan sponsor and the plan sponsor's controlled group.

Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability. These separate mortality tables are permitted to be used with respect to disabled individuals in lieu of the generally applicable mortality tables provided pursuant to section 430(h)(3)(A) or the substitute mortality tables under section 430(h)(3)(C). The Secretary is to establish separate tables for individuals with disabilities occurring in plan years beginning before January 1, 1995, and in later plan years, with the mortality tables for individuals with disabilities occurring in those later plan years applying only to individuals who are disabled within the meaning of Title II of the Social Security Act.

Section 431, which was added by PPA, specifies the minimum funding requirements that apply to multiemployer plans. Under section 431(c)(6)(B), a plan's full funding limitation cannot be less than the excess (if any) of 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year) over the value of the plan's assets. Section 431(c)(6)(D)(iv)(II) provides that the Secretary may by regulation prescribe mortality tables to be used in determining a plan's current liability for purposes of section 431(c)(6). The standards for these mortality tables are the same as the standards for mortality tables to be prescribed under section 430(h)(3)(A). Section 431(c)(6)(D)(iv)(I) provides that, until mortality tables are prescribed under section 431(c)(6)(D)(iv)(II), the mortality table used in determining a plan's current liability for purposes of section 431(c)(6) is the table prescribed by the Secretary that is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

On February 2, 2007, the IRS issued final regulations under section 412(l)(7) (TD 9310, 72 FR 4955) setting forth mortality tables to be used in determining a plan's current liability with respect to nondisabled pension plan participants during the 2007 plan year. Those updated mortality tables were based on the tables contained in the RP–2000 Mortality Tables Report.[2] Those regulations permitted plans to use separate mortality tables for nonannuitant and annuitant periods, with different projection periods for annuitants and nonannuitants based on an estimate of the duration of the respective liabilities. Alternatively, plans were permitted to use a combined table that applied the same mortality rates to both annuitants and nonannuitants.

On May 29, 2007, the IRS issued proposed regulations under section 430(h)(3) (72 FR 29456). Those proposed regulations provide guidance regarding the mortality tables to be used for purposes of applying certain defined benefit plan funding requirements, including § 1.430(h)(3)–1, which provides generally applicable mortality tables, and § 1.430(h)(3)–2, which provides rules regarding the approval and use of substitute mortality tables. On May 31, 2007, the IRS issued Rev. Proc. 2007–37 (2007–1 CB 1433), which sets forth procedures by which a plan sponsor may request approval to use substitute mortality tables in accordance with proposed § 1.430(h)(3)–2, including guidelines for the construction of substitute mortality tables. See § 601.601(d)(2)(ii)(*b*) of this chapter.

On January 31, 2008, the IRS issued Notice 2008–21 (2008–7 IRB 431). See § 601.601(d)(2)(ii)(*b*) of this chapter. Notice 2008–21 provides that, when certain pension funding regulations (including the § 1.430(h)(3)–2 regulations issued under section 430(h)(3)(C) regarding substitute mortality tables) are finalized, those final regulations will not apply to plan years beginning before January 1, 2009. For plan years beginning during 2008, taxpayers must follow applicable statutory provisions and can rely on the proposed regulations for compliance with those statutory provisions. Under Notice 2008–21, the IRS will not challenge a reasonable interpretation of section 430 (taking into account the items with respect to which guidance is provided in Notice 2008–21) for plan years beginning during 2008.

Several comments were received on the proposed regulations, and no public hearing was requested or held. After consideration of the comments received, the IRS and the Treasury Department are issuing these final regulations to adopt the rules set forth in the proposed regulations with certain modifications that are noted in this preamble.

Explanation of Provisions

Generally Applicable Mortality Tables

These regulations adopt the methodology set forth in the proposed regulations that the IRS will use to establish mortality tables as provided under section 430(h)(3)(A) to be used for participants and beneficiaries to determine present value or make any computation under section 430. These mortality tables apply as well for purposes of determining the current liability of a multiemployer plan pursuant to section 431(c)(6)(D)(iv)(II). In addition, pursuant to § 1.412(l)(7)–1(a), these regulations apply for purposes of determining the current liability of a plan for which application of the PPA changes to section 412 is delayed (see sections 104 through 106 of PPA). Under these regulations, mortality tables to be used with respect to disabled individuals will be provided in guidance published in the Internal Revenue Bulletin (IRB). This guidance has been issued as Notice 2008–29 (2008–12 IRB 637). See § 601.601(d)(2)(ii)(*b*).

The new mortality tables under section 430(h)(3)(A) are based on the tables contained in the RP–2000 Mortality Tables Report because, as with the mortality tables used under section 412(l)(7)(C)(ii), the IRS and the Treasury Department have determined that the RP–2000 mortality tables form the best available basis for predicting mortality of pension plan participants and beneficiaries (other than disabled individuals) based on pension plan experience, including expected trends. Like the mortality tables provided in the final section 412(l) regulations, the mortality tables set forth in these regulations are gender-distinct because of significant differences between expected male mortality and expected female mortality.

The mortality tables set forth in these regulations provide separate mortality rates for annuitants and nonannuitants. This distinction has been made because the RP–2000 Mortality Tables Report indicates that these two groups have

[2] The RP–2000 Mortality Tables Report was released by the Society of Actuaries in July 2000. Society of Actuaries, RP–2000 Mortality Tables Report, at *http://www.soa.org/ccm/content/research-publications/experience-studies-tools/the-rp-2000-mortality-tables/*.

significantly different mortality experience. This is particularly true at typical ages for early retirees, where the number of health-induced early retirements results in a population that has higher mortality rates than the population of currently employed individuals. While the use of separate mortality rates for these groups of individuals will likely entail changes in programming of actuarial software, the IRS and the Treasury Department believe that the improvement in accuracy resulting from the use of separate mortality tables for annuitants and nonannuitants more than offsets the added complexity.

Under these regulations, the annuitant mortality tables are applied to determine the present value of benefits for annuitants. The annuitant mortality tables are also used for nonannuitants (active employees and terminated vested participants) for the periods beginning when the nonannuitants are projected to commence receiving benefits, while the nonannuitant mortality tables are applied for the periods before nonannuitants are projected to commence receiving benefits. For any period in which an annuitant is projected to be receiving benefits, the mortality table applicable to any beneficiary of that annuitant is the annuitant mortality table.

The RP–2000 Mortality Tables Report sets forth mortality tables that reflect expected mortality as of 2000, along with projection factors that are used to reflect the impact of expected improvements in mortality. Similarly, the mortality tables set forth in these regulations are based on expected mortality as of 2000 and reflect the impact of expected improvements in mortality. The regulations permit plan sponsors to apply the projection of mortality improvement in either of two ways: Through use of static tables that are updated annually to reflect expected improvements in mortality, or through use of generational tables.

The regulations set forth base tables for annuitants and nonannuitants, as well as a set of projection factors. The base tables set forth in the regulations generally provide the same rates as the RP–2000 mortality tables, except that they have been extended so that the annuitant and nonannuitant tables have mortality rates available at each age. The RP–2000 Mortality Tables Report did not develop annuitant rates before age 50 or nonannuitant rates after age 70. The extended nonannuitant tables in these regulations were created by (1) using nonannuitant rates through age 70, (2) using annuitant rates for ages over 80, and (3) blending the rates to produce a smooth transition between the two tables, using increasing fractions. The total difference between the rates at ages 70 and 80 is divided by 55; the rate at age 71 is set equal to the rate at age 70 plus 1/55 of the total difference, the age 72 rate is equal to the rate at age 71 plus 2/55 of the total difference, etc.

A similar approach was used to develop the base tables for annuitants. For male annuitants, annuitant rates from the RP–2000 Mortality Tables Report were used for ages 50 and over, nonannuitant rates from the RP–2000 Mortality Tables Report were used through age 40, and rates between ages 41 and 49 were smoothed to create a smooth transition using the same methodology as was used for the nonannuitant tables. For female annuitants, annuitant rates from the RP–2000 Mortality Tables Report were used for ages 50 and over. However, to avoid anomalous results, female nonannuitant rates were used through age 46 (rather than age 40) and, accordingly, rates were smoothed between ages 47 and 49. The smoothing methodology for the female annuitant tables was the same as that used for the male tables but, because a shorter transition period was used, the difference between the age 46 and the age 50 mortality rates was smoothed using a denominator of 10 instead of 55.

For a plan sponsor that chooses to use the generational mortality tables, the mortality rate for each particular age would be projected for each individual participant to reflect projected improvement for the period of time until the participant reaches the particular age using the applicable base table along with the projection factors provided under the regulations. These projection factors are from Mortality Projection Scale AA, which was recommended for use in the UP–94 Study [3] and in the RP–2000 Mortality Tables Report.

The static mortality tables that are permitted to be used under the regulations are constructed from the base table used for purposes of the generational mortality tables. The static mortality tables are projected from the base table for the year 2000 through the year of valuation with further projection to reflect the approximate expected duration of liabilities. The static mortality tables for annuitants under the regulations reflect projection through the year of valuation with a further projection period of 7 years, and the static mortality tables for nonannuitants under the regulations reflect projection through the year of valuation with a further projection period of 15 years. These projection periods were selected as the expected average duration of liabilities. To be consistent with the original construction of the RP–2000 mortality tables, both the static annuitant and nonannuitant tables use the rates from the projected annuitant table for ages 80 and over and from the projected nonannuitant table for ages 40 and younger (ages 44 and younger for females). For a smooth transition between the different projection periods for annuitants versus nonannuitants, the nonannuitant rates for ages 71 through 79 and the annuitant rates for ages 41 through 49 (ages 45 through 49 for females) were smoothed using the same technique as that used in constructing the base tables.

The static mortality tables that apply with respect to valuation dates occurring during 2008 are set forth in these regulations, which also include an example of how to apply the tables in that year. The mortality tables to be used for valuation dates in subsequent years will be published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*). The IRS intends to publish a notice in the near future that provides a series of tables for valuation dates occurring during 2009 through 2013.

These regulations provide an option for smaller plans that choose to use static mortality tables to use a single blended static table for all participants—in lieu of the separate tables for annuitants and nonannuitants—in order to simplify the actuarial valuation for these plans. The final regulations provide that the smaller plans to which this rule applies are plans where the total of active and inactive participants is 500 or fewer, and clarify that this participant count is determined as of the plan's valuation date. The blended table is constructed from the separate nonannuitant and annuitant tables using the nonannuitant/annuitant weighting factors published in the RP–2000 Mortality Tables Report. However, because the RP–2000 Mortality Tables Report does not provide weighting factors before age 51 or after age 69, the IRS and the Treasury Department have extended the table of weighting factors (using straight-line interpolation) for ages 41 through 50 (ages 45–50 for females) and for ages 70 through 79 in order to develop the blended table.

Since the publication of proposed regulations under sections 430(h) and

[3] The UP–94 Study, prepared by the UP–94 Task Force of the Society of Actuaries, was published in the Transactions of the Society of Actuaries, Vol. XLVII (1995), p. 819.

430(d), questions have arisen regarding whether small plans are required to apply mortality assumptions using the mortality tables provided under section 430(h) for the period before a participant is projected to commence receiving benefits under the plan. Final regulations under section 430(d) are expected to clarify that the mortality tables provided under section 430(h) must be used to determine present values under section 430 when mortality assumptions are applied and that, in appropriate cases, it is permissible to assume no mortality for the period before a participant is projected to commence receiving benefits under the plan.

Substitute Mortality Tables

These regulations generally adopt the methodology set forth in the proposed regulations for the development and use of substitute mortality tables upon written request of the plan sponsor and approval of the Commissioner. Pursuant to section 430(h)(3)(C), substitute mortality tables apply in lieu of the mortality tables provided under section 430(h)(3)(A) and § 1.430(h)(3)–1 for purposes of making present value determinations and other computations.

Substitute mortality tables must reflect the actual mortality experience of the pension plan for which the tables are to be used, and that mortality experience must be credible. Separate mortality tables must be established for each gender under the plan, and a substitute mortality table is permitted to be established for a gender only if the plan has credible mortality experience with respect to that gender. If the mortality experience for one gender is credible but the mortality experience for the other gender is not credible, the substitute mortality tables are used for the gender that has credible mortality experience, and the mortality tables under § 1.430(h)(3)–1 are used for the gender that does not have credible mortality experience. If separate mortality tables under section 430(h)(3)(D) are used for certain disabled individuals under a plan, then those individuals are disregarded for all purposes with respect to substitute mortality tables under section 430(h)(3)(C). Thus, if the mortality tables under section 430(h)(3)(D) are used for certain disabled individuals under a plan, mortality experience with respect to those individuals must be excluded in determining mortality rates for substitute mortality tables with respect to a plan.

The proposed regulations provided that a substitute mortality table would be based on credible mortality experience for a gender within a plan if and only if the mortality experience were based on at least 1,000 deaths within that gender over the period covered by the experience study. The proposed regulations required that the experience study be based on mortality experience data over a 2, 3, or 4 consecutive year period, the last day of which must be less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply.

Commentators requested an expansion of this rule that would allow the plan to demonstrate credibility on the basis of divergence between the actual number of deaths and the number of deaths expected under the standard mortality tables in § 1.430(h)(3)–1. The IRS and the Treasury Department have rejected this suggestion because, although such a measure of divergence may show that the standard mortality tables are not necessarily the best estimate of future mortality under the plan, the existence of this divergence does not demonstrate that a particular alternative table reflects the actual experience of the pension plans maintained by the sponsor unless the experience study data reflects a sufficient number of deaths to support the use of that alternative table.

The 1,000-death threshold in the proposed regulations was set at a level so that there is a high degree of confidence that the plan's past mortality experience will be predictive of its future mortality, and is consistent with relevant actuarial literature (see, for example, Thomas N. Herzog, *Introduction to Credibility Theory* (1999); Stuart A. Klugman, *et al.*, *Loss Models: From Data to Decisions* (2004)). A number of commentators requested that substitute mortality tables be made available to plans with fewer annual deaths. For example, one commentator requested an extension of the 4-year maximum period for the mortality experience study in order to allow a smaller plan to satisfy the 1,000-death threshold. In response to these comments, these regulations lengthen the maximum period for the experience study and provide that the experience study for purposes of demonstrating 1,000 deaths within a gender can be conducted over as long as a 5-year period. In addition, in accordance with the delegation of authority set forth in the regulations, the Commissioner may, in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*)), provide for further extensions of this maximum experience study period.

Development of a substitute mortality table under the regulations requires creation of a base table and identification of a base year, which are then used to determine a substitute mortality table. The base table must be developed from a study of the mortality experience of the plan using amounts-weighted data. The regulations set forth rules regarding development of amounts-weighted mortality rates for an age. The regulations provide that amounts-weighted mortality rates may be derived from amounts-weighted mortality rates for age groups. The regulations provide for grouping of ages and alternative methods of graduation in order to simplify the construction of substitute mortality tables. The regulations provide rules for determination of the base year for a substitute mortality table. These rules have been modified from the rules set forth in the proposed regulations to reflect the potential for a longer experience study period than permitted under the proposed regulations.

In general, substitute mortality tables are permitted to be used for a plan for a plan year only if, for that plan year, substitute mortality tables are also approved and used for each other pension plan subject to the requirements of section 430 that is maintained by the plan sponsor or by a member of the sponsor's controlled group. The final regulations clarify the application of this rule where plans maintained within a controlled group have different plan years. In such a case, a plan that uses substitute mortality tables for a plan year satisfies the requirement that all plans within the controlled group use substitute mortality tables for the plan year if all plans within the controlled group use substitute mortality tables for at least some portion of the plan year. Under the regulations, the use of substitute mortality tables for one plan is not prohibited merely because another plan subject to section 430 that is maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) cannot use substitute mortality tables because neither the males nor the females under that plan have credible mortality experience for a plan year. Thus, if a sponsor's controlled group contains two pension plans that are subject to section 430, each of which has credible mortality experience for at least one gender, either both plans must obtain approval from the Commissioner to use substitute mortality tables or neither plan may use substitute mortality tables. By contrast, if for one of those plans neither males nor females

have credible mortality experience, then the plan without credible mortality experience will not interfere with the ability of the plan with credible mortality experience to use substitute mortality tables.

Under the regulations, the requirement that the plan sponsor demonstrate the lack of credible mortality experience for both the male and female populations in other plans maintained by the plan sponsor (and by members of the plan sponsor's controlled group) for which substitute mortality tables are not used must be satisfied for each plan year for which substitute mortality tables are used. This demonstration is made for a plan population by showing that the population has not experienced at least 1,000 deaths over a time period that satisfies the requirements set forth in the regulations. In general, for each plan year in which a plan uses substitute mortality tables, the demonstration that both genders of another plan maintained by the plan sponsor do not have credible mortality experience is made by counting the number of deaths for that plan population over a 4-year period. However, if the experience study period for the experience study on which the substitute mortality tables are based is longer than 4 years, the demonstration that both genders of another plan maintained by the plan sponsor do not have credible mortality experience (that is, there are less than 1,000 deaths within each gender) must be made using a consecutive period for mortality experience that is the same length as the period of the experience study. In either case, the period for mortality experience that is used to demonstrate lack of credible mortality experience with respect to a plan year must end less than 3 years before the first day of that plan year.

For example, a plan sponsor that requests to use substitute mortality tables for a plan for the plan year that begins January 1, 2009, using data obtained over a 4-year experience study period must show, as part of its submission to the Commissioner, that both the male and female populations in all other defined benefit plans of the plan sponsor (and of members of the plan sponsor's controlled group) that are subject to section 430 and that do not use substitute mortality tables do not have credible mortality experience using a 4-year period that ends no earlier than January 2, 2006 (that is, each gender in those plans did not experience 1,000 deaths during that 4-year period). If the plan sponsor chooses to use the 4-year period from January 1, 2004, through December 31, 2007, to demonstrate the lack of credible mortality experience for the other plans, then the plan can rely on this same data to demonstrate the lack of credible mortality experience for 2010 as well because the less-than-3-years requirement is still met with respect to the 2010 plan year. However, the plan cannot use this same data to demonstrate lack of credible mortality experience for the 2011 plan year because the last day of the experience study used for the demonstration (the January 1, 2004–December 31, 2007 period) is too distant in time (3 or more years) from the first day of the plan year (January 1, 2011).

Although the regulations permit a plan sponsor to use a single experience study to demonstrate a lack of credible mortality experience for a plan population for multiple years, plan sponsors are encouraged to update experience studies annually as new mortality data become available for the plan population. In such a case, if an updated test reveals 1,000 or more deaths for the more recent 4-year period (or 5-year period in the case of a plan using a 5-year experience study period), the plan sponsor nonetheless will be able to continue to use substitute mortality tables for one plan year by demonstrating that the other plans in the controlled group do not have credible mortality experience based on the earlier experience study. This will give the plan sponsor sufficient time to develop substitute mortality tables for the plan population with newly credible mortality experience and to obtain the Commissioner's approval to use those tables prior to the first year substitute mortality tables are to be used for that population.

Under the regulations, a plan's substitute mortality tables must be generational mortality tables. Substitute mortality tables are determined using the base mortality tables developed from the experience study and the projection factors provided in Projection Scale AA, as set forth in § 1.430(h)(3)–1(d). Under the generational mortality tables, the probability of an individual's death at a particular age is determined as the individual's base mortality rate (that is, the applicable base mortality rate from the base mortality table for the age for which the probability of death is being determined) multiplied by the mortality improvement factor. The mortality improvement factor is equal to (1 minus the projection factor for that age)^n, where n is equal to the projection period (that is, the number of years between the base year for the base mortality table and the year for which the probability of death is being determined).

The regulations require separate tables to be established for males and females under a plan. Under the regulations, separate substitute mortality tables are permitted (but not required) to be established for separate populations within a gender, such as annuitants and nonannuitants or hourly and salaried individuals. The regulations provide that separate substitute mortality tables are permitted to be used for a separate population within a gender under a plan only if all individuals of that gender in the plan are divided into separate populations, each separate population has credible mortality experience (determined in the same manner as determining whether a gender has credible mortality experience), and the separate substitute mortality table for each separate population is developed using mortality experience data for that population. For example, in the case of a plan that has credible mortality experience data for both its male hourly and male salaried populations, separate substitute mortality tables could be used for those two separate populations. However, if the plan does not have credible mortality experience for its male salaried population, it is not permissible to use substitute mortality tables for its male hourly population and the standard mortality tables described in § 1.430(h)(3)–1 for its male salaried population.

The requirement that each separate population have credible mortality experience does not apply in the case of separate mortality tables that are developed for annuitant and nonannuitant populations within a gender. Thus, the regulations provide that substitute mortality tables for separate annuitant and nonannuitant populations may be used within a gender even if only one of those separate populations has credible mortality experience. Similarly, if separate populations with credible mortality experience are established within a gender, then any of those populations may be further subdivided into separate annuitant and nonannuitant subpopulations, provided that at least one of the two resulting subpopulations has credible mortality experience. In such a case, the standard mortality tables under § 1.430(h)(3)–1 must be used for a resulting subpopulation that does not have credible mortality experience. For example, in the case of a plan that has credible mortality experience for both its male hourly and salaried individuals, if the male salaried annuitant population has credible mortality

experience, the plan may use substitute mortality tables with respect to that population even if the standard mortality tables under § 1.430(h)(3)–1 are used for the male salaried nonannuitant population (because that nonannuitant population does not have credible mortality experience). For purposes of demonstrating that an annuitant or nonannuitant population within a gender or within a separate population does not have credible mortality experience, the demonstration of lack of credible mortality experience is made on the same basis as for purposes of demonstrating a lack of credible mortality experience for a gender.

The proposed regulations provide a limited time period during which a newly acquired plan that does not use substitute mortality tables does not prevent another plan from using substitute mortality tables. The proposed regulations implied that this exception applies only where a newly acquired plan does not use substitute mortality tables (and not to the case where a plan that uses substitute mortality tables is acquired by a plan sponsor that maintains other plans for which substitute mortality tables are not used). In response to commentator concerns, the final regulations replace the term ''newly acquired plan'' with the term ''newly affiliated plan.'' Thus, the final regulations eliminate the implication that this exception is unavailable in situations in which the acquiring plan sponsor does not use substitute mortality tables for its other plans but the acquired plan uses substitute mortality tables.

Under the regulations, the use of substitute mortality tables for a plan is not prohibited merely because a newly affiliated plan does not use substitute mortality tables, but only through the last day of the plan year of the plan using substitute mortality tables that contains the last day of the transition period described in section 410(b)(6)(C)(ii) (without regard to any change in coverage during that period) for either the newly affiliated plan or the plan using substitute mortality tables, whichever is later. For the following plan year, the mortality tables prescribed under § 1.430(h)(3)–1 apply with respect to the plan (and all other plans within the plan sponsor's controlled group, including the newly affiliated plan) unless approval to use substitute mortality tables has been obtained with respect to the newly affiliated plan, or the newly affiliated plan cannot use substitute mortality tables because neither the males nor the females under the plan have credible mortality experience. For example, if on September 1, 2009, a plan sponsor of a plan that uses substitute mortality tables and that has a calendar year plan year acquires a business that maintains a plan that does not use substitute mortality tables and that has a plan year that ends June 30, the maintenance of the latter plan within the controlled group will not impair the continued use of substitute mortality tables by the former plan through the end of the plan year that ends on December 31, 2011. This is because December 31, 2010, is the last day of the period described in section 410(b)(6)(C)(ii) for the plan using substitute mortality tables, June 30, 2011, is the last day of the period described in section 410(b)(6)(C)(ii) for the newly affiliated plan that does not use substitute mortality tables, and the last day of the plan year of the plan using substitute mortality tables that contains the later of those two dates is December 31, 2011. Similarly, if on September 1, 2009, a plan sponsor of a plan that uses substitute mortality tables and that has a calendar year plan year is acquired by an employer that maintains a plan that does not use substitute mortality tables and that has a plan year that ends June 30, the maintenance of the latter plan within the controlled group will not impair the continued use of substitute mortality tables by the former plan through the end of the plan year that ends on December 31, 2011.

Under the regulations, a plan is treated as a newly affiliated plan if it becomes maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f). The regulations provide that a plan is also treated as a newly affiliated plan if it is established in connection with a transfer of assets and liabilities from another employer's plan in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f).

In the case of a newly affiliated plan that does not use substitute mortality tables, the demonstration of whether credible mortality experience exists for the plan may be made by either including or excluding mortality experience data for the period prior to the date the plan becomes maintained within the controlled group that includes the plan sponsor of the plan that uses substitute mortality tables. If a plan sponsor excludes mortality experience data prior to the date the plan became maintained within the controlled group that includes the plan sponsor of the plan that uses substitute mortality tables, the exclusion must apply for all populations within the plan. For example, it is impermissible to include the data for hourly individuals for the pre-acquisition period but exclude the data for salaried individuals for that same period.

In order to demonstrate a lack of credible mortality experience with respect to a gender for a plan year, a special rule applies if the plan's mortality experience demonstration for a plan year is made by excluding mortality experience for the period prior to the date the newly affiliated plan becomes maintained within the new plan sponsor's controlled group. In such a case, an employer is permitted to demonstrate a plan's lack of credible mortality experience using an experience study period of less than four years, provided that the experience study period begins with the date the plan becomes maintained within the employer's controlled group and ends not more than one year and one day before the first day of the plan year with respect to which the lack of credible mortality experience demonstration is made.

The regulations provide rules for aggregating plans for purposes of using substitute mortality tables. Under the regulations, in order to use a set of substitute mortality tables for two or more plans, the rules set forth in the regulations are applied by treating those plans as a single plan. In such a case, the substitute mortality tables must be used for all such plans and must be based on data collected with respect to all such plans. Although plans generally are not required to be aggregated, the regulations require a plan to be aggregated with any plan that was previously spun off from that plan if one purpose of the spinoff was to avoid the use of substitute mortality tables for any of the plans involved in the spinoff.

Under the regulations, in order to use substitute mortality tables with respect to a plan, a plan sponsor must submit a written request to the Commissioner that demonstrates that those substitute mortality tables comply with applicable requirements. A request to use substitute mortality tables must state the first plan year and the term of years (not more than 10) that the tables are requested to be used. In general, substitute mortality tables cannot be used for a plan year unless the plan sponsor submits the written request to use substitute mortality tables at least 7 months prior to the first day of the first plan year for which the substitute mortality tables are to apply. However, the timing of the written request to use substitute mortality tables does not

prevent a plan from using substitute mortality tables for a plan year if the written request is submitted no later than October 1, 2007. This special rule, which was provided under the proposed regulations, allowed plan sponsors sufficient time to review the proposed regulations and other guidance in order to prepare requests to use substitute mortality tables for use in 2008. In addition, the timing of the written request to use substitute mortality tables does not prevent a plan from using substitute mortality tables for a plan year that begins during 2009 if the written request is submitted no later than October 1, 2008. This special rule allows plan sponsors sufficient time to review the final regulations in order to prepare requests to use substitute mortality tables for plan years that begin during 2009.

Under the regulations, experience data cannot be used to develop a base table if the number of individuals in the population covered by the table (for example, the male annuitants) as of the last day of the plan year before the year the request to use substitute mortality tables is made (or a reasonable estimate of that number), compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based, reflects a difference of 20 percent or more, unless it is demonstrated to the satisfaction of the Commissioner that the experience data is accurately predictive of future mortality of that plan population (taking into account the effect of the change in individuals) after appropriate adjustments to the data are made (for example, excluding data from individuals with respect to a spun-off portion of the plan).

Under the regulations, the Commissioner may, in revenue rulings and procedures, notices or other guidance published in the IRB (see § 601.601(d)(2)(ii)(*b*) of this chapter), provide additional guidance regarding the approval and use of substitute mortality tables under section 430(h)(3)(C) and related matters. The IRS intends to publish a revenue procedure in the near future that updates the requirements set forth in Rev. Proc. 2007–37 regarding approval to use substitute mortality tables to reflect the provisions of these final regulations.

In general, the Commissioner has a 180-day period to review a request for the use of substitute mortality tables. If the Commissioner does not issue a denial within this 180-day period, the request is deemed to have been approved unless the Commissioner and the plan sponsor have agreed to extend that period. The Commissioner may request additional information with respect to a submission. Failure to provide that information on a timely basis is grounds for denial of the plan sponsor's request. In addition, the Commissioner will deny a request if the request fails to meet the requirements to use substitute mortality tables or if the Commissioner determines that a substitute mortality table does not sufficiently reflect the mortality experience of the applicable plan population. One commentator suggested that the 180-day period for approval of substitute mortality tables should automatically be tolled during any period between the time additional information is requested and received, and should resume after that information is received. These regulations do not adopt this suggestion. It is anticipated that the Commissioner and the taxpayer will establish a reasonable period for the taxpayer to collect and submit the requested data and extend the 180-day period to the extent necessary.

The regulations provide rules regarding the duration of use of substitute mortality tables. Under the regulations, substitute mortality tables generally are used with respect to a plan for the term of consecutive plan years specified in the plan sponsor's written request to use such tables and approved by the Commissioner, or such shorter period prescribed by the Commissioner in the approval to use substitute mortality tables. If the term of use of a substitute mortality table ends for any reason, the mortality tables specified in § 1.430(h)(3)–1 will apply with respect to the plan unless the plan sponsor has obtained approval to use substitute mortality tables for a further term. The regulations provide that a plan's substitute mortality tables cannot be used as of the earliest of the following: The second plan year following the plan year in which there is a significant change in the population covered by the substitute mortality table (generally, a change of at least 20% from the average number of individuals included in the experience study); or the plan year following the plan year in which a substitute mortality table for a plan population is no longer accurately predictive of future mortality of that population, as determined by the Commissioner or as certified by the plan's actuary to the satisfaction of the Commissioner. In addition, the regulations provide that a plan's substitute mortality tables cannot be used after the date specified in guidance published in the IRB (see § 601.601(d)(2)(ii)(*b*)) pursuant to a replacement of mortality tables specified under section 430(h)(3)(A) (other than annual updates to the static mortality tables).

Effective/Applicability Date

Section 1.430(h)(3)–1, which provides generally applicable mortality tables, applies to plan years beginning on or after January 1, 2008. Section 1.430(h)(3)–2, which provides rules regarding the approval and use of substitute mortality tables, applies to plan years beginning on or after January 1, 2009. Taxpayers may rely on the provisions of § 1.430(h)(3)–2 for plan years beginning during 2008. For example, taxpayers can use the exceptions contained in § 1.430(h)(3)–2(d)(1) from the general rule that all controlled group members must use substitute mortality tables in order for any controlled group member to use substitute mortality tables. Because section 430(h)(3) provides that substitute mortality tables can be used only if the use of those tables is approved by the Secretary, taxpayers can use substitute mortality tables for plan years beginning during 2008 only if those mortality tables were approved by the IRS under the procedures set forth in Rev. Proc. 2007–37.

Special Analyses

It has been determined that this Treasury decision 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 collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. Pension plans of small entities generally are precluded from requesting to use substitute mortality tables pursuant to § 1.430(h)(3)–2 because they will not have 1,000 deaths for a permitted population over a permissible mortality experience study period as required under § 1.430(h)(3)–2(c)(1)(ii) and, thus, will not have credible mortality experience as required by the regulation. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Lauson C. Green and Linda S. F. Marshall, Office of Division

Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is 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 1.430(h)(3)–1 is added to read as follows:

§ 1.430(h)(3)–1 Mortality tables used to determine present value.

(a) *Basis for mortality tables*—(1) *In general.* This section sets forth rules for the mortality tables to be used in determining present value or making any computation under section 430. Generally applicable mortality tables for participants and beneficiaries are set forth in this section pursuant to section 430(h)(3)(A). In lieu of using the mortality tables provided under this section with respect to participants and beneficiaries, plan-specific substitute mortality tables are permitted to be used for this purpose pursuant to section 430(h)(3)(C) provided that the requirements of § 1.430(h)(3)–2 are satisfied. Mortality tables that may be used with respect to disabled individuals are to be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(2) *Static tables or generational tables permitted.* The generally applicable mortality tables provided under section 430(h)(3)(A) are the static tables described in paragraph (a)(3) of this section and the generational mortality tables described in paragraph (a)(4) of this section. A plan is permitted to use either of those sets of mortality tables with respect to participants and beneficiaries pursuant to this section.

(3) *Static tables.* The static mortality tables that are permitted to be used pursuant to paragraph (a)(2) of this section are updated annually to reflect expected improvements in mortality experience as described in paragraph (c)(2) of this section. Static mortality tables that are to be used with respect to valuation dates occurring during 2008 are provided in paragraph (e) of this section. The mortality tables to be used with respect to valuation dates occurring in later years are to be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(4) *Generational mortality tables*—(i) *In general.* The generational mortality tables that are permitted to be used pursuant to paragraph (a)(2) of this section are determined pursuant to this paragraph (a)(4) using the base mortality tables and projection factors set forth in paragraph (d) of this section. Under the generational mortality tables, the probability of an individual's death at a particular age is determined as the individual's base mortality rate (that is, the applicable mortality rate from the table set forth in paragraph (d) of this section for the age for which the probability of death is being determined) multiplied by the mortality improvement factor. The mortality improvement factor is equal to $(1 - \text{projection factor for that age})^n$, where n is equal to the projection period. For this purpose, the projection period is the number of years between 2000 and the year for which the probability of death is being determined.

(ii) *Examples of calculation.* As an example of the use of generational mortality tables under paragraph (a)(4)(i) of this section, for purposes of determining the probability of death at age 54 for a male annuitant born in 1974, the base mortality rate is .005797, the projection factor is .020, and the projection period (the period from the year 2000 until the year the participant will attain age 54) is 28 years, so that the mortality improvement factor is .567976, and the probability of death at age 54 is .003293. Similarly, under these generational mortality tables, the probability of death at age 55 for the same male annuitant would be determined by using the base mortality rate and projection factor at age 55, and a projection period of 29 years (the period from the year 2000 until the year the participant will attain age 55). Thus, the base mortality rate is .005905, the projection factor is .019, so that the mortality improvement factor is .573325 ($(1 - .019)^{29}$), and the probability of death at age 55 is .003385 (.573325 times .005905). Because these generational mortality tables reflect expected improvements in mortality experience, no periodic updates are needed.

(b) *Use of the tables*—(1) *Separate tables for annuitants and nonannuitants*—(i) *In general.* Separate tables are provided for use for annuitants and nonannuitants. The nonannuitant mortality table is applied to determine the probability of survival for a nonannuitant for the period before the nonannuitant is projected to commence receiving benefits. The annuitant mortality table is applied to determine the present value of benefits for each annuitant, and for each nonannuitant for the period beginning when the nonannuitant is projected to commence receiving benefits. For purposes of this section, an annuitant means a plan participant who has commenced receiving benefits and a nonannuitant means a plan participant who has not yet commenced receiving benefits (for example, an active employee or a terminated vested participant). A participant whose benefit has partially commenced is treated as an annuitant with respect to the portion of the benefit which has commenced and a nonannuitant with respect to the balance of the benefit. In addition, for any period in which an annuitant is projected to be receiving benefits, any beneficiary with respect to that annuitant is also treated as an annuitant for purposes of this paragraph (b)(1).

(ii) *Examples of calculation.* As an example of the use of separate annuitant and nonannuitant tables under paragraph (b)(1)(i) of this section, with respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, the funding target would be determined using the nonannuitant mortality table for the period before the participant attains age 55 (so that, if the static mortality tables are used pursuant to paragraph (a)(3) of this section, the probability of an active male participant living from age 45 to age 55 using the table that applies for a plan year beginning in 2008 is 98.61%) and the annuitant mortality table for the period ages 55 and above. Similarly, if a 45-year-old terminated vested participant is projected to commence an annuity at age 65, the funding target would be determined using the nonannuitant mortality table for the period before the participant attains age 65 and the annuitant mortality table for ages 65 and above.

(2) *Small plan tables.* If static mortality tables are used pursuant to paragraph (a)(3) of this section, as an alternative to the separate static tables specified for annuitants and nonannuitants pursuant to paragraph (b)(1) of this section, a combined static table that applies the same mortality rates to both annuitants and nonannuitants is permitted to be used for a small plan. For this purpose, a small plan is defined as a plan with 500

or fewer participants (including both active and inactive participants) on the valuation date.

(c) *Construction of static tables*—(1) *Source of basic rates.* The static mortality tables that are used pursuant to paragraph (a)(3) of this section are based on the base mortality tables set forth in paragraph (d) of this section.

(2) *Projected mortality improvements.* The mortality rates under the base mortality tables are projected to improve using the projection factors provided in Projection Scale AA, as set forth in paragraph (d) of this section. Using these projection factors, the mortality rate for an individual at each age is determined as the individual's base mortality rate (that is, the applicable base mortality rate from the table set forth in paragraph (d) of this section for the individual at that age) multiplied by the mortality improvement factor. The mortality improvement factor is equal to $(1 - \text{projection factor for that age})^n$, where n is equal to the projection period. The annuitant mortality rates for a plan year are determined using a projection period that runs from the calendar year 2000 until 7 years after the calendar year that contains the valuation date for the plan year. The nonannuitant mortality rates for a plan year are determined using a projection period that runs from the calendar year 2000 until 15 years after the calendar year that contains the valuation date for the plan year. Thus, for example, for a plan year with a January 1, 2012, valuation date, the annuitant mortality rates are determined using a projection period that runs from 2000 until 2019 (19 years) and the nonannuitant mortality rates are determined using a projection period that runs from 2000 until 2027 (27 years).

(3) *Construction of combined tables for small plans.* The combined mortality tables that are permitted to be used for small plans pursuant to paragraph (b)(2) of this section are constructed from the separate nonannuitant and annuitant tables using the weighting factors for small plans that are set forth in paragraph (d) of this section. The weighting factors are applied to develop these mortality tables using the following equation: Combined mortality rate = [nonannuitant rate * (1 − weighting factor)] + [annuitant rate * weighting factor].

(d) *Base mortality tables and projection factors.* The following base mortality tables and projection factors are used to determine generational mortality tables for purposes of determining present value or making any computation under section 430 as set forth in paragraph (a)(4) of this section. In addition, the following base mortality tables and projection factors are used to determine the static mortality tables that are used for purposes of determining present value or making any computation under section 430 as set forth in paragraphs (a)(3) and (c) of this section. See § 1.430(h)(3)–2(c)(3) for rules regarding the required use of the projection factors set forth in this paragraph (d) in connection with a plan-specific substitute mortality table.

Age	Male	Male	Male	Male	Female	Female	Female	Female
	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans
1	0.000637	0.000637	0.020		0.000571	0.000571	0.020	
2	0.000430	0.000430	0.020		0.000372	0.000372	0.020	
3	0.000357	0.000357	0.020		0.000278	0.000278	0.020	
4	0.000278	0.000278	0.020		0.000208	0.000208	0.020	
5	0.000255	0.000255	0.020		0.000188	0.000188	0.020	
6	0.000244	0.000244	0.020		0.000176	0.000176	0.020	
7	0.000234	0.000234	0.020		0.000165	0.000165	0.020	
8	0.000216	0.000216	0.020		0.000147	0.000147	0.020	
9	0.000209	0.000209	0.020		0.000140	0.000140	0.020	
10	0.000212	0.000212	0.020		0.000141	0.000141	0.020	
11	0.000219	0.000219	0.020		0.000143	0.000143	0.020	
12	0.000228	0.000228	0.020		0.000148	0.000148	0.020	
13	0.000240	0.000240	0.020		0.000155	0.000155	0.020	
14	0.000254	0.000254	0.019		0.000162	0.000162	0.018	
15	0.000269	0.000269	0.019		0.000170	0.000170	0.016	
16	0.000284	0.000284	0.019		0.000177	0.000177	0.015	
17	0.000301	0.000301	0.019		0.000184	0.000184	0.014	
18	0.000316	0.000316	0.019		0.000188	0.000188	0.014	
19	0.000331	0.000331	0.019		0.000190	0.000190	0.015	
20	0.000345	0.000345	0.019		0.000191	0.000191	0.016	
21	0.000357	0.000357	0.018		0.000192	0.000192	0.017	
22	0.000366	0.000366	0.017		0.000194	0.000194	0.017	
23	0.000373	0.000373	0.015		0.000197	0.000197	0.016	
24	0.000376	0.000376	0.013		0.000201	0.000201	0.015	
25	0.000376	0.000376	0.010		0.000207	0.000207	0.014	
26	0.000378	0.000378	0.006		0.000214	0.000214	0.012	
27	0.000382	0.000382	0.005		0.000223	0.000223	0.012	
28	0.000393	0.000393	0.005		0.000235	0.000235	0.012	
29	0.000412	0.000412	0.005		0.000248	0.000248	0.012	
30	0.000444	0.000444	0.005		0.000264	0.000264	0.010	
31	0.000499	0.000499	0.005		0.000307	0.000307	0.008	
32	0.000562	0.000562	0.005		0.000350	0.000350	0.008	
33	0.000631	0.000631	0.005		0.000394	0.000394	0.009	
34	0.000702	0.000702	0.005		0.000435	0.000435	0.010	
35	0.000773	0.000773	0.005		0.000475	0.000475	0.011	
36	0.000841	0.000841	0.005		0.000514	0.000514	0.012	
37	0.000904	0.000904	0.005		0.000554	0.000554	0.013	

Age	Male	Male	Male	Male	Female	Female	Female	Female
	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans
38	0.000964	0.000964	0.006	.....	0.000598	0.000598	0.014	.....
39	0.001021	0.001021	0.007	.....	0.000648	0.000648	0.015	.....
40	0.001079	0.001079	0.008	.....	0.000706	0.000706	0.015	.....
41	0.001142	0.001157	0.009	0.0045	0.000774	0.000774	0.015	.....
42	0.001215	0.001312	0.010	0.0091	0.000852	0.000852	0.015	.....
43	0.001299	0.001545	0.011	0.0136	0.000937	0.000937	0.015	.....
44	0.001397	0.001855	0.012	0.0181	0.001029	0.001029	0.015	.....
45	0.001508	0.002243	0.013	0.0226	0.001124	0.001124	0.016	0.0084
46	0.001616	0.002709	0.014	0.0272	0.001223	0.001223	0.017	0.0167
47	0.001734	0.003252	0.015	0.0317	0.001326	0.001335	0.018	0.0251
48	0.001860	0.003873	0.016	0.0362	0.001434	0.001559	0.018	0.0335
49	0.001995	0.004571	0.017	0.0407	0.001550	0.001896	0.018	0.0419
50	0.002138	0.005347	0.018	0.0453	0.001676	0.002344	0.017	0.0502
51	0.002288	0.005528	0.019	0.0498	0.001814	0.002459	0.016	0.0586
52	0.002448	0.005644	0.020	0.0686	0.001967	0.002647	0.014	0.0744
53	0.002621	0.005722	0.020	0.0953	0.002135	0.002895	0.012	0.0947
54	0.002812	0.005797	0.020	0.1288	0.002321	0.003190	0.010	0.1189
55	0.003029	0.005905	0.019	0.2066	0.002526	0.003531	0.008	0.1897
56	0.003306	0.006124	0.018	0.3173	0.002756	0.003925	0.006	0.2857
57	0.003628	0.006444	0.017	0.3780	0.003010	0.004385	0.005	0.3403
58	0.003997	0.006895	0.016	0.4401	0.003291	0.004921	0.005	0.3878
59	0.004414	0.007485	0.016	0.4986	0.003599	0.005531	0.005	0.4360
60	0.004878	0.008196	0.016	0.5633	0.003931	0.006200	0.005	0.4954
61	0.005382	0.009001	0.015	0.6338	0.004285	0.006919	0.005	0.5805
62	0.005918	0.009915	0.015	0.7103	0.004656	0.007689	0.005	0.6598
63	0.006472	0.010951	0.014	0.7902	0.005039	0.008509	0.005	0.7520
64	0.007028	0.012117	0.014	0.8355	0.005429	0.009395	0.005	0.8043
65	0.007573	0.013419	0.014	0.8832	0.005821	0.010364	0.005	0.8552
66	0.008099	0.014868	0.013	0.9321	0.006207	0.011413	0.005	0.9118
67	0.008598	0.016460	0.013	0.9510	0.006583	0.012540	0.005	0.9367
68	0.009069	0.018200	0.014	0.9639	0.006945	0.013771	0.005	0.9523
69	0.009510	0.020105	0.014	0.9714	0.007289	0.015153	0.005	0.9627
70	0.009922	0.022206	0.015	0.9740	0.007613	0.016742	0.005	0.9661
71	0.010912	0.024570	0.015	0.9766	0.008309	0.018579	0.006	0.9695
72	0.012892	0.027281	0.015	0.9792	0.009700	0.020665	0.006	0.9729
73	0.015862	0.030387	0.015	0.9818	0.011787	0.022970	0.007	0.9763
74	0.019821	0.033900	0.015	0.9844	0.014570	0.025458	0.007	0.9797
75	0.024771	0.037834	0.014	0.9870	0.018049	0.028106	0.008	0.9830
76	0.030710	0.042169	0.014	0.9896	0.022224	0.030966	0.008	0.9864
77	0.037640	0.046906	0.013	0.9922	0.027094	0.034105	0.007	0.9898
78	0.045559	0.052123	0.012	0.9948	0.032660	0.037595	0.007	0.9932
79	0.054469	0.057927	0.011	0.9974	0.038922	0.041506	0.007	0.9966
80	0.064368	0.064368	0.010	1.0000	0.045879	0.045879	0.007	1.0000
81	0.072041	0.072041	0.009	1.0000	0.050780	0.050780	0.007	1.0000
82	0.080486	0.080486	0.008	1.0000	0.056294	0.056294	0.007	1.0000
83	0.089718	0.089718	0.008	1.0000	0.062506	0.062506	0.007	1.0000
84	0.099779	0.099779	0.007	1.0000	0.069517	0.069517	0.007	1.0000
85	0.110757	0.110757	0.007	1.0000	0.077446	0.077446	0.006	1.0000
86	0.122797	0.122797	0.007	1.0000	0.086376	0.086376	0.005	1.0000
87	0.136043	0.136043	0.006	1.0000	0.096337	0.096337	0.004	1.0000
88	0.150590	0.150590	0.005	1.0000	0.107303	0.107303	0.004	1.0000
89	0.166420	0.166420	0.005	1.0000	0.119154	0.119154	0.003	1.0000
90	0.183408	0.183408	0.004	1.0000	0.131682	0.131682	0.003	1.0000
91	0.199769	0.199769	0.004	1.0000	0.144604	0.144604	0.003	1.0000
92	0.216605	0.216605	0.003	1.0000	0.157618	0.157618	0.003	1.0000
93	0.233662	0.233662	0.003	1.0000	0.170433	0.170433	0.002	1.0000
94	0.250693	0.250693	0.003	1.0000	0.182799	0.182799	0.002	1.0000
95	0.267491	0.267491	0.002	1.0000	0.194509	0.194509	0.002	1.0000
96	0.283905	0.283905	0.002	1.0000	0.205379	0.205379	0.002	1.0000
97	0.299852	0.299852	0.002	1.0000	0.215240	0.215240	0.001	1.0000
98	0.315296	0.315296	0.001	1.0000	0.223947	0.223947	0.001	1.0000
99	0.330207	0.330207	0.001	1.0000	0.231387	0.231387	0.001	1.0000
100	0.344556	0.344556	0.001	1.0000	0.237467	0.237467	0.001	1.0000
101	0.358628	0.358628	0.000	1.0000	0.244834	0.244834	0.000	1.0000
102	0.371685	0.371685	0.000	1.0000	0.254498	0.254498	0.000	1.0000
103	0.383040	0.383040	0.000	1.0000	0.266044	0.266044	0.000	1.0000
104	0.392003	0.392003	0.000	1.0000	0.279055	0.279055	0.000	1.0000
105	0.397886	0.397886	0.000	1.0000	0.293116	0.293116	0.000	1.0000
106	0.400000	0.400000	0.000	1.0000	0.307811	0.307811	0.000	1.0000

Age	Male	Male	Male	Male	Female	Female	Female	Female
	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans
107	0.400000	0.400000	0.000	1.0000	0.322725	0.322725	0.000	1.0000
108	0.400000	0.400000	0.000	1.0000	0.337441	0.337441	0.000	1.0000
109	0.400000	0.400000	0.000	1.0000	0.351544	0.351544	0.000	1.0000
110	0.400000	0.400000	0.000	1.0000	0.364617	0.364617	0.000	1.0000
111	0.400000	0.400000	0.000	1.0000	0.376246	0.376246	0.000	1.0000
112	0.400000	0.400000	0.000	1.0000	0.386015	0.386015	0.000	1.0000
113	0.400000	0.400000	0.000	1.0000	0.393507	0.393507	0.000	1.0000
114	0.400000	0.400000	0.000	1.0000	0.398308	0.398308	0.000	1.0000
115	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
116	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
117	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
118	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
119	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
120	1.000000	1.000000	0.000	1.0000	1.000000	1.000000	0.000	1.0000

(e) *Static mortality tables with respect to valuation dates occurring during 2008.* The following static mortality tables are used pursuant to paragraph (a)(3) of this section for determining present value or making any computation under section 430 with respect to valuation dates occurring during 2008.

Age	Male	Male	Male	Female	Female	Female
	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans
1	0.000400	0.000400	0.000400	0.000359	0.000359	0.000359
2	0.000270	0.000270	0.000270	0.000234	0.000234	0.000234
3	0.000224	0.000224	0.000224	0.000175	0.000175	0.000175
4	0.000175	0.000175	0.000175	0.000131	0.000131	0.000131
5	0.000160	0.000160	0.000160	0.000118	0.000118	0.000118
6	0.000153	0.000153	0.000153	0.000111	0.000111	0.000111
7	0.000147	0.000147	0.000147	0.000104	0.000104	0.000104
8	0.000136	0.000136	0.000136	0.000092	0.000092	0.000092
9	0.000131	0.000131	0.000131	0.000088	0.000088	0.000088
10	0.000133	0.000133	0.000133	0.000089	0.000089	0.000089
11	0.000138	0.000138	0.000138	0.000090	0.000090	0.000090
12	0.000143	0.000143	0.000143	0.000093	0.000093	0.000093
13	0.000151	0.000151	0.000151	0.000097	0.000097	0.000097
14	0.000163	0.000163	0.000163	0.000107	0.000107	0.000107
15	0.000173	0.000173	0.000173	0.000117	0.000117	0.000117
16	0.000183	0.000183	0.000183	0.000125	0.000125	0.000125
17	0.000194	0.000194	0.000194	0.000133	0.000133	0.000133
18	0.000203	0.000203	0.000203	0.000136	0.000136	0.000136
19	0.000213	0.000213	0.000213	0.000134	0.000134	0.000134
20	0.000222	0.000222	0.000222	0.000132	0.000132	0.000132
21	0.000235	0.000235	0.000235	0.000129	0.000129	0.000129
22	0.000247	0.000247	0.000247	0.000131	0.000131	0.000131
23	0.000263	0.000263	0.000263	0.000136	0.000136	0.000136
24	0.000278	0.000278	0.000278	0.000142	0.000142	0.000142
25	0.000298	0.000298	0.000298	0.000150	0.000150	0.000150
26	0.000329	0.000329	0.000329	0.000162	0.000162	0.000162
27	0.000340	0.000340	0.000340	0.000169	0.000169	0.000169
28	0.000350	0.000350	0.000350	0.000178	0.000178	0.000178
29	0.000367	0.000367	0.000367	0.000188	0.000188	0.000188
30	0.000396	0.000396	0.000396	0.000210	0.000210	0.000210
31	0.000445	0.000445	0.000445	0.000255	0.000255	0.000255
32	0.000501	0.000501	0.000501	0.000291	0.000291	0.000291
33	0.000562	0.000562	0.000562	0.000320	0.000320	0.000320
34	0.000626	0.000626	0.000626	0.000345	0.000345	0.000345
35	0.000689	0.000689	0.000689	0.000368	0.000368	0.000368
36	0.000749	0.000749	0.000749	0.000389	0.000389	0.000389
37	0.000806	0.000806	0.000806	0.000410	0.000410	0.000410
38	0.000839	0.000839	0.000839	0.000432	0.000432	0.000432
39	0.000869	0.000869	0.000869	0.000458	0.000458	0.000458
40	0.000897	0.000897	0.000897	0.000499	0.000499	0.000499
41	0.000928	0.000955	0.000928	0.000547	0.000547	0.000547

Age	Male	Male	Male	Female	Female	Female
	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans
42	0.000964	0.001070	0.000965	0.000602	0.000602	0.000602
43	0.001007	0.001243	0.001010	0.000662	0.000662	0.000662
44	0.001058	0.001474	0.001066	0.000727	0.000727	0.000727
45	0.001116	0.001763	0.001131	0.000776	0.000779	0.000776
46	0.001168	0.002109	0.001194	0.000824	0.000882	0.000825
47	0.001225	0.002513	0.001266	0.000873	0.001037	0.000877
48	0.001284	0.002975	0.001345	0.000944	0.001244	0.000954
49	0.001345	0.003495	0.001433	0.001021	0.001502	0.001041
50	0.001408	0.004072	0.001529	0.001130	0.001812	0.001164
51	0.001472	0.004146	0.001605	0.001252	0.001931	0.001292
52	0.001538	0.004168	0.001718	0.001422	0.002142	0.001476
53	0.001647	0.004226	0.001893	0.001617	0.002415	0.001693
54	0.001767	0.004281	0.002091	0.001842	0.002744	0.001949
55	0.001948	0.004428	0.002460	0.002100	0.003130	0.002295
56	0.002177	0.004663	0.002966	0.002400	0.003586	0.002739
57	0.002446	0.004983	0.003405	0.002682	0.004067	0.003153
58	0.002758	0.005413	0.003926	0.002933	0.004565	0.003566
59	0.003046	0.005876	0.004457	0.003207	0.005130	0.004045
60	0.003366	0.006435	0.005095	0.003503	0.005751	0.004617
61	0.003802	0.007175	0.005940	0.003818	0.006418	0.005327
62	0.004180	0.007904	0.006825	0.004149	0.007132	0.006117
63	0.004680	0.008864	0.007986	0.004490	0.007893	0.007049
64	0.005082	0.009807	0.009030	0.004838	0.008715	0.007956
65	0.005476	0.010861	0.010232	0.005187	0.009613	0.008972
66	0.005994	0.012218	0.011795	0.005531	0.010586	0.010140
67	0.006363	0.013527	0.013176	0.005866	0.011632	0.011267
68	0.006557	0.014731	0.014436	0.006189	0.012774	0.012460
69	0.006876	0.016273	0.016004	0.006495	0.014055	0.013773
70	0.007009	0.017702	0.017424	0.006784	0.015529	0.015233
71	0.007888	0.019586	0.019312	0.007411	0.016975	0.016683
72	0.009646	0.021747	0.021495	0.008666	0.018881	0.018604
73	0.012283	0.024223	0.024006	0.010548	0.020673	0.020433
74	0.015799	0.027024	0.026849	0.013058	0.022912	0.022712
75	0.020195	0.030622	0.030486	0.016195	0.024916	0.024768
76	0.025470	0.034131	0.034041	0.019959	0.027451	0.027349
77	0.031624	0.038547	0.038493	0.024351	0.030694	0.030629
78	0.038657	0.043489	0.043464	0.029370	0.033835	0.033805
79	0.046569	0.049071	0.049064	0.035017	0.037355	0.037347
80	0.055360	0.055360	0.055360	0.041291	0.041291	0.041291
81	0.062905	0.062905	0.062905	0.045702	0.045702	0.045702
82	0.071350	0.071350	0.071350	0.050664	0.050664	0.050664
83	0.079534	0.079534	0.079534	0.056255	0.056255	0.056255
84	0.089800	0.089800	0.089800	0.062565	0.062565	0.062565
85	0.099680	0.099680	0.099680	0.070761	0.070761	0.070761
86	0.110516	0.110516	0.110516	0.080120	0.080120	0.080120
87	0.124300	0.124300	0.124300	0.090716	0.090716	0.090716
88	0.139683	0.139683	0.139683	0.101042	0.101042	0.101042
89	0.154366	0.154366	0.154366	0.113903	0.113903	0.113903
90	0.172706	0.172706	0.172706	0.125879	0.125879	0.125879
91	0.188113	0.188113	0.188113	0.138232	0.138232	0.138232
92	0.207060	0.207060	0.207060	0.150672	0.150672	0.150672
93	0.223365	0.223365	0.223365	0.165391	0.165391	0.165391
94	0.239646	0.239646	0.239646	0.177391	0.177391	0.177391
95	0.259578	0.259578	0.259578	0.188755	0.188755	0.188755
96	0.275506	0.275506	0.275506	0.199303	0.199303	0.199303
97	0.290981	0.290981	0.290981	0.212034	0.212034	0.212034
98	0.310600	0.310600	0.310600	0.220611	0.220611	0.220611
99	0.325288	0.325288	0.325288	0.227940	0.227940	0.227940
100	0.339424	0.339424	0.339424	0.233930	0.233930	0.233930
101	0.358628	0.358628	0.358628	0.244834	0.244834	0.244834
102	0.371685	0.371685	0.371685	0.254498	0.254498	0.254498
103	0.383040	0.383040	0.383040	0.266044	0.266044	0.266044
104	0.392003	0.392003	0.392003	0.279055	0.279055	0.279055
105	0.397886	0.397886	0.397886	0.293116	0.293116	0.293116
106	0.400000	0.400000	0.400000	0.307811	0.307811	0.307811
107	0.400000	0.400000	0.400000	0.322725	0.322725	0.322725
108	0.400000	0.400000	0.400000	0.337441	0.337441	0.337441
109	0.400000	0.400000	0.400000	0.351544	0.351544	0.351544
110	0.400000	0.400000	0.400000	0.364617	0.364617	0.364617
111	0.400000	0.400000	0.400000	0.376246	0.376246	0.376246

Age	Male	Male	Male	Female	Female	Female
	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans
112	0.400000	0.400000	0.400000	0.386015	0.386015	0.386015
113	0.400000	0.400000	0.400000	0.393507	0.393507	0.393507
114	0.400000	0.400000	0.400000	0.398308	0.398308	0.398308
115	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
116	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
117	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
118	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
119	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

(f) *Effective/Applicability date.* This section applies for plan years beginning on or after January 1, 2008.

■ **Par. 3.** Section 1.430(h)(3)–2 is added to read as follows:

§ 1.430(h)(3)–2 Plan-specific substitute mortality tables used to determine present value.

(a) *In general.* This section sets forth rules for the use of substitute mortality tables under section 430(h)(3)(C) in determining any present value or making any computation under section 430 in accordance with § 1.430(h)(3)–1(a)(1). In order to use substitute mortality tables, a plan sponsor must obtain approval to use substitute mortality tables for the plan in accordance with the procedures set forth in paragraph (b) of this section. Paragraph (c) of this section sets forth rules for the development of substitute mortality tables, including guidelines for determining whether a plan has sufficient credible mortality experience to use substitute mortality tables. Paragraph (d) of this section sets forth special rules regarding the use of substitute mortality tables. The Commissioner may, in revenue rulings and procedures, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), provide additional guidance regarding approval and use of substitute mortality tables under section 430(h)(3)(C) and related matters.

(b) *Procedures for obtaining approval to use substitute mortality tables*—(1) *Written request to use substitute mortality tables*—(i) *General requirements.* In order to use substitute mortality tables, a plan sponsor must submit a written request to the Commissioner that demonstrates that those substitute mortality tables meet the requirements of section 430(h)(3)(C) and this section. This request must state the first plan year and the term of years (not more than 10) that the tables are requested to be used.

(ii) *Time for written request*—(A) *In general.* Except as provided in this paragraph (b)(1)(ii), substitute mortality tables cannot be used for a plan year unless the plan sponsor submits the written request described in paragraph (b)(1)(i) of this section at least 7 months prior to the first day of the first plan year for which the substitute mortality tables are to apply.

(B) *Special rule for requests submitted on or before October 1, 2007.* Notwithstanding the rule of paragraph (b)(1)(ii)(A) of this section, the timing of the written request described in paragraph (b)(1)(i) of this section does not prevent a plan from using substitute mortality tables for a plan year provided that the written request is submitted no later than October 1, 2007.

(C) *Special rule for requests submitted on or before October 1, 2008, with respect to plan years beginning during 2009.* Notwithstanding the rule of paragraph (b)(1)(ii)(A) of this section, the timing of the written request described in paragraph (b)(1)(i) of this section does not prevent a plan from using substitute mortality tables for a plan year that begins during 2009 provided that the written request is submitted no later than October 1, 2008.

(2) *Commissioner's review of request*—(i) *In general.* During the 180-day period that begins on the date the plan sponsor submits a request to use substitute mortality tables for a plan pursuant to this section, the Commissioner will determine whether the request to use substitute mortality tables satisfies the requirements of this section (including any published guidance issued pursuant to paragraph (a) of this section), and will either approve or deny the request. The Commissioner will deny a request if the request fails to meet the requirements of this section or if the Commissioner determines that a substitute mortality table does not sufficiently reflect the mortality experience of the applicable plan population.

(ii) *Request for additional information.* The Commissioner may request additional information with respect to the submission. Failure to provide that information on a timely basis constitutes grounds for denial of the request.

(iii) *Deemed approval.* Except as provided in paragraph (b)(2)(iv) of this section, if the Commissioner does not issue a denial within the 180-day review period, the request is deemed to have been approved.

(iv) *Extension of time permitted.* The Commissioner and a plan sponsor may, before the expiration of the 180-day review period, agree in writing to extend that period, provided that any such agreement also specifies any revisions in the plan sponsor's request, including any change in the requested term of use of the substitute mortality tables.

(c) *Development of substitute mortality tables*—(1) *Mortality experience requirements*—(i) *In general.* Substitute mortality tables must reflect the actual mortality experience of the pension plan for which the tables are to be used and that mortality experience must be credible mortality experience as described in paragraph (c)(1)(ii) of this section. Separate mortality tables must be established for each gender under the plan, and a substitute mortality table is permitted to be established for a gender only if the plan has credible mortality experience with respect to that gender.

(ii) *Credible mortality experience.* There is credible mortality experience for a gender within a plan if and only if, over the period covered by the experience study described in paragraph (c)(2)(ii) of this section, there are at least 1,000 deaths within that gender.

(iii) *Gender without credible mortality experience*—(A) *In general.* If, for the first year for which a plan uses substitute mortality tables, one gender has credible mortality experience but

the other gender does not have credible mortality experience, the substitute mortality tables are used for the gender that does have credible mortality experience and the mortality tables under § 1.430(h)(3)–1 are used for the gender that does not have credible mortality experience. For a subsequent plan year, the plan sponsor may continue to use substitute mortality tables for the gender with credible mortality experience without using substitute mortality tables for the other gender only if the other gender continues to lack credible mortality experience for that subsequent plan year.

(B) *Demonstration of lack of credible mortality experience for a gender.* In general, in order to demonstrate that a gender within a plan does not have credible mortality experience for a plan year, the demonstration that the gender population within the plan has fewer than 1,000 deaths over a 4-year period must be made using a 4-year period that ends less than 3 years before the first day of that plan year. For example, if a plan uses substitute mortality tables based on credible mortality experience obtained over a 4-year experience study period for its male population and the standard mortality tables under § 1.430(h)(3)–1 for its female population, there must be a demonstration that the plan's female population does not have at least 1,000 deaths in a 4-year period that ends less than 3 years before the first day of that plan year. However, if the experience study period described in paragraph (c)(2)(ii)(A) of this section exceeds 4 years, then in order to demonstrate that a gender within a plan does not have credible mortality experience for a plan year, the mortality experience of that population must be analyzed over a period that is the same length as the experience study on which the substitute mortality tables are based and that ends less than 3 years before the first day of that plan year.

(iv) *Disabled individuals.* Under section 430(h)(3)(D), separate mortality tables are permitted to be used for certain disabled individuals. If such separate mortality tables are used for those disabled individuals, then those individuals are disregarded for all purposes under this section. Thus, if the mortality tables under section 430(h)(3)(D) are used for disabled individuals under a plan, mortality experience with respect to those individuals must be excluded in developing mortality rates for substitute mortality tables under this section.

(2) *Base table and base year*—(i) *In general.* Development of a substitute mortality table under this section requires creation of a base table and identification of a base year under this paragraph (c)(2). The base table and base year are then used to determine a substitute mortality table under paragraph (c)(3) of this section.

(ii) *Experience study and base table requirements*—(A) *In general.* The base table for a plan population must be developed from an experience study of the mortality experience of that plan population that generates amounts-weighted mortality rates based on experience data for the plan that is collected over an experience study period. The minimum length of the experience study period is 2 years. The maximum length of the experience study period is 5 years, but can be extended by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter). The last day of the final year reflected in the experience data must be less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply. For example, if July 1, 2009, is the first day of the first plan year for which the substitute mortality tables will be used, then an experience study using calendar year data must include data collected for a period that ends no earlier than December 31, 2006.

(B) *Amounts-weighted mortality rates.* The amounts-weighted mortality rate for an age is equal to the quotient determined by dividing the sum of the accrued benefits (or payable benefits, in the case of individuals in pay status) for all individuals at that age at the beginning of the year who died during the year, by the sum of the accrued benefits (or payable benefits, in the case of individuals in pay status) for all individuals at that age at the beginning of the year, with appropriate adjustments for individuals who left the relevant plan population during the year for reasons other than death. Because amounts-weighted mortality rates for a plan cannot be determined without accrued (or payable) benefits, the mortality experience study used to develop a base table cannot include periods before the plan was established.

(C) *Grouping of ages.* Amounts-weighted mortality rates may be derived from amounts-weighted mortality rates for age groups. The Commissioner, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), may specify grouping rules (for example, 5-year age groups, except for extreme ages such as ages above 100 or below 20) and methods for developing amounts-weighted mortality rates for individual ages from amounts-weighted mortality rates initially determined for each age group.

(D) *Base table construction.* The base tables must be constructed from the amounts-weighted mortality rates determined in paragraph (c)(2)(ii)(B) of this section. The base tables must be constructed either directly through graduation of the amounts-weighted mortality rates or indirectly by applying a level percentage to the applicable mortality table set forth in § 1.430(h)(3)–1, provided that the adjusted table sufficiently reflects the mortality experience of the plan. The Commissioner also may permit the use of other recognized mortality tables in the construction of base tables, applying a similar mortality experience standard.

(iii) *Base year requirements.* The base year is the calendar year that contains the day before the midpoint of the experience study period. If the base table is constructed by applying a level percentage to a table set forth in § 1.430(h)(3)–1, then the percentage must be applied to the table under § 1.430(h)(3)–1 after it has been projected to the base year using Projection Scale AA, as set forth in § 1.430(h)(3)–1(d). Thus, for example, if the base year of the mortality experience study is 2005, the applicable base (year 2000) mortality rates must be projected 5 years prior to determining the level percentage to be applied to the applicable projected base (year 2000) mortality rates.

(iv) *Change in number of individuals covered by table.* Experience data cannot be used to develop a base table if the number of individuals in the population covered by the table (for example, the male annuitant population) as of the last day of the plan year before the year the request to use substitute mortality tables is made, compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based, reflects a difference of 20 percent or more, unless it is demonstrated to the satisfaction of the Commissioner that the experience data is accurately predictive of future mortality of that plan population (taking into account the effect of the change in individuals) after appropriate adjustments to the data are made (for example, excluding data from individuals with respect to a spun-off portion of the plan). For this purpose, a reasonable estimate of the number of individuals in the population covered

by the table may be used, such as the estimated number of participants and beneficiaries used for purposes of the PBGC Form 1–ES.

(3) *Determination of substitute mortality tables*—(i) *In general.* A plan's substitute mortality tables must be generational mortality tables. Substitute mortality tables are determined using the base mortality tables developed pursuant to paragraph (c)(2) of this section and the projection factors provided in Projection Scale AA, as set forth in § 1.430(h)(3)–1(d). Under the generational mortality tables, the probability of an individual's death at a particular age is determined as the individual's base mortality rate (that is, the applicable mortality rate from the base mortality table for the age for which the probability of death is being determined) multiplied by the mortality improvement factor. The mortality improvement factor is equal to $(1 - \text{projection factor for that age})^n$, where n is equal to the projection period (the number of years between the base year for the base mortality table and the calendar year in which the individual attains the age for which the probability of death is being determined).

(ii) *Example of calculation.* As an example of the use of generational mortality tables under paragraph (c)(3)(i) of this section, if approved substitute mortality tables are based on data collected during 2005 and 2006, the base year would be 2005 because 2005 would be the year that contains the day before the midpoint of the experience study period. If the tables show a base mortality rate of .006000 for male annuitants at age 54, the probability of death at age 54 for a male annuitant born in 1974 would be determined using the base mortality rate of .006000, the age-54 projection factor of .020 (pursuant to the Scale AA Projection Factors set forth in § 1.430(h)(3)–1(d)) and a projection period of 23 years. The projection period is the number of years between the base year of 2005 and the calendar year in which the individual reaches age 54. Accordingly, the mortality improvement factor would be .628347 and the probability of death at age 54 would be .003770.

(4) *Separate tables for specified populations*—(i) *In general.* Except as provided in this paragraph (c)(4), separate substitute mortality tables are permitted to be used for separate populations within a gender under a plan only if—

(A) All individuals of that gender in the plan are divided into separate populations;

(B) Each separate population has credible mortality experience as provided in paragraph (c)(4)(iii) of this section; and

(C) The separate substitute mortality table for each separate population is developed using mortality experience data for that population.

(ii) *Annuitant and nonannuitant separate populations.* Notwithstanding paragraph (c)(4)(i)(B) of this section, substitute mortality tables for separate populations of annuitants and nonannuitants within a gender may be used even if only one of those separate populations has credible mortality experience. Similarly, if separate populations that satisfy paragraph (c)(4)(i)(B) of this section are established, then any of those populations may be further subdivided into separate annuitant and nonannuitant subpopulations, provided that at least one of the two resulting subpopulations has credible mortality experience. The standard mortality tables under § 1.430(h)(3)–1 are used for a resulting subpopulation that does not have credible mortality experience. For example, in the case of a plan that has credible mortality experience for both its male hourly and salaried individuals, if the male salaried annuitant population has credible mortality experience, the plan may use substitute mortality tables with respect to that population even if the standard mortality tables under § 1.430(h)(3)–1 are used for the male salaried nonannuitant population (because that nonannuitant population does not have credible mortality experience).

(iii) *Credible mortality experience for separate populations.* In determining whether a separate population within a gender has credible mortality experience, the requirements of paragraph (c)(1)(ii) of this section must be satisfied but, in applying that paragraph (c)(1)(ii), the separate population should be substituted for the particular gender. In demonstrating that an annuitant or nonannuitant population within a gender or within a separate population does not have credible mortality experience, the requirements of paragraph (c)(1)(iii) of this section must be satisfied but, in applying that paragraph, the annuitant (or nonannuitant) population should be substituted for the particular gender.

(d) *Special rules*—(1) *All plans in controlled group must use substitute mortality tables*—(i) *In general.* Except as otherwise provided in this paragraph (d)(1), substitute mortality tables are permitted to be used for a plan for a plan year only if, for that plan year (or any portion of that plan year), substitute mortality tables are also approved and used for each other pension plan subject to the requirements of section 430 that is maintained by the sponsor and by each member of the plan sponsor's controlled group. For purposes of this section, the term *controlled group* means any group treated as a single employer under paragraph (b), (c), (m), or (o) of section 414.

(ii) *Plans without credible experience*—(A) *In general.* For the first year for which a plan uses substitute mortality tables, the use of substitute mortality tables for the plan is not prohibited merely because another plan described in paragraph (d)(1)(i) of this section cannot use substitute mortality tables because neither the males nor the females under that other plan have credible mortality experience for a plan year. For each subsequent plan year, the plan sponsor may continue to use substitute mortality tables for the plan with credible mortality experience without using substitute mortality tables for the other plan only if neither the males nor the females under that other plan have credible mortality experience for that subsequent plan year.

(B) *Analysis of mortality experience.* For each plan year in which a plan uses substitute mortality tables, in order to demonstrate that the male and female populations of another plan maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) do not have credible mortality experience, the requirements of paragraph (c)(1)(iii)(B) of this section must be satisfied for that plan year. Thus, a plan is not prohibited from using substitute mortality tables for a plan year merely because another plan in the controlled group of the plan sponsor does not have at least 1,000 male deaths and does not have at least 1,000 female deaths in a 4-year period (or a period that is the length of the experience study period if the experience study period under paragraph (c)(2)(ii)(A) of this section is longer than 4 years) that ends less than 3 years before the first day of that plan year.

(iii) *Newly affiliated plans not using substitute mortality tables*—(A) *In general.* The use of substitute mortality tables for a plan is not prohibited merely because a newly affiliated plan does not use substitute mortality tables, but only through the last day of the plan year of the plan using substitute mortality tables that contains the last day of the period described in section 410(b)(6)(C)(ii) for either the newly affiliated plan or the plan using substitute mortality tables, whichever is later. Thus, for the following plan year, the mortality tables prescribed under

§ 1.430(h)(3)–1 apply with respect to the plan (and all other plans within the plan sponsor's controlled group, including the newly affiliated plan) unless—

(*1*) Approval to use substitute mortality tables has been obtained with respect to the newly affiliated plan pursuant to paragraph (b)(1) of this section; or

(*2*) The newly affiliated plan cannot use substitute mortality tables because neither the males nor the females under the plan have credible mortality experience as described in paragraph (c)(1)(ii) of this section (as determined in accordance with the rules of paragraph (d)(1)(iv) of this section).

(B) *Definition of newly affiliated plan.* For purposes of this section, a plan is treated as a newly affiliated plan if it becomes maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f). A plan also is treated as a newly affiliated plan for purposes of this section if the plan is established in connection with a transfer of assets and liabilities from another employer's plan in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f).

(iv) *Demonstration of credible mortality experience for newly affiliated plan*—(A) *In general.* In general, in the case of a newly affiliated plan described in paragraph (d)(1)(iii) of this section, the demonstration of whether credible mortality experience exists for the plan for a plan year may be made by either including or excluding mortality experience data for the period prior to the date the plan becomes maintained by a member of the new plan sponsor's controlled group. If a plan sponsor excludes mortality experience data for the period prior to the date the plan becomes maintained within the new plan sponsor's controlled group, the exclusion must apply for all populations within the plan.

(B) *Demonstration of credible mortality experience.* Regardless of whether mortality experience data for the period prior to the date a newly affiliated plan becomes maintained within the new plan sponsor's controlled group is included or excluded for a plan year, the provisions of this section, including the demonstration of credible mortality experience in accordance with paragraph (c)(1)(ii) of this section, must be satisfied before substitute mortality tables may be used with respect to the plan. Thus, for example, the plan must meet the rule in paragraph (c)(2)(ii)(A) of this section that the base table be based on mortality experience data for the plan over a 2-year or longer consecutive period that ends less than 3 years before the first day of the plan year for which substitute mortality tables will be used.

(C) *Demonstration of lack of credible mortality experience.* In the case of a newly affiliated plan described in paragraph (d)(1)(iii) of this section, in order to demonstrate a lack of credible mortality experience with respect to a gender for a plan year, the rules of paragraph (c)(1)(iii)(B) of this section generally will apply. However, a special rule applies if the plan's mortality experience demonstration for a plan year is made by excluding mortality experience for the period prior to the date the plan becomes maintained by a member of the new plan sponsor's controlled group. In such a case, an employer is permitted to demonstrate a plan's lack of credible mortality experience using an experience study period of less than four years, provided that the experience study period begins with the date the plan becomes maintained within the sponsor's controlled group and ends not more than one year and one day before the first day of the plan year with respect to which the lack of credible mortality experience demonstration is made.

(D) *Example.* The following example illustrates the application of this paragraph (d)(1):

Example. (i) Employer A is a corporation and maintains Plan M, which has a calendar year plan year and has obtained approval to use substitute mortality tables for 10 years beginning with the plan year that begins on January 1, 2009. Employer B is a corporation and maintains Plan N, which does not use substitute mortality tables and has a calendar year plan year. On July 1, 2010, Employer A acquires 100% of the stock of Employer B.

(ii) Pursuant to paragraph (d)(1)(iii) of this section, the maintenance of Plan N within the controlled group that maintains Plan M does not impair the use of substitute mortality tables by Plan M through the end of the plan year that ends on December 31, 2011.

(iii) Pursuant to paragraph (d)(1)(iii) of this section, beginning with the plan year that begins on January 1, 2012, Plan M continues to use substitute mortality tables only if either Plan N obtains approval to use substitute mortality tables or Employer A can demonstrate that Plan N does not have credible mortality experience. Pursuant to paragraph (d)(1)(iv)(C) of this section, Employer A is permitted to either exclude mortality experience date for the period of time before July 1, 2010 (the date Plan N became maintained with Employer A's controlled group), or include that mortality experience data for purposes of demonstrating that Plan N does not have credible mortality experience. Thus, if there is an experience study that shows that the male and female populations of Plan N each do not have 1,000 deaths during the period from July 1, 2010, through December 31, 2010, then the maintenance of Plan N within the Employer A's controlled group does not impair Plan M's use of substitute mortality tables for Plan M's 2012 plan year.

(iv) For Plan M's 2013 plan year, pursuant to paragraph (d)(1)(iv)(C) of this section, the maintenance of Plan N within Employer A's controlled group does not impair Plan M's use of substitute mortality tables if there is an experience study that shows that the male and female populations of Plan N each do not have 1,000 deaths during the period from July 1, 2010, through December 31, 2011.

(2) *Duration of use of tables.* Except as provided in paragraph (d)(4) of this section, substitute mortality tables are used with respect to a plan for the term of consecutive plan years specified in the plan sponsor's written request to use such tables under paragraph (b)(1) of this section and approved by the Commissioner, or such shorter period prescribed by the Commissioner in the approval to use substitute mortality tables. Following the end of such term of use, or following any early termination of use described in paragraph (d)(4) of this section, the mortality tables specified in § 1.430(h)(3)–1 apply with respect to the plan unless approval under paragraph (b)(1) of this section has been received by the plan sponsor to use substitute mortality tables for a further term.

(3) *Aggregation*—(i) *Permissive aggregation of plans.* In order for a plan sponsor to use a set of substitute mortality tables with respect to two or more plans, the rules of this section are applied by treating those plans as a single plan. In such a case, the substitute mortality tables must be used for the aggregated plans and must be based on data collected with respect to those aggregated plans.

(ii) *Required aggregation of plans.* In general, plans are not required to be aggregated for purposes of applying the rules of this section. However, for purposes of this section, a plan is required to be aggregated with any plan that was previously spun off from that plan for purposes of this section if the Commissioner determines that one purpose of the spinoff is to avoid the use of substitute mortality tables for any of the plans that were involved in the spinoff.

(4) *Early termination of use of tables*—(i) *General rule.* A plan's substitute mortality tables cannot be used as of the earliest of—

(A) The plan year in which the plan fails to satisfy the requirements of paragraph (c)(1) of this section (regarding credible mortality experience requirements and demonstrations);

(B) The plan year in which the plan fails to satisfy the requirements of paragraph (d)(1) of this section (regarding use of substitute mortality tables by controlled group members);

(C) The second plan year following the plan year in which there is a significant change in individuals covered by the plan as described in paragraph (d)(4)(ii) of this section;

(D) The plan year following the plan year in which a substitute mortality table used for a plan population is no longer accurately predictive of future mortality of that population, as determined by the Commissioner or as certified by the plan's actuary to the satisfaction of the Commissioner; or

(E) The date specified in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) pursuant to a replacement of mortality tables specified under section 430(h)(3)(A) and § 1.430(h)(3)–1 (other than annual updates to the static mortality tables issued pursuant to § 1.430(h)(3)–1(a)(3)).

(ii) *Significant change in coverage*—(A) *Change in coverage from time of experience study.* For purposes of applying the rules of paragraph (d)(4)(i)(C) of this section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals of at least 20 percent compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used for the plan population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the population).

(B) *Change in coverage from time of certification.* For purposes of applying the rules of paragraph (d)(4)(i)(C) of this section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals covered by a substitute mortality table of at least 20 percent compared to the number of individuals in a plan year for which a certification described in paragraph (d)(4)(ii)(A) of this section was made on account of a prior change in coverage. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used by the plan with respect to the covered population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the plan population).

(e) *Effective/Applicability date.* This section applies for plan years beginning on or after January 1, 2009.

■ **Par. 4.** Section 1.431(c)(6)–1 is added to read as follows:

§ 1.431(c)(6)–1 Mortality tables used to determine current liability.

(a) *Mortality tables used to determine current liability.* The mortality assumptions that apply to a defined benefit plan for the plan year pursuant to section 430(h)(3)(A) and § 1.430(h)(3)–1(a)(2) are used to determine a multiemployer plan's current liability for purposes of applying the rules of section 431(c)(6). A multiemployer plan is permitted to apply either the static mortality tables used pursuant to § 1.430(h)(3)–1(a)(3) or generational mortality tables used pursuant to § 1.430(h)(3)–1(a)(4) for this purpose. However, for this purpose, a multiemployer plan is not permitted to use substitute mortality tables under § 1.430(h)(3)–2.

(b) *Effective/applicability date.* This section applies for plan years beginning on or after January 1, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–17492 Filed 7–30–08; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[TD 9414]

RIN 1545–BE52

Grantor Retained Interest Trusts—Application of Sections 2036 and 2039; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9414) that were published in the **Federal Register** on Monday, July 14, 2008 (73 FR 40173). The final regulations provide guidance on the portion of property transferred to a trust or otherwise, that is properly includible in a grantor's gross estate under Internal Revenue Code (Code) sections 2036 and 2039 if the grantor has retained the use of the property or the right to an annuity, unitrust, or other payment from such property for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death.

DATES: The correction is effective on July 31, 2008 and applicable to the estates of decedents dying after August 16, 1954.

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9414) that is the subject of this correction are under sections 2036 and 2039 of the Code.

List of Subjects for 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 20 is corrected by making the following correcting amendment:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Paragraph 1.** The authority citation for part 20 continues to read in part as follows:

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

■ **Par. 2.** Section 20.2036–1 is amended by adding paragraph (a)(3)(ii) to read as follows:

§ 20.2036–1 Transfers with retained life estate.

(a) * * *

(3) * * *

(ii) The right, either alone or in conjunction with any other person or persons, to designate the person or persons who shall possess or enjoy the transferred property or its income (except that, if the transfer was made before June 7, 1932, the right to designate must be retained by or reserved to the decedent alone).

* * * * *

Cynthia E. Grigsby,

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

[FR Doc. E8–17500 Filed 7–30–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26

[TD 9421]

RIN 1545–BE70

Severance of a Trust for Generation-Skipping Transfer (GST) Tax Purposes

AGENCY: Internal Revenue Service (IRS), Department of the Treasury (Treasury).

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance regarding the generation-skipping transfer (GST) tax consequences of the severance of a trust in a manner that is effective under state law, but that does not meet the requirements of a qualified severance under section 2642(a)(3) of the Internal Revenue Code (Code). These final regulations also provide guidance regarding the GST tax consequences of a qualified severance of a trust with an inclusion ratio between zero and one into more than two resulting trusts. These final regulations also provide special funding rules applicable to the non-pro rata division of certain assets between or among resulting trusts. The regulations will affect trusts that are subject to the GST tax.

DATES: *Effective Date:* The regulations are effective July 31, 2008.

Applicability Date: For dates of applicability, see § 26.2642–6(k)(1).

FOR FURTHER INFORMATION CONTACT: Mayer R. Samuels, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 2642(a)(3) was added to the Code by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107–16 (115 Stat. 38 (2001). Under section 2642(a)(3), if a trust is divided into two or more trusts in a ''qualified severance,'' the separate trusts resulting from the severance (resulting trusts), which may have different inclusion ratios, will be recognized as separate trusts for GST tax purposes. (As used in this guidance, ''resulting trust'' has no relation to a resulting trust recognized under the common law of trusts and principles of equity.) Once the resulting trusts are recognized as separate trusts, the transferor's lifetime GST tax exemption may be allocated separately to either trust. In addition, whether or not a GST taxable event occurs is determined separately for each resulting trust.

On August 24, 2004, proposed regulations under section 2642(a)(3) regarding qualified severances were published in the **Federal Register** (REG–145987–03, 2004–39 IRB 519, 69 FR 51967). Final regulations were published on August 2, 2007 (TD 9348, 2007–37 IRB 563, 72 FR 42291). The Treasury Department and IRS determined that certain comments received in response to the proposed regulations, and certain additional rules under section 2642(a)(3), should be addressed in a separate notice of proposed rulemaking. On August 2, 2007, the **Federal Register** published a notice of proposed rulemaking (REG–128843–05, 2007–37 IRB 587, 72 FR 42340) addressing those comments and rules. The IRS received one submission containing several comments on the notice of proposed rulemaking. The comments contained in the submission are discussed below. No public hearing was requested or held.

Explanation of Provisions and Summary of Comments

Section 26.2642–6(d)(4) of the existing regulations provides that each of the trusts resulting from a qualified severance must be funded with a fraction or percentage of the original trust, and that the sum of those fractions or percentages must be one or one hundred percent, respectively. The existing regulations provide that this requirement may be satisfied by the funding of each resulting trust with that trust's fraction or percentage share of each asset held by the original trust (a pro rata division). Section 26.2642–6(d)(4) of the proposed regulations permits the funding of the resulting trusts on a non-pro rata basis, provided that a special funding rule is also satisfied. Specifically, this section of the proposed regulations provides that, if the assets of the original trust are divided between or among the resulting trusts on a non-pro rata basis, no discounts or other reductions from the value of the asset owned by the original trust, arising by reason of the division of the original trust's interest in the asset between or among the resulting trusts, are permitted for purposes of determining the amount used to fund each resulting trust. Instead, solely for funding purposes, each resulting trust's interest in the stock of a closely held corporation, partnership interest, or other asset must be valued by multiplying the fair market value of the asset held in the original trust as of the date of severance by the fractional or percentage interest in that asset being distributed to that resulting trust. Thus, for purposes of the requirements of a qualified severance, regardless of whether the funding is done on a pro rata basis, the cumulative value of the resulting trusts equals the value of the original trust.

The commentators pointed out that funding pursuant to this rule would result in an allocation different from the allocation that would normally be obtained from funding based on the state law fair market value standard which would take the discounts into account. The commentators expressed concern that the resulting shift in beneficial interests between or among the resulting trusts could violate the trustee's fiduciary duty of impartiality under applicable state law. Further, the commentators pointed out that the proposed rule could be avoided through the post-severance purchase and sale of assets between resulting trusts at fair market value. The commentators recommended an alternative funding rule under which the value of the original trust would be calculated as the sum of the fair market value of the assets to be held by the resulting trusts.

This recommendation was not adopted in the final regulations. It is difficult to see how the fiduciary duty of impartiality is challenged more by this funding rule than by a pro rata division of each asset of the original trust. The funding rule in the proposed regulations was intended to facilitate the funding of the resulting trusts without the cost or need for review of appraisals of each severed interest, and thus to improve the administrability of the severance provisions. This funding rule produces a bright line test, the same result whether or not the trust assets are divided on a pro rata basis, and recognizes that in many circumstances, where a trust is severed for tax purposes into two identical trusts with the same or related beneficiaries, any closely held stock or partnership units divided between the two resulting trusts are likely to be sold as a unit without any actual reduction in value that may be reflected in the claimed discounts. Any use of post-severance sales between resulting trusts to avoid these funding rules may constitute mere steps in a pre-arranged transaction.

The commentators pointed out that the nonqualified severance illustrated in § 26.2642–6(j), *Example 3*, of the existing regulations will result in a taxable event for GST tax purposes (that is, a taxable termination or taxable distribution) if that severance occurs on or after the proposed regulations are adopted as final. This is because, under the proposed regulations, the severed

trust is treated as a separate trust for GST tax purposes. Accordingly, cautionary language has been added to this example to the effect that a GST taxable event will result as a consequence of the severance.

It was determined that § 26.2642–6(j), *Example 12* of the proposed regulations addresses the same issue covered in *Example 8* of § 26.2654–1(a)(5). Therefore, *Example 12* has been removed from the final regulations and the examples have been renumbered accordingly.

As requested by the commentators, a new example, § 26.2642–6(j), *Example 13*, has been added to confirm that a trust resulting from a nonqualified severance may subsequently be severed in a qualified severance.

The commentators noted that the proposed regulations under § 26.2654–1(a)(1)(iii) address the treatment of severances resulting in separate trusts that are required under the terms of a trust instrument (mandatory severances) but that are neither severances otherwise recognized under section 2654 nor qualified severances under section 2642. The proposed regulations conclude that the separate shares or trusts resulting from such a severance, if recognized as separate trusts under state law, will be recognized as separate for GST tax purposes. The commentators questioned why the proposed changes to the regulations under section 2654 must address those severances that result in separate trusts when this issue is already addressed in § 26.2642–6(h) of the proposed regulations dealing with nonqualified severances. Section 26.2654–1(a)(1)(iii) was intended to address only mandatory severances that, as with the other types of severances covered by § 26.2654–1(a), are dictated by the terms of the trust. On the other hand, § 26.2642–6(h) addresses discretionary severances, that is, severances that are elective and within the discretion of the trustee. The severances described in § 26.2654–1 are governed by that section. Therefore, the proposed addition to this section has not been removed.

The proposed regulations under section 2654 state a general rule that separate shares or trusts resulting from a mandatory severance, that are recognized as separate trusts for GST tax purposes, will not be treated as separate trusts for purposes of filing income tax returns or calculating any other taxes. The comments noted that this statement should not apply to shares or trusts that are recognized as separate trusts under local law. Rather, this statement should apply only to separate shares created within a single trust that are not recognized under local law as separate trusts. The final regulations reflect this change.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) applies only to § 26.2642–6(d)(7)(iii) of these regulations. It is hereby certified that this provision will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required. This provision directly affects individuals, not entities. Because the remaining sections of these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these final regulations is Mayer R. Samuels, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. Other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 26 is amended as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

■ **Paragraph 1.** The authority citation for part 26 continues to read in part as follows:

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

■ **Par. 2.** In § 26.2600–1, the table of contents is amended by adding the entry for § 26.2642–6(h) to read as follows:

§ 26.2600–1 Table of contents.

* * * * *

§ 26.2642–6 Qualified severance.

* * * * *

(h) Treatment of trusts resulting from a severance that is not a qualified severance.

* * * * *

■ **Par. 3.** Section 26.2642–6 is amended as follows:

■ 1. Paragraphs (d)(4) and (d)(7) are revised.

■ 2. Paragraph (h) is added.

■ 3. Paragraph (j) *Example 3* is revised.

■ 4. Paragraph (j) *Examples 6, 9, 12*, and *13* are added.

■ 5. Paragraph (k)(1) is revised.

The additions and revisions read as follows:

§ 26.2642–6 Qualified severance.

* * * * *

(d) * * *

(4) The single trust (original trust) is severed on a fractional basis, such that each new trust (resulting trust) is funded with a fraction or percentage of the original trust, and the sum of those fractions or percentages is one or one hundred percent, respectively. For this purpose, the fraction or percentage may be determined by means of a formula (for example, that fraction of the trust the numerator of which is equal to the transferor's unused GST tax exemption, and the denominator of which is the fair market value of the original trust's assets on the date of severance). The severance of a trust based on a pecuniary amount does not satisfy this requirement. For example, the severance of a trust is not a qualified severance if the trust is divided into two trusts, with one trust to be funded with $1,500,000 and the other trust to be funded with the balance of the original trust's assets. With respect to the particular assets to be distributed to each separate trust resulting from the severance, each such trust may be funded with the appropriate fraction or percentage (pro rata portion) of each asset held by the original trust. Alternatively, the assets may be divided among the resulting trusts on a non-pro rata basis, based on the fair market value of the assets on the date of severance. However, if a resulting trust is funded on a non-pro rata basis, each asset received by a resulting trust must be valued, solely for funding purposes, by multiplying the fair market value of the asset held in the original trust as of the date of severance by the fraction or percentage of that asset received by that resulting trust. Thus, the assets must be valued without taking into account any discount or premium arising from the severance, for example, any valuation discounts that might arise because the resulting trust receives less than the entire interest

held by the original trust. See paragraph (j), *Example 6* of this section.

* * * * *

(7)(i) In the case of a qualified severance occurring after GST tax exemption has been allocated to the trust (whether by an affirmative allocation, a deemed allocation, or an automatic allocation pursuant to the rules contained in section 2632), if the trust has an inclusion ratio as defined in § 26.2642–1 that is greater than zero and less than one, then either paragraph (d)(7)(ii) or (iii) of this section must be satisfied.

(ii) The trust is severed initially into only two resulting trusts. One resulting trust must receive that fractional share of the total value of the original trust as of the date of severance that is equal to the applicable fraction, as defined in § 26.2642–1(b) and (c), used to determine the inclusion ratio of the original trust immediately before the severance. The other resulting trust must receive that fractional share of the total value of the original trust as of the date of severance that is equal to the excess of one over the fractional share described in the preceding sentence. The trust receiving the fractional share equal to the applicable fraction shall have an inclusion ratio of zero, and the other trust shall have an inclusion ratio of one. If the applicable fraction with respect to the original trust is .50, then, with respect to the two equal trusts resulting from the severance, the trustee may designate which of the resulting trusts will have an inclusion ratio of zero and which will have an inclusion ratio of one. Each separate trust resulting from the severance then may be further divided in accordance with the rules of this section. See paragraph (j), *Example 7*, of this section.

(iii) The trust is severed initially into more than two resulting trusts. One or more of the resulting trusts in the aggregate must receive that fractional share of the total value of the original trust as of the date of severance that is equal to the applicable fraction used to determine the inclusion ratio of the original trust immediately before the severance. The trust or trusts receiving such fractional share shall have an inclusion ratio of zero, and each of the other resulting trust or trusts shall have an inclusion ratio of one. (If, however, two or more of the resulting trusts each receives the fractional share of the total value of the original trust equal to the applicable fraction, the trustee may designate which of those resulting trusts will have an inclusion ratio of zero and which will have an inclusion ratio of one.) The resulting trust or trusts with an inclusion ratio of one must receive in the aggregate that fractional share of the total value of the original trust as of the date of severance that is equal to the excess of one over the fractional share described in the second sentence of this paragraph. See paragraph (j), *Example 9*, of this section.

* * * * *

(h) *Treatment of trusts resulting from a severance that is not a qualified severance.* Trusts resulting from a severance (other than a severance recognized for GST tax purposes under § 26.2654–1) that does not meet the requirements of a qualified severance under paragraph (b) of this section will be treated, after the date of severance, as separate trusts for purposes of the GST tax, provided that the trusts resulting from such severance are recognized as separate trusts under applicable state law. The post-severance treatment of the resulting trusts as separate trusts for GST tax purposes generally permits the allocation of GST tax exemption, the making of various elections permitted for GST tax purposes, and the occurrence of a taxable distribution or termination with regard to a particular resulting trust, with no GST tax impact on any other trust resulting from that severance. Each trust resulting from a severance described in this paragraph (h), however, will have the same inclusion ratio immediately after the severance as that of the original trust immediately before the severance. (See § 26.2654–1 for the inclusion ratio of each trust resulting from a severance described in that section.) Further, any trust resulting from a nonqualified severance may be severed subsequently, pursuant to a qualified severance described in this § 26.2642–6.

* * * * *

(j) * * *

Example 3. Severance based on actuarial value of beneficial interests. In 2004, T establishes Trust, an irrevocable trust providing that income is to be paid to T's child C during C's lifetime. Upon C's death, Trust is to terminate and the assets of Trust are to be paid to GC, C's child, if living, or, if GC is not then living, to GC's estate. T properly elects, under section 2632(c)(5), not to have the automatic allocation rules contained in section 2632(c) apply with respect to T's transfers to Trust, and T does not otherwise allocate GST tax exemption with respect to Trust. Thus, Trust has an inclusion ratio of one. In 2009, the trustee of Trust, pursuant to applicable state law, divides Trust into two separate trusts, Trust 1 for the benefit of C (and on C's death to C's estate), and Trust 2 for the benefit of GC (and on GC's death to GC's estate). The document severing Trust directs that Trust 1 is to be funded with an amount equal to the actuarial value of C's interest in Trust prior to the severance, determined under section 7520 of the Internal Revenue Code. Similarly, Trust 2 is to be funded with an amount equal to the actuarial value of GC's interest in Trust prior to the severance, determined under section 7520. Trust 1 and Trust 2 do not provide for the same succession of interests as provided under the terms of the original trust. Therefore, the severance is not a qualified severance. Furthermore, because the severance results in no non-skip person having an interest in Trust 2, Trust 2 constitutes a skip person under section 2613 and, therefore, the severance results in a taxable termination subject to GST tax.

* * * * *

Example 6. Funding of severed trusts on a non-pro rata basis. (i) T's will establishes an irrevocable trust (Trust) for the benefit of T's descendants. As a result of the allocation of GST tax exemption, the applicable fraction with respect to Trust is .60 and Trust's inclusion ratio is .40 [1–.60]. Pursuant to authority granted under applicable state law, on August 1, 2008, the trustee executes a document severing Trust into two trusts, Trust 1 and Trust 2, each of which is identical to Trust. The instrument of severance provides that the severance is intended to qualify as a qualified severance within the meaning of section 2642(a)(3) and designates August 3, 2008, as the date of severance (within the meaning of paragraph (d)(3) of this section). The instrument further provides that Trust 1 and Trust 2 are to be funded on a non-pro rata basis with Trust 1 funded with assets having a fair market value on the date of severance equal to 40% of the value of Trust's assets on that date and Trust 2 funded with assets having a fair market value equal to 60% of the value of Trust's assets on that date. The fair market value of the assets used to fund each trust is to be determined in compliance with the requirements of paragraph (d)(4) of this section.

(ii) On August 3, 2008, the fair market value of the Trust assets totals $4,000,000, consisting of 52% of the outstanding common stock in Company, a closely-held corporation, valued at $3,000,000 and $1,000,000 in cash and marketable securities. Trustee proposes to divide the Company stock equally between Trust 1 and Trust 2, and thus transfer 26% of the Company stock to Trust 1 and 26% of the stock to Trust 2. In addition, the appropriate amount of cash and marketable securities will be distributed to each trust. In accordance with paragraph (d)(4) of this section, for funding purposes, the interest in the Company stock distributed to each trust is valued as a pro rata portion of the value of the 52% interest in Company held by Trust before severance, without taking into account, for example, any valuation discount that might otherwise apply in valuing the noncontrolling interest distributed to each resulting trust.

(iii) Accordingly, for funding purposes, each 26% interest in Company stock distributed to Trust 1 and Trust 2 is valued at $1,500,000 (.5 × $3,000,000). Therefore, Trust 1, which is to be funded with $1,600,000 (.40 × $4,000,000), receives $100,000 in cash and marketable securities valued as of August 3, 2008, in addition to

the Company stock, and Trust 2, which is to be funded with $2,400,000 (.60 × $4,000,000), receives $900,000 in cash and marketable securities in addition to the Company stock. Therefore, the severance is a qualified severance, provided that all other requirements of section 2642(a)(3) and this section are satisfied.

* * * * *

Example 9. Regulatory qualified severance. (i) In 2004, T establishes an inter vivos irrevocable trust (Trust) providing that trust income is to be paid annually in equal shares to T's children, A and B, for 10 years. Trust provides that the trustee has discretion to make additional distributions of principal to A and B during the 10-year term without adjustments to their shares of income or the trust remainder. If either (or both) dies prior to the expiration of the 10-year term, the deceased child's share of trust income is to be paid to the child's then living descendants, per stirpes, for the balance of the trust term. At the expiration of the 10-year term, the corpus is to be distributed equally to A and B; if A and B (or either or them) is not then living, then such decedent's share is to be distributed instead to such decedent's then living descendants, per stirpes. T allocates GST tax exemption to Trust such that Trust's applicable fraction is .25 and its inclusion ratio is .75.

(ii) In 2006, pursuant to applicable state law, the trustee severs the trust into three trusts: Trust 1, Trust 2, and Trust 3. The instrument severing Trust provides that Trust 1 is to receive 50% of Trust's assets, Trust 2 is to receive 25% of Trust's assets, and Trust 3 is to receive 25% of Trust's assets. All three resulting trusts are identical to Trust, except that each has different beneficiaries: A and A's issue are designated as the beneficiaries of Trust 1, and B and B's issue are designated as the beneficiaries of Trust 2 and Trust 3. The severance constitutes a qualified severance, provided that all other requirements of section 2642(a)(3) and this section are satisfied. Trust 1 will have an inclusion ratio of 1. Because both Trust 2 and Trust 3 have each received the fractional share of Trust's assets equal to Trust's applicable fraction of .25, trustee designates that Trust 2 will have an inclusion ratio of one and that Trust 3 will have an inclusion ratio of zero.

* * * * *

Example 12. Other severance that does not meet the requirements of a qualified severance. (i) In 2004, T establishes an irrevocable inter vivos trust (Trust) providing that Trust income is to be paid to T's children, A and B, in equal shares for their joint lives. Upon the death of the first to die of A and B, all Trust income will be paid to the survivor of A and B. At the death of the survivor, the corpus is to be distributed in equal shares to T's grandchildren, W and X (with any then-deceased grandchild's share being paid in accordance with that grandchild's testamentary general power of appointment). W is A's child and X is B's child. T elects under section 2632(c)(5) not to have the automatic allocation rules contained in section 2632(c) apply with respect to T's transfers to Trust, but T allocates GST tax exemption to Trust resulting in Trust having an inclusion ratio of .30.

(ii) In 2009, the trustee of Trust, as permitted by applicable state law, divides Trust into two separate trusts, Trust 1 and Trust 2. Trust 1 provides that trust income is to be paid to A for life and, on A's death, the remainder is to be distributed to W (or pursuant to W's testamentary general power of appointment). Trust 2 provides that trust income is to be paid to B for life and, on B's death, the remainder is to be distributed to X (or pursuant to X's testamentary general power of appointment). Because Trust 1 and Trust 2 do not provide A and B with the contingent survivor income interests that were provided to A and B under the terms of Trust, Trust 1 and Trust 2 do not provide for the same succession of interests in the aggregate as provided by Trust. Therefore, the severance does not satisfy the requirements of this section and is not a qualified severance. Provided that Trust 1 and Trust 2 are recognized as separate trusts under applicable state law, Trust 1 and Trust 2 will be recognized as separate trusts for GST tax purposes pursuant to paragraph (h) of this section, prospectively from the date of the severance. However, Trust 1 and Trust 2 each have an inclusion ratio of .30 immediately after the severance, the same as the inclusion ratio of Trust prior to severance.

Example 13. Qualified severance following a non-qualified severance. Assume the same facts as in *Example 12*, except that, as of November 4, 2010, the trustee of Trust 1 severs Trust 1 into two trusts, Trust 3 and Trust 4, in accordance with applicable local law. The instrument severing Trust 1 provides that both resulting trusts have provisions identical to Trust 1. The terms of the instrument severing Trust 1 further provide that Trust 3 is to be funded on a pro rata basis with assets having a fair market value as of the date of severance equal to 70% of the value of Trust 1's assets on that date, and Trust 4 is to be funded with assets having a fair market value as of the date of severance equal to 30% of the value of Trust 1's assets on that date. The severance constitutes a qualified severance, provided that all other requirements of section 2642(a)(3) and this section are satisfied. Trust 3 will have an inclusion ratio of zero and Trust 4 will have an inclusion ratio of one.

(k) * * *

(1) *In general.* Except as otherwise provided in this paragraph (k), this section applies to severances occurring on or after August 2, 2007. Paragraph (d)(7)(iii), paragraph (h), and *Examples 9, 12* and *13* of paragraph (j) of this section apply to severances occurring on or after September 2, 2008.

■ **Par. 4.** Section 26.2654–1 is amended as follows:

■ 1. Paragraph (a)(1)(i) is revised.

■ 2. Paragraph (a)(1)(iii) is added.

■ 3. In paragraph (a)(5), *Example 8* is revised.

■ 4. Paragraph (d) is added.

The additions and revisions read as follows:

§ 26.2654–1 Certain trusts treated as separate trusts.

(a) * * * (1) * * * (i) * * * If a single trust consists solely of substantially separate and independent shares for different beneficiaries, the share attributable to each beneficiary (or group of beneficiaries) is treated as a separate trust for purposes of Chapter 13. The phrase ''substantially separate and independent shares'' generally has the same meaning as provided in § 1.663(c)–3. However, except as provided in paragraph (a)(1)(iii) of this section, a portion of a trust is not a separate share unless such share exists from and at all times after the creation of the trust. For purposes of this paragraph (a)(1), a trust is treated as created at the date of death of the grantor if the trust is includible in its entirety in the grantor's gross estate for Federal estate tax purposes. Further, except with respect to shares or trusts that are treated as separate trusts under local law, treatment of a single trust as separate trusts under this paragraph (a)(1) does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts, unless the governing instrument expressly provides otherwise. See § 26.2642–6 and paragraph (b) of this section regarding the treatment, for purposes of Chapter 13, of separate trusts resulting from the discretionary severance of a single trust.

* * * * *

(iii) *Mandatory severances.* For purposes of this section, if the governing instrument of a trust requires the division or severance of a single trust into separate trusts upon the future occurrence of a particular event not within the discretion of the trustee or any other person, and if the trusts resulting from such a division or severance are recognized as separate trusts under applicable state law, then each resulting trust is treated as a separate trust for purposes of Chapter 13. For this purpose, the rules of paragraph (b)(1)(ii)(C) of this section apply with respect to the severance and funding of the trusts. Similarly, if the governing instrument requires the division of a single trust into separate shares under the circumstances described in this paragraph, each such share is treated as a separate trust for purposes of Chapter 13. The post-severance treatment of the resulting shares or trusts as separate trusts for

GST tax purposes generally permits the allocation of GST tax exemption, the making of various elections permitted for GST tax purposes, and the occurrence of a taxable distribution or termination with regard to a particular resulting share or trust, with no GST tax impact on any other trust or share resulting from that severance. The treatment of a single trust as separate trusts under this paragraph (a)(1), however, does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code, if those portions are not treated as separate trusts under local law. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts, unless the governing instrument expressly provides otherwise. Each separate share and each trust resulting from a mandatory division or severance described in this paragraph will have the same inclusion ratio immediately after the severance as that of the original trust immediately before the division or severance.

* * * * *

(5) * * *

Example 8. Subsequent mandatory division into separate trusts. T creates an irrevocable trust that provides the trustee with the discretionary power to distribute income or corpus to T's children and grandchildren. The trust provides that, when T's youngest child reaches age 21, the trust will be divided into separate shares, one share for each child of T. The income from a respective child's share will be paid to the child during the child's life, with the remainder passing on the child's death to such child's children (grandchildren of T). The separate shares that come into existence when the youngest child reaches age 21 will be recognized as of that date as separate trusts for purposes of Chapter 13. The inclusion ratio of the separate trusts will be identical to the inclusion ratio of the trust before the severance. Any allocation of GST tax exemption to the trust after T's youngest child reaches age 21 may be made to any one or more of the separate shares. The result would be the same if the trust instrument provided that the trust was to be divided into separate trusts when T's youngest child reached age 21, provided that the severance and funding of the separate trusts meets the requirements of this section.

* * * * *

(d) *Effective date.* Paragraph (a)(1)(i), paragraph (a)(1)(iii), and *Example 8* of paragraph (a)(5) apply to severances occurring on or after September 2, 2008.

Sherri L. Brown,

(Acting) Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2008.

Eric Solomon,

Assistant Secretary of the Treasury, (Tax Policy).

[FR Doc. E8–17503 Filed 7–30–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: United States Coast Guard; DHS.

ACTION: Notice of compliance date, Captain of the Port Zones Charleston, Long Island Sound, Jacksonville, and Savannah.

SUMMARY: This document informs owners and operators of facilities located within Captain of the Port Zones Charleston, Long Island Sound, Jacksonville, and Savannah that they must implement access control procedures utilizing TWIC no later than December 1, 2008.

DATES: The compliance date for the TWIC regulations found in 33 CFR part 105 for Captain of the Port Zones Charleston, Long Island Sound, Jacksonville, and Savannah is December 1, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this document as being available in the docket, are part of dockets TSA–2006–24191 and USCG–2006–24196, and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this Notice, call LCDR Jonathan Maiorine, telephone 1–877–687–2243. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On May 22, 2006, the Department of Homeland Security (DHS) through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA) published a joint notice of proposed rulemaking entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' in the **Federal Register** (71 FR 29396). This was followed by a 45-day comment period and four public meetings. The Coast Guard and TSA issued a joint final rule, under the same title, on January 25, 2007 (72 FR 3492) (hereinafter referred to as the original TWIC final rule). The preamble to that final rule contains a discussion of all the comments received on the NPRM, as well as a discussion of the provisions found in the original TWIC final rule, which became effective on March 26, 2007.

On May 7, 2008, the Coast Guard and TSA issued a final rule to realign the compliance date for implementation of the Transportation Worker Identification Credential. 73 FR 25562. The date by which mariners need to obtain a TWIC, and by which owners and operators of vessels, facilities, and outer continental shelf facilities, who have not otherwise been required to implement access control procedures utilizing TWIC, must implement those procedures, is now April 15, 2009 instead of September 25, 2008. Owners and operators of facilities that must comply with 33 CFR part 105 will still be subject to earlier, rolling compliance dates, as set forth in 33 CFR 105.115(e).

The Coast Guard will continue to announce rolling compliance dates, as provided in 33 CFR 105.115(e), at least 90 days in advance via notices published in the **Federal Register**. The final compliance date for all COTP Zones will not be later than April 15, 2009.

II. Notice of Facility Compliance Date—COTP Zones Charleston, Long Island Sound, Jacksonville, and Savannah

Title 33 CFR 105.115(e) currently states that ''[f]acility owners and operators must be operating in accordance with the TWIC provisions in this part by the date set by the Coast Guard in a Notice to be published in the

Federal Register.'' Through this Notice, the Coast Guard informs the owners and operators of facilities subject to 33 CFR 105.115(e) located within COTP Zones Charleston, Long Island Sound, Jacksonville, and Savannah that the deadline for their compliance with Coast Guard and TSA TWIC requirements is December 1, 2008.

The TSA and Coast Guard have determined that this date provides sufficient time for the estimated population required to obtain TWICs for these COTP Zones to enroll and for TSA to complete the necessary security threat assessments for those enrollment applications. We strongly encourage persons requiring unescorted access to facilities regulated by 33 CFR part 105 and located in one of these COTP Zones to enroll for their TWIC as soon as possible, if they haven't already. Additionally, we note that the TWIC Final Rule advises owners and operators of MTSA regulated facilities of their responsibility to notify employees of the TWIC requirements. Specifically, 33 CFR 105.200(b)(14) requires owners or operators of MTSA regulated facilities to ''[i]nform facility personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications.'' Information on enrollment procedures, as well as a link to the pre-enrollment Web site (which will also enable an applicant to make an appointment for enrollment), may be found at *https://twicprogram.tsa.dhs.gov/TWICWebApp/.*

You may also visit our Web site at homeport.uscg.mil/twic for a framework showing expected future compliance dates by COTP Zone. This list is subject to change; changes in expected future compliance dates will appear on that Web site. The exact compliance date for COTP Zones will also be announced in the **Federal Register** at least 90 days in advance.

Dated: July 25, 2008.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Chief, Ports and Facilities Activities.

[FR Doc. E8–17557 Filed 7–30–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2006–1018; A–1–FRL–8691–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to Massachusetts' State Implementation Plan for Transit System Improvements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision changes completion dates of delayed transit projects, provides interim deadlines for projects, maintains requirements for interim emission reduction offsets in the event a project becomes delayed, modifies the project substitution process, revises the list of required transit projects, and expands public participation in and oversight of the projects. The intended effect of this action is to substitute specific transit projects and 1,000 park and ride spaces to replace certain transit projects currently approved into the SIP, and approve modifications to the delay and substitution procedures for transit projects. This action is being taken under the Clean Air Act.

DATES: *Effective Date:* This rule is effective on July 31, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification Number EPA–R01–OAR–2006–1018. 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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Bureau of Waste Prevention, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document: We are providing the following outline to aid in locating information in this preamble.

I. Background and Purpose
II. Response to Comments
III. Compliance With Clean Air Act TCM Substitution Requirements
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background and Purpose

On November 5, 2007 (72 FR 62422–62427), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of Massachusetts' amendments to its Transit System Improvements Regulation, 310 CMR 7.36, and Definition Regulation, 310 CMR 7.00 (which were filed with the Massachusetts Secretary of State on November 16, 2006 and were effective on December 1, 2006), as a revision to the Massachusetts SIP. EPA proposed to find that the transit measures in the revised transit system improvements regulation remain directionally sound and that all proposed substitution projects identified in the Regulation will collectively contribute to achieving the national ambient air quality standard for ozone and maintaining the carbon monoxide standard, thereby satisfying requirements set forth in section 110(l) of the Clean Air Act (CAA or Act).

On December 13, 2006, the Massachusetts Department of Environmental Protection (MA DEP) submitted its formal SIP revision amending its Transit System Improvements Regulation. The revision consists of MA DEP's final amendments to 310 CMR 7.36, ''Transit System Improvements,'' effective December 1, 2006. MA DEP held a hearing on the amendments to the Regulation on

December 21, 2005. On June 1, 2007, MA DEP supplemented its SIP revision with a letter determining that the Massachusetts Executive Office of Transportation (EOT) had met the requirements of 310 CMR 7.36 (8), Demonstration of Air Quality Emissions Reductions, along with EOT's air quality modeling analysis (''Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions,'' dated March 15, 2007). EOT held a public comment period on this supplemental material for a 45-day period commencing on January 2, 2007. The document was amended based on comments received and an additional two-week public comment period began on March 21, 2007, following posting in the ''Environmental Monitor.'' DEP submitted EOT's responses to public comments received as part of the supplemental materials.

On August 22, 2007, we issued our determination that the Massachusetts SIP package is administratively and technically complete. In our completeness determination, we also highlighted EPA's interest in seeing that the transit projects are implemented in a timely manner and requested that MA DEP keep us apprised of the status of the replacement projects as they move forward. In addition, we specifically mentioned hearing recent reports of potential delays in the Green Line extension project and encouraged EOT to address this issue on the record at its upcoming September 6, 2007 public status report meeting.

On September 6, 2007, the MA DEP held a public meeting to address EOT's annual status report on transit commitments. EOT presented the status of the uncompleted transit projects and took public comment. David Mohler, Acting Deputy Secretary for Planning, EOT, explained the Commonwealth's efforts in seeking Federal funds for the Green Line, which could delay the completion of the Green Line for up to two years. Mohler emphasized EOT's plan to make up any time delay, and if a delay occurred, to propose mitigation projects and adequate emission offsets as required by the regulation. EOT also made available at the public meeting a September 4, 2007 letter from David Mohler to MA DEP's Acting Commissioner, Arlene O'Donnell, committing to accelerate the planning, design and environmental review and permitting of the project in order to meet the 2014 completion date.

On January 4, 2008, EOT submitted copies of its ''State Implementation Plan—Transit Commitments, 2007 Annual Status Report, Agency Responses to Public Comments'' to MA DEP and EPA. EOT's submittal provided a summary of and responses to public comments, a written certification that the public process requirements were met, and a written certification that complete information was provided on any actual or known project delays, project substitutions, and interim offsets. MA DEP determined that EOT met the public process and other requirements of 310 CMR 7.36(7)(d) by letter on March 4, 2008.

The Arborway Restoration, the Blue Line/Red Line connection, and the Green Line extension to Ball Square/Tufts University which were approved into the Massachusetts SIP on October 4, 1994 (59 FR 50495–50498), will be substituted with the Fairmount Line commuter rail improvements, 1,000 new park and ride parking spaces (serving MBTA transit and commuter rail in the Metropolitan Boston Area), and the Green Line transit line extension to Medford Hillside with a spur to Union Square. Air quality modeling demonstrates that the substitution projects will achieve a minimum of 110% of the emissions reductions that would have been achieved if the original projects had been built. In addition to the substitution of transit projects, EPA is today approving the other specific requirements of Massachusetts' amendments to the Transit System Improvements Regulation. The rationale for EPA's proposed action to approve those amendments is explained in the NPR and will not be restated here.

II. Response to Comments

EPA received twenty-three public comments on our proposal to amend Massachusetts' Transit System Improvements Regulation (Transit Regulation). Copies of the public comments have been placed in the public docket without change and are available online at *www.regulations.gov*, docket number EPA–R01–OAR–2006–1018, document number EPA–R01–OAR–2006–1018–0022 through EPA–R01–OAR–2006–1018–0044. EPA's full Technical Support Document—Response to Comments is also available in the public docket, as well as at the Regional Office.

Comment: A number of commenters supported the transit system improvement projects. Six commenters supported all of the transit system improvement projects, three commenters expressed strong support for the Fairmount Line; two commenters supported the Green Line Extension; and one commenter supported the Design of Red Line/Blue Line Connector.

EPA Response: EPA acknowledges the commenters' support for the transit system improvement projects.

Comment: Three commenters wanted the transit system improvement projects originally approved into the SIP in 1994 to be implemented without any substitutions or changes.

EPA Response: As a threshold matter, EPA notes that nothing in our approval of these revisions to the Transit Regulation into the SIP in any way prevents the Commonwealth from completing the projects originally included in the regulation as EPA approved it in 1994. Although the projects are being dropped from the SIP-approved Transit Regulation, if any of the projects have merit, the Commonwealth's transportation planning process may include them in the statewide transportation improvement program. The only question before EPA is whether Massachusetts has the option of revising the set of projects to which it will attach the specific requirements under the CAA that come when transit measures are specifically required in a SIP.

EPA does not underestimate the importance of a state's decision to drop transit projects from a SIP. EPA's approval of this SIP revision will have the effect of eliminating the requirement under the CAA to complete the projects dropped from the regulation. That requirement allowed direct enforcement of the project deadlines pursuant to state law and sections 113 or 304 of the Act. The SIP mandate for these projects also required the Commonwealth to demonstrate in the conformity process under section 176(c) of the Act that Massachusetts' transportation plan and transportation improvement program supported and would not interfere with completion of those projects. EPA agrees that these compliance mechanisms provide an incentive to complete SIP-approved transit projects.

But precisely because the decision to incorporate transit projects into a SIP is a significant commitment, subject to compliance mechanisms under the Act, a state should only include in its SIP those transit projects to which it is clearly committed. And the state is in the best position to determine the mix of transit measures that best meets the state's transit and air quality goals and that merits this high level of commitment. Accordingly, the Act assigns to EPA a limited role in reviewing a state's choice of transit measures. Essentially, EPA is required to approve a SIP revision if it meets the basic requirements of the Act, most

importantly in this case that the substitute transit projects will achieve equivalent or greater emissions reductions than the projects to be replaced. See CAA section 176(c)(8)(A)(i).

Below in Table 1 is a summary of EOT's March 2007 Modeling Analysis for daily air quality emission benefits from the original 1994 SIP-approved transit system improvement projects, as well as the new transit system improvement projects. EPA has reviewed the modeling analysis report and concurs in the air quality benefits attributed to the transit system improvement projects. EPA addresses EOT's modeling analysis and air quality benefits in several of EPA's responses to comments below.

TABLE 1—EOT AIR QUALITY ANALYSIS COMPARISON OF PROJECT PACKAGES BENEFITS IN THE YEAR 2025

	Daily emission benefits in kilograms (kg.)		
	Carbon monoxide (CO)	Nitrogen oxides (NO_X)	Volatile organic compounds (VOC)
SIP Approved Projects (Package):			
Arborway Restoration, Green Line Extension to Ball Square/Tufts University, and Blue Line/Red Line Connection (Bowdoin Station to Charles Station)	292	8	11
SIP Approved Projects (Package) Plus Ten Percent	321.2	8.8	12.1
Replacement/Substitution Projects (Package):			
Green Line to Union Square and Medford Hillside, Fairmont Line Improvements, and Additional Parking	435	11	17

The action before EPA is to approve or reject the Commonwealth's transit project substitution as part of the Commonwealth's revision to its Transit System Improvements regulations 310 CMR 7.36. Approval of the changes to the Transit System Improvements regulation including the substitute transit projects into the SIP extends federal-enforcement to the design, construction and in most cases operation of the transit projects. The fact that a project is not specifically approved into a SIP does not affect the Commonwealth's ability to include a transit project in its transportation plan process, seek future federal-funding or undertake a specific transit as a state initiative funded by State, City, public or private funding.

Indeed, outside the context of the Act's SIP process, there are several signs of activity in connection with the projects or project areas that will no longer be subject to a SIP mandate. On November 15, 2007, Ian A. Bowles, Secretary of Massachusetts Executive Office of Energy and Environmental Affairs, determined that the Red Line/Blue Line Connector (EEA Number 14101) requires the preparation of a mandatory Environmental Impact Report (EIR) initiating the Commonwealth's Massachusetts Environmental Policy Act for the proposed project. And in the Transit Settlement Agreement that resolved the case *Conservation Law Foundation* v. *Romney et al.*, Civil Action No. 05–10487–NG, is the following statement: ''The parties agree that they will work in good faith with the City of Boston and other relevant parties to develop and agree upon recommended public transportation improvements to the Arborway corridor over the course of the next year. All Parties agree to commit to and participate in a public process to identify and recommend any agreed upon improvements for the Arborway Corridor.'' (The settlement agreement dated November 28, 2006 is available at *http://www.clf.org/uploadedFiles/Transit_settlement_signed_Jan2007.pdf.*) EPA encourages all parties involved to fully implement this agreement.

Comment: Two commenters requested EPA reject EOT's request to remove the Arborway project from the SIP.

EPA Response: The Commonwealth has flexibility to revise SIP-approved transportation control measures (TCMs), provided the revisions are consistent with attaining and maintaining compliance with the national ambient air quality standards (NAAQSs). This flexibility to substitute projects follows the intent of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU). Section 6011(d) of SAFETEA–LU amended the Clean Air Act by adding a new section 176(c)(8) that establishes specific criteria and procedures for replacing TCMs in an existing approved SIP with new TCMs and adding TCMs to an approved SIP.

The action before EPA is to approve or reject the Commonwealth's transit project substitution as part of the Commonwealth's revision to its Transit System Improvements regulation 310 CMR 7.36. Under the Clean Air Act, the EPA 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)(3); 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. Here, DEP's SIP submission meets all the requirements of the Act, specifically the elements in section 176(c)(8) for substituting TCMs, including a demonstration that the new TCMs achieve emissions reductions equivalent to the projects being substituted.

Comment: Three commenters objected to the substitution of the Red Line/Blue Line Connector with a commitment only to design the connector but dropping the SIP commitment to construct the project. Four commenters supported the construction of the Red Line/Blue Line Connector and outlined benefits of constructing and operating the Red Line/Blue Line Connector.

EPA Response: EPA is aware of the merits and benefits of the operation of the Red Line/Blue Line Connector. EPA acknowledges the commenters' support for construction of the Red Line Blue Line Connector by 2014. However, the Commonwealth of Massachusetts has taken advantage of the flexibility provided under the Clean Air Act to revise SIP-approved TCMs, provided the revisions are consistent with attaining and maintaining compliance with the NAAQSs. Here, the Commonwealth has decided to drop the commitment to construct the Connector as part of a larger package of substitute projects designed to achieve an equivalent emission reduction. Again, this flexibility to substitute projects follows the requirements of the new Clean Air Act section 176(c)(8) that establishes specific criteria and procedures for replacing TCMs in an existing approved

SIP with new TCMs and adding TCMs to an approved SIP.

Comment: Eight commenters wanted EPA to enforce the transit system improvement project deadlines. One commenter supported a two year delay of the Medford Green Line Extension, asserting that completion of the transit project by 2014 was optimistic.

EPA Response: EPA concurs in the need for an enforceable deadline for the transit system improvement projects. EPA's approval of Massachusetts' Transit System Improvements regulation into the SIP will make the design, construction and operation deadlines in the Commonwealth's regulation federally-enforceable. In addition, transportation air quality conformity determinations required by section 176(c) of the Clean Air Act will require the Boston Metropolitan Planning Organization as well as the U.S. Department of Transportation to make a positive finding that all SIP-approved transportation control measures are being implemented in a timely manner and in accordance with established SIP deadlines (40 CFR 93.113) prior to approving the long range transportation plans and transportation improvement programs for Eastern Massachusetts.

EPA notes that in at least one respect, the compliance deadlines provided for in this new version of 310 CMR 7.36 are more firm than the deadlines in the version EPA approved in 1994. The original ''Project Delays and Project Deadline Extensions,'' (310 CMR 7.36 (3)) previously approved into the SIP allowing up to three years delay in project completion has been removed.

In further support of the 2014 completion date for the Green Line Extension, the Massachusetts Executive Office of Transportation and Public Works (EOTPW) has committed to make up delays in the Green Line Extension Project, associated with seeking federal funding and addressing federal requirements, to the maximum extent possible.

Comment: Four commenters requested enhancements to the transit system improvement projects. One Commenter raised concerns with a transit system improvement project's impact on transportation, environment, social and economic impacts and lack of community involvement. Two commenters wanted alternatives to the Green Line extension to be evaluated, while another commenter wanted more specificity in the broad terms of the regulation providing for the Green Line extension terminus station.

EPA Response: EPA acknowledges the commenters' support for the transit system improvement projects. EPA must accept the transit system improvement projects as presented, or reject the Transit Project substitutions, based on the Act's criteria established for approving SIPs (i.e., substitution projects must provide for equivalent emissions reductions in the same time frame). EPA has no authority to dictate specific enhancements to any of the proposed transit project substitutions. However, EPA believes the submitted projects could be enhanced during the public participation process associated with the Commonwealth's state environmental process and design of the transit measure.

The action before EPA is to approve or reject the Commonwealth's transit project substitution as part of the Commonwealth's revision to its Transit System Improvements regulation 310 CMR 7.36. The concerns raised by the commenters regarding transportation, environmental, social and economic impacts of the Green Line Extension project should be addressed and mitigated during the Commonwealth's state environmental process. See MGL c. 30 § 61–62 and regulations, 301 CMR 11.00. And should the Green Line Expansion Project receive federal funding, these concerns may also be addressed under any future federal environmental review and public participation process conducted in accordance with the National Environmental Policy Act. 42 U.S.C. 4321–4370f.

Comment: Two commenters wanted Massachusetts EOT to specify the location of the 1,000 park and ride locations, and identify an implementation schedule.

EPA Response: The Park and Ride provisions in section 7.36 provide that before December 31, 2011, construction shall be completed and 1,000 new park and ride parking spaces opened to full public use serving commuter transit facilities within the 101 cities and towns constituting the Boston Metropolitan Planning Organization. These park and ride facilities are subject to ''Project Interim Deadlines,'' established under 310 CMR 7.36(3), which identifies timeframes for hiring a design consultant, completing a conceptual design, filing an Environmental Notification Form (ENF) with MEPA, completing the Environmental Impact Report, completing final design, applying for necessary permits and funding, and proceeding to construction. Therefore, there is still considerable work to be done before the specific location of these lots can be determined.

EPA agrees with the commenters that it is impossible to fully assess the emissions reductions that these 1,000 spaces will accomplish without knowing where they will be located. And EPA recognizes that the individual transit substitution projects will undergo project refinement as these projects proceed through environmental evaluation, public participation and project design. Nevertheless, EPA has concluded that the uncertainty about the location of these parking spaces does not prevent EPA from approving the entire package of transit project substitutions. First, the package of new transit projects demonstrates equivalent emissions reductions to the substituted projects even if one were to eliminate entirely any credit for the lots. Therefore, EPA does not believe that EOT's inability to specify the location of these lots provides EPA a basis to disapprove this SIP revision. Second, EPA has reviewed the assumptions EOT made about the park and ride lots in modeling their emissions impact. EPA agrees that EOT made reasonably conservative assumptions in assigning any emissions reductions value to the lots.

Comment: Four commenters repeated modeling questions and concerns previously addressed through the Commonwealth's public participation process.

EPA Response: These questions and concerns were raised during the Commonwealth's approval of the revised Transit System Improvements regulations. Based on EPA's review of the Commonwealth's Response to Comments as well as EOT's Response to Public Comments identified during the public participation process on the Transit Commitments 2007 Annual Status Report, EPA believes the commenters' concerns have been adequately addressed.

The March 15, 2007, ''Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions,'' prepared by the Central Transportation Planning Staff is consistent with methodology and assumptions used in developing the SIP and developing the long range transportation plans and transportation improvement program. It is also consistent with the methodology and assumptions used in the transportation conformity process to determine that transportation planning is consistent with the air quality plan for the SIP. EPA recognizes that the transit substitution projects will continuously undergo refinement as they proceed

through the environmental development phase and project design phase; however, EPA has determined the current project delineation to be sufficient in defining the project and for air quality evaluation.

Comment: One of the commenters submitted a number of modeling issues regarding the Green Line Arborway Restoration Project that were previously submitted during the Commonwealth's public participation process.

EPA Response: These Arborway modeling concerns were addressed in a June 27, 2005 Central Transportation Planning Staff memorandum from Karl Quackenbush and Scott Peterson to Dennis DiZoglio and Joe Cosgrove of the Massachusetts Bay Transit Authority, as well as addressed in EOT's ''Summary of Comments Received on Modeling Analysis for Proposed Substitute State Implementation Plan Transit Projects and Agency Responses'' dated May 3, 2007.

EPA concurs with the Commonwealth's modeling to evaluate air quality impacts associated with the original 1994 SIP-approved transit improvement projects and the proposed transit system improvement substitution projects. EPA did not assign or grant specific emission reduction credit to the 1994 SIP-approved projects, so to model the original projects and new substitution projects on an equal basis is the only fair way to evaluate potential air quality emission benefits from the transit improvement projects.

After review of the transportation and air quality modeling submitted as part of the SIP revision package, EPA has determined that the modeling is consistent with methodology and assumptions used in developing the SIP, consistent with developing the long range transportation plans and transportation improvement programs, as well as consistent with the methodology and assumptions used in the transportation conformity process to determine that transportation planning is consistent with the air quality planning for the SIP. See March 2007 re-evaluation submitted to EPA June 1, 2007, conducted to satisfy subsection (8) ''Determination of Air Quality Emission Reductions'' of the Transit System Improvements regulation, 310 CMR 7.36; CTPS's March 15, 2007 ''Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions''; CTPS's June 16, 2005 Memorandum on ''SIP Transit Modeling Assumptions''; and CTPS Memorandum dated June 27, 2005 on ''Responses to Arborway Comments.''

EPA has evaluated the submitted SIP revision package, including Central Transportation Planning Staff's March 15, 2007 ''Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions.'' EPA independently concurs with the Massachusetts Department of Environmental Protection's June 1, 2007, determination that the emission reductions associated with the transit improvement projects in the revised State Regulation 310 CMR 7.36 ''Transit System Improvements'' will achieve in excess of the requirement in the state regulations that the substitute projects must achieve an emissions reduction of at least 110 percent of the reductions that would be expected from eliminated projects. As presented in Table 1, above, the reductions expected from the new projects when compared to the original SIP-approved projects as a percentage are for volatile organic compounds 154%, nitrogen oxides 137.5%, and carbon monoxide 149%.

Comment: Five commenters expressed their belief that there were no real substitutions for the Green Line Extension project. The commenters did not want further substitutions, and wanted air quality benefits to remain in the proposed Green Line Extension project area which they assert is an environmental justice area.

EPA Response: The Transit System Improvements Regulation provides for substitution of this project at 310 CMR 7.36(5) should the Commonwealth wish to take advantage of this flexibility in its regulation in the future. This substitution procedure for the Green Line Extension requires Massachusetts EOT to:

1. Identify the reasons for seeking a project substitution;
2. Conduct a public participation process for the substitution process;
3. Achieve interim emission reduction offsets of non-methane hydrocarbons, carbon monoxide, and nitrogen oxides;
4. Comply with original project interim deadlines;
5. Prioritize funding in the long range transportation plan and transportation improvement program of the Boston Metropolitan Planning Organization (MPO);
6. Require substitute project(s) that enhance or improve existing public transit service, or provide new transit service within the municipalities of Boston, Cambridge, Somerville, and Medford;
7. Demonstrate that the proposed substitute project will achieve 110% of the emission reductions of that would have been achieved had all components of the original project been completed; and to require that the Massachusetts Department of Environmental Protection determine in writing whether the substitution requirements of 310 CMR 7.36(5) have been met and whether the administrative record reasonably supports EOT's substitution determination.

Finally, any future substitution would have to meet the requirements of CAA section 176(c)(8), which governs substitution of transportation control measures in a SIP. In addition to concurrence from the state air pollution control agency as provided by the substitution provision of the state regulation, CAA section 176(c)(8) also requires formal concurrence by the metropolitan planning organization and the EPA New England Regional Administrator to adopt substitute or additional control measures into the SIP. The requirements in the CAA overlap substantially with the requirements in the new section 7.36. Indeed, section 7.36 sets a higher hurdle for emissions reductions than the Act, requiring not just mere equivalency, but reductions of at least 110% compared with the substituted projects.

With respect to a Green Line Extension substitution transit project trading off air quality benefits with other neighborhoods, the regulations define the geographic area of Boston, Cambridge, Somerville, and Medford for Green Line Extension substitution transit projects. This delineation is more restrictive than how the CAA requires EPA to evaluate emissions reductions in an ozone nonattainment area. As long as the emissions reductions come from within the applicable nonattainment area, in this case Eastern Massachusetts, they would qualify under the federal CAA. Here again, the state requirement in section 7.36 sets a higher bar by restricting the geographic area for an allowed substitution to only four municipalities within the Eastern Massachusetts nonattainment area.

Comment: One commenter raised the issue of timely implementation of TCMs adopted into the SIP.

EPA Response: EPA believes the Transit System Improvements regulation, with its defined project deadlines, interim project deadlines, and annual public reporting of update and status of SIP-approved TCMs, (which is open to public participation and requires a written determination by Massachusetts Department of Environmental Protection whether the public process and other requirements of 310 CMR 7.36(7) ''Public Process

Requirements,'' were met) will assist in completing the SIP-approved TCMs on time.

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the SIP. EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP. One criterion established at 40 CFR 93.113 is that all SIP-approved transportation control measures are being implemented in a timely manner and in accordance with established SIP deadlines. EPA believes the conformity process will ensure the timely implementation of these TCMs.

If a SIP-approved TCM identified in the transportation improvement program does fall behind schedule, a positive conformity determination can still be made in accordance with 40 CFR 93.113 if:

(1) * * * The MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the transportation improvement program (TIP) cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

See 40 CFR 93.113(c).

Comment: Two commenters expressed concern that past transportation air quality conformity evaluations did not adequately address timely implementation of TCMs.

EPA Response: EPA is finalizing an action to approve a TCM substitution and revisions to the Massachusetts Transit System Improvements regulation. EPA is not re-evaluating past transportation conformity determinations. The timely implementation of the substitute TCMs will be evaluated in future transportation conformity determinations to ensure that the requirements of Clean Air Act section 176(c)(2)(B) and 176(c)(3)(A)(ii) and the transportation conformity rule (49 CFR 93.113) are satisfied.

Comment: A commenter claimed that the air quality benefit associated with the substituted transit projects ignores the fact that the 1990 Conservation Law Foundation (CLF) Agreement and EPA intervention were intended to complement the parking restrictions in and near downtown Boston.

EPA Response: While the metropolitan Boston parking freezes complement traffic reduction strategies, the approval of the proposed transit improvement substitution projects is independent of the parking freezes, in the sense that nothing in the Act, including section 176(c)(8), requires EPA to link one set of TCMs with another. Admittedly, if the success of the state's proffered TCM substitutions relied heavily on the enforcement of TCMs that the state was not prepared to make part of the SIP, EPA would need to consider whether it could credit the substitute TCMs with the level of reduction the state was assuming from their combined effect with the TCMs outside the SIP. Here, however, the relevant parking freezes are part of the SIP, and DEP has not abandoned the use of parking freeze requirements as part of the strategy included in its SIP. Therefore that question is not before EPA.

EPA has approved Parking Freezes for Cambridge, Downtown Boston, South Boston, East Boston and Logan Airport. Since the 1994 adoption of the transit system improvement projects into the SIP, EPA has approved the South Boston Parking Freeze and amended the East Boston/Logan Parking Freeze.

On October 15, 1996, EPA approved the South Boston Parking Freeze SIP Amendment as a revision to the Massachusetts SIP (61 FR 53628). Massachusetts Air Pollution Control Regulation 310 CMR 7.33 entitled ''City of Boston/South Boston Parking Freeze,'' established and requires the Boston Air Pollution Control Commission (BAPCC) and the Massachusetts Port Authority (MassPort) to control the growth of parking spaces in the South Boston neighborhood of Boston. The effect of controlling parking growth is anticipated to be a decrease in vehicle miles traveled (VMT), thereby holding automobile usage to levels within the practical capacity of the local street network.

On March 12, 2001, EPA approved revisions to the Massachusetts Port Authority/Logan Airport Parking Freeze, 310 CMR 7.30, and City of Boston/East Boston Parking Freeze, 310 CMR 7.31, into the Massachusetts SIP (66 FR 14318). The revisions allow the Commonwealth to automatically approve the transfer of parking spaces from the East Boston Parking Freeze to the Logan Parking Freeze provided the total parking space inventory number for the Logan Parking Freeze remains at or below 21,790 parking spaces. Future modifications in the parking freeze inventories for the Logan Airport and East Boston Parking Freezes will be regulated by the Commonwealth's revisions to Massachusetts State Regulations 310 CMR 7.30 and 310 CMR 7.31.

Comment: A commenter stated that the SIP substitution proposal shifts the responsibility to enforce the Environmental Justice Executive Order from EPA, the Federal agency required to comply with the Executive Order, to the state. Another commenter identified Jamaica Plain, served by the Green Line Arborway Restoration Project, as an environmental justice neighborhood with a high asthma hospitalization rate among children under age 5 (11.1 per 1,000).

EPA Response: It is not this SIP revision, but rather the structure of the CAA as Congress designed it, that rests consideration of environmental justice issues here primarily with the state. 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)(3); 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 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 ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' (59 FR 7629, February 16, 1994).

The Federal executive policy on environmental justice is established by Executive Order 12898. 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. Here the Clean Air Act directs EPA to approve a SIP revision unless it does not meet the Act's requirements. Although the Act does not provide EPA the authority to modify the Commonwealth's regulatory decision solely on the basis of environmental justice considerations, EPA continues to encourage EOT to consider environmental justice concerns when deciding the location of the additional Park and Ride spaces and the new stations along the Fairmount commuter rail line and the Green Line extension project and when implementing public transportation improvements to the Arborway corridor promised in the Transit Settlement Agreement that resolved the case *Conservation Law Foundation* v. *Romney et al.*, Civil Action No. 05–10487–NG. EPA believes the transit improvement substitution projects can be enhanced and additional consideration be given to minority populations and low-income populations during the public participation process associated with the environmental evaluation phase and engineering design phase of the transit measures. EPA also urges EOT and DEP to consider environmental justice concerns when deciding whether to meet project deadlines, to approve proposals for project delays, and to approve offset or substitute projects.

Comment: One commenter identified the Commonwealth's transit substitutions as contrary to the Commonwealth's financial interests and claimed that restoring the Arborway Green Line would result in significant operating cost savings. Another commenter questioned whether the Commonwealth had accurately compared the relative costs of constructing and operating the Red-Blue Line connector with the proposed substitute projects.

EPA Response: The CAA assigns to the state the responsibility for assessing the cost implications of SIP measures. Indeed, EPA has no authority to disapprove a SIP revision solely because the Agency might disagree with the cost-effectiveness of a state's chosen control strategy. See *Union Electric Co.* v. *EPA,* 427 U.S. 246 (1976), rehearing denied 429 U.S. 873 (1976). Massachusetts EOT's position in responding to this issue during the state public participation process is that the restoration of Green Line Arborway service is not a cost-effective way to achieve the desired transportation and air quality benefits. Correspondingly, the CAA provides EPA no basis for disapproving this SIP revision even if EPA did not agree with the Commonwealth's weighing of the costs of the Red-Blue Line connector with the substitute projects.

Comment: Two commenters stated that particulate matter impacts are particularly harmful and expressed concern about the particulate matter and other emissions from diesel trains used on the Fairmount/Indigo Line.

EPA Response: The Massachusetts transit system improvement projects were originally approved into the SIP in 1994 as control strategies for carbon monoxide and ozone (control of precursors volatile organic compounds and nitrogen oxides), but no emission credits were assigned to these projects. EPA has also established National Ambient Air Quality Standards for Particulate Matter (PM_{10}—Particles less than 10 micrometers in diameter, and $PM_{2.5}$—Particles less than 2.5 micrometers in diameter and referred to as ''fine'' particles). Currently air quality monitoring within the Boston Metropolitan area indicates attainment of the PM_{10} annual standard, as well as the $PM_{2.5}$ annual and 24-hour standards. As such, the area is not subject to the CAA conformity requirements for particulate matter.

EPA supports the Commonwealth's on-going efforts to reduce particulate matter from mobile sources through the use of lower sulfur fuel, alternative fuels, and retrofits for diesel equipment and vehicles including construction equipment and school buses.

Comment: One commenter looking at an earlier version of the air quality modeling analysis stated that ''Attempts to deduce the benefits of the incremental extension of the Green Line, by subtracting the benefits claimed for the new Green Line extension from the benefits attributable to the Existing SIP Commitments, yield an incredible result: by increasing the number of stations by three, nitrogen oxides (NO_X) benefits increase nearly 300 percent and hydrocarbon (HC) benefits increase by nearly 400 percent. This result strains credulity and requires far more detailed background to justify such an anomalous result.''

EPA Response: The air quality modeling submitted with the SIP revision showed that extending the Green Line from Tufts University/Ball Square to Medford Hillside and adding the Green Line spur to Union Square Somerville would add the following daily emission benefits to the original Green Line Extension: 7 kilograms of nitrogen oxides; 12 kilograms of volatile organic compounds; and 212 kilograms of carbon monoxide. As a result, the demonstration submitted to EPA shows that the extension of the Green Line project to Medford Hillside and Union Square accounted for only a 0.025% increase in emission reduction benefits for NO_X and 0.041% for VOC when compared to the no-build emissions for the modeled area. It is more realistic to compare the marginal emission benefits for the expanded Green Line extension alternative with the overall emission benefits of the entire original Green Line to Tufts University/Ball Square. EPA finds these incremental benefits to be reasonable.

Comment: One commenter raised a number of concerns about how the modeling analysis handled assumptions for the proposed ''West Medford Green Line extension with a Union Square spur'' and the ''Fairmount Commuter Rail project'' such as headways, fares, number of transit stations and transfers. The commenter asserted that modeling assumptions would have a significant impact on the forecast of ridership and corresponding emissions.

EPA Response: The Central Transportation Planning Staff (CTPS) maintains a regional travel demand model set that is used to measure a variety of impacts associated with changes to existing transportation infrastructure, one of which is air quality emissions. CTPS's model set is continuously improved as newer information is made available. This process of updating inputs and methods has led to several intermediate sets of results during the process of evaluating the SIP transit commitments. The commenter based his concerns on a review of an early state air quality modeling analysis and not the final analysis submitted June 1, 2007 with a supplement to the December 13, 2006 SIP revision. The March 2007 re-evaluation submitted to EPA June 1, 2007, was conducted to satisfy subsection (8) ''Determination of Air Quality Emission Reductions'' of the Transit System Improvements regulation, 310 CMR 7.36. Technical documentation identifying and explaining the model and modeling assumptions is addressed in the CTPS's March 15, 2007 ''Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions.'' Additional modeling support documents provided

to EPA as part of the SIP revision include CTPS's June 16, 2005 Memorandum on ''SIP Transit Modeling Assumptions,'' and a second CTPS Memorandum dated June 27, 2005 on ''Responses to Arborway Comments.'' These updates and refinements to the modeling appear to address the concerns about fares, number of transit stations and transfers and represent the most recent information about and analysis of the emissions effect of the project substitutions.

Even with the refinement of the model and the supporting documentation, it remained unclear to EPA how the state's submittal responded to a comment concerning headways, specifically the potential for three minute headways on the Green Line Extension when the service from the two new branches is combined and travels through the Lechmere Station. One commenter indicated that the model's assumption of three minute headways was unrealistic. EPA contacted CTPS and the Massachusetts Bay Transportation Authority (MBTA) and learned that the Green Line has operated in the past on three minute headways outbound from Government Center Subway Station as well as inbound from Lechmere Station. The MBTA has made structural improvements to the Lechmere viaduct to allow 3 (2-car) trains per direction operating at 25 miles per hour. Finally, a 1999 operational analysis of the Green Line showed that within the Lechmere to Government Center area, the segment of the Green Line between the North Station and Haymarket stations serves as the capacity ''pinch point,'' with a maximum number of trains per hour on this segment of 34. Under the proposed Green Line Extension operating plan, the C, D and E Lines on the Green Line would operate through this pinch point with 34 trains per hour during the peak period. Therefore, it does not appear to be unrealistic that the new service could operate at three minute headways.

As explained in the response above, EPA has determined that the modeling is consistent with methodology and assumptions used in developing the State Implementation Plan, consistent with developing the long range transportation plans and transportation improvement programs, as well as consistent with the methodology and assumptions used in the transportation conformity process to determine that transportation planning is consistent with the air quality planning for the SIP.

III. Compliance With Clean Air Act TCM Substitution Requirements

Clean Air Act section 176(c)(8), added by SAFETEA–LU, establishes the procedures for ensuring that substitute TCMs provide equal or greater emissions reductions than the TCMs that are being replaced. It also establishes the process for MPO, EPA and state air agency concurrence on the substitution or addition of TCM projects. Finally, it ensures that the state and EPA maintain up-to-date information on the TCMs in approved SIPs so that the public is aware of the TCMs that are to be implemented. EPA and U.S. Department of Transportation (DOT) issued joint guidance on February 14, 2006, on the implementation of all of the Clean Air Act amendments made by SAFETEA–LU, a copy of which has been placed in the electronic docket. This guidance clarified EPA and DOT expectations for how TCM substitutions and additions are to be carried out by state and local agencies. The guidance is available at *http://www.epa.gov/otaq/stateresources/transconf/420b06901.pdf.*[1]

On June 1, 2007, MA DEP concurred in EOT's determination that the substitute projects achieved at least equivalent emissions reductions. In addition to the state air pollution control agency, section 176(c)(8)(A)(v) specifically requires both the MPO and EPA to concur with the equivalency of the substitute TCMs before the substitution can take effect. On May 3, 2007, Massachusetts Secretary of Transportation, Bernard Cohen, submitted EOT's air quality modeling analysis for the substitution projects to MA DEP. This analysis demonstrates that the required emission reductions set forth in section 7.36(8) of the Regulation will be achieved by the new projects. In a May 1, 2008 letter to EPA, the Boston MPO concurred in the finding that the transit system improvements projects will achieve emission benefits equivalent to or greater than the benefits from the original transit system improvements projects being replaced. For EPA's concurrence on the substitutions included in this SIP revision, the Agency sent a letter to the Boston MPO, contemporaneous with our final action on this SIP revision, to document EPA's concurrence on the substitutions being approved with the revisions to MA DEP's regulation.[2] For any future substitutions, EPA will work with MA DEP to coordinate EPA's review with DEP's review of the proposed substitution so that the substitution can take effect as a matter of federal law if both DEP and EPA approve it.

Section 176(c)(8) now also requires all substitutions of TCM's to be submitted to EPA for incorporation into the codification of the SIP. For the purposes of the substitutions provided for in the revisions of the Regulation, the codification that results from the final action on this SIP revision will address this requirement. For future substitutions, although the state regulation does not specifically require MA DEP to forward to EPA the results of MA DEP's substitution determinations, it should be a routine matter for MA DEP to submit any substitution it approves under section 7.36(5)(h) so that the federally approved SIP can accurately reflect the current requirements under the Regulation.

IV. Final Action

EPA is approving Massachusetts' amendments to Transit System Improvements Regulation, 310 CMR 7.36, and Definition Regulation, 310 CMR 7.00 (which were filed with the Massachusetts Secretary of State on November 16, 2006 and were effective on December 1, 2006), as a revision to the Massachusetts SIP. EPA finds that the transit measures in the revised transit system improvements regulation remain directionally sound and that all proposed substitution projects identified in the Regulation will collectively contribute to achieving the national ambient air quality standard for ozone and maintaining the carbon monoxide standard, thereby satisfying requirements set forth in section 110(l) of the Clean Air Act.

EPA has determined that today's rule falls under the ''good cause'' exemption

[1] EPA issued regulations to implement SAFETEA–LU, and concluded that no regulations were needed to implement section 176(c)(8), because the statute is already sufficiently detailed. Additionally, EPA/DOT have issued guidance that addresses questions that might arise about TCM substitutions. (73 FR 4420–4441; January 24, 2008).

[2] Both the authority to approve this SIP revision and the authority to concur on TCM substitutions under section 176(c)(8) have been delegated to the Regional Administrator. See EPA Delegations of Authority Nos. 7–10 (Approval/Disapproval of State Implementation Plans) and 7–158 (Transportation Control Measure Substitutions and Additions). Note that while EPA is using an informal rulemaking to act on this proposed SIP revision, section 176(c)(8)(A)(v) does not require a rulemaking to accomplish EPA's concurrence. See EPA/DOT Guidance at page 27, section 5.17. Indeed, section 176(c)(8) was added to the Act precisely to avoid the need for a full SIP revision to implement TCM substitutions in the routine case. In this instance, where the TCM substitution is occurring as part of a proposed SIP revision, EPA is simply acting on the SIP in a rulemaking under section 110 of the Act contemporaneous with its concurrence on the substitution in a letter to the Boston MPO under section 176(c)(8) of the Act.

in section 553(d)(3) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). EPA has concluded that it is not necessary to delay the effectiveness of this rule for 30 days because the entities that will be directly affected by the transit system improvements regulation have had ample notice of the requirements in the regulation, and they wish to use the substitute transit projects as soon as possible in the conformity process under the Clean Air Act. First, the requirements of the transit system improvements regulation have been effective as a matter of state law since December 1, 2006. Therefore, it is unnecessary to wait an additional thirty days to make the regulation federally enforceable, because the entities subject to the regulation have already had ample time to anticipate the compliance requirements of this regulation under state law. Second, the state and U.S. Departments of Transportation (DOTs) and the Boston Metropolitan Planning Organization (Boston MPO) must use timely implementation of these SIP-approved transportation control measures to determine whether their long range transportation plans and transportation improvement programs conform with the state's implementation plan. The DOTs and Boston MPO will be most immediately affected by EPA's approval of these transit system improvements and their transportation planning obligations are directly impacted by changes in the SIP-approved list of transportation control projects. EPA and the Massachusetts DEP have been consulting extensively with the DOTs and the Boston MPO about the transit system improvements. The DOTs and Boston MPO are not only ready to use the new list of transit system improvement projects without waiting 30 days, they are eager to use them as soon as possible to avoid delays in the transportation planning process. Therefore, since the entities that are most directly impacted by this approval are ready to use the transit system improvements and prefer to use them immediately, EPA is making this rule effective immediately. This rule will be effective July 31, 2008.

V. Statutory and Executive Order Reviews

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

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

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

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).

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 29, 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 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 5, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 W—Massachusetts

■ 2. Section 52.1120 is amended by adding paragraph (c)(136) to read as follows:

§ 52.1120 Identification of plan

* * * * *

(c) * * *

(136) Revisions to the State Implementation Plan submitted by the Massachusetts Department of

Environmental Protection on December 13, 2006 and June 1, 2007.

(i) Incorporation by reference.

(A) Massachusetts Regulation 310 CMR 7.00 entitled ''Definitions,'' adding the definition for the term ''Boston Metropolitan Planning Organization,'' effective in the Commonwealth of Massachusetts on December 1, 2006.

(B) Massachusetts Regulation 310 CMR 7.36 entitled ''Transit System Improvements,'' effective in the Commonwealth of Massachusetts on December 1, 2006.

(C) Massachusetts Regulation Filing, dated November 16, 2006, substantiating December 1, 2006, State effective date for amended 310 CMR 7.00 entitled ''Definition,'' (addition of term ''Boston Metropolitan Planning Organization,'' which appears on the replaced page 173 of the State's Code of Massachusetts Regulations,) and 310 CMR 7.36 entitled ''Transit System Improvements.''

(ii) Additional Materials.

(A) Letter from the Massachusetts Department of Environmental Protection dated December 13, 2006 submitting a revision to the Massachusetts State Implementation Plan.

(B) Letter from the Massachusetts Department of Environmental Protection dated June 1, 2007 submitting a revision to the Massachusetts State Implementation Plan.

(C) Letter from the Massachusetts Executive Office of Transportation dated September 4, 2007 identifying its commitment to the Green Line extension and to make every effort to accelerate the planning, design and environmental review and permitting of the project in order to work towards the 2014 completion date.

(D) Letter from the Chair of the Boston Region Metropolitan Planning Organization dated May 1, 2008 concurring in the finding that the transit system improvements projects will achieve emission benefits equivalent to or greater than the benefits from the original transit system improvements projects being replaced.

(E) Letter from EPA New England Regional Administrator dated July 5, 2008 concurring in the finding that the transit system improvements projects will achieve emission benefits equivalent to or greater than the benefits from the original transit system improvements projects being replaced.

■ 3. In § 52.1167, Table 52.1167 is amended by adding two new citations to the existing entry for 310 CMR 7.00 and two new citations to the existing entry for 310 CMR 7.36 to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	**Federal Register** citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.00.	Definitions	12/13/06	07/31/08	[Insert **Federal Register** page number where the document begins].	136	Addition of the term, ''Boston Metropolitan Planning Organization.''
	.....	12/13/06	07/31/08	[Insert **Federal Register** page number where the document begins].	136	Massachusetts Regulation Filing, dated November 16, 2006, substantiating December 1, 2006, State effective date for amended 310 CMR 7.00 entitled ''Definition,'' (addition of term ''Boston Metropolitan Planning Organization,'' which appears on the replaced page 173 of the State's Code of Massachusetts Regulations.).
*	*	*	*	*	*	*
310 CMR 7.36.	Transit system improvements regulation.	12/13/06	07/31/08	[Insert **Federal Register** page number where the document begins].	136	Amendments to Transit System Improvements Regulation.
	.....	12/13/06	07/31/08	[Insert **Federal Register** page number where the document begins].	136	Massachusetts Regulation Filing, dated November 16, 2006, substantiating December 1, 2006, State effective date for amended 310 CMR 7.36 entitled ''Transit System Improvements.''
*	*	*	*	*	*	*

Notes: 1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date. 2. The regulations are effective statewide unless otherwise stated in comments or title section.

[FR Doc. E8–17595 Filed 7–30–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 08–154]

Inflation Adjustment of Maximum Forfeiture Penalties

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document increases the maximum monetary forfeiture penalties available to the Commission under its rules governing monetary forfeiture proceedings to account for inflation. The inflationary adjustment is necessary to implement the Debt Collection Improvement Act of 1996, which requires federal agencies to adjust ''civil

monetary penalties provided by law'' at least once every four years. The increase covers the period between June of the year the particular forfeiture amount was last set or adjusted and June 2007. The increase in the Consumer Price Index for the relevant period was applied to each maximum penalty, and then rounded using the statutorily defined rules to adjust each maximum monetary forfeiture penalty accordingly. The base forfeiture amounts in the Commission's rules remain unchanged by this rule revision.

DATES: Effective September 2, 2008.

FOR FURTHER INFORMATION CONTACT: Kathryn Berthot, Enforcement Bureau, Spectrum Enforcement Division, 202–418–7454.

SUPPLEMENTARY INFORMATION: This is a summary of the Order by the Commission, FCC 08–154, adopted on June 13, 2008, and released on June 13, 2008. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC 20554 and also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., at 1–800–378–3160, CY–B402, 445 12th Street, SW., Washington, DC 20554.

This Order amends § 1.80(b) of the Commission's rules, 47 CFR 1.80(b), to increase the maximum penalties established in that section to account for inflation since the last adjustment to these penalties. The adjustment procedure is set forth in detail in § 1.80(b)(5) of the Commission's rules. That section implements the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461, which requires federal agencies to adjust maximum statutory civil monetary penalties at least once every four years.

This Order adjusts the maximum penalties to account for the increase in the Consumer Price Index (CPI) between June of the year the forfeiture amount was last set or adjusted,[1] and June 2007. The increases were then rounded using the statutorily prescribed rules to produce the adjusted penalties.

The amendment of § 1.80(b) implements the requirements of the Debt Collection Improvement Act of 1986, 28 U.S.C. 2461, as incorporated in § 1.80(b)(5) of the Commission's rules. Since Congress has mandated these periodic rule changes and the Commission has no discretion but to make them, we find that, for good cause, compliance with the notice and comment provisions of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. 553(b)(B).

Since a notice of proposed rulemaking is not required, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* does not apply.

The actions taken in this Order have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Comunications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), 309.

§ 1.80 [Amended]

■ 2. Amend Section 1.80 as follows:

■ a. Revise the first three sentences in paragraph (b)(1).

■ b. Revise paragraphs (b)(2) through (b)(4).

■ c. Revise the introductory text to the Note to paragraph (b)(4).

■ d. Revise the table in Section III of the note to paragraph (b)(4).

■ e. Revise the table in paragraph (b)(5)(iii).

§ 1.80 Forfeiture proceedings.

* * * * *

(b) *Limits on the amount of forfeiture assessed.* (1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty under this section shall not exceed $37,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $375,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act. * * *

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $150,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,500,000 for any single act or failure to act described in paragraph (a) of this section.

(3) In any case not covered in paragraphs (b)(1) or (b)(2) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $16,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $112,500 for any single act or failure to act described in paragraph (a) of this section.

(4) *Factors considered in determining the amount of the forfeiture penalty.* In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

Note to paragraph (b)(4):

[1] Under the rounding rules set forth in § 1.80(b)(5)(ii), the inflationary adjustment for a statutory forfeiture amount must reach a specific threshold before the forfeiture amount may be increased. That adjustment is based on the difference between the CPI of ''June of the preceding year'' (here June 2007) and that of June of the year a particular forfeiture was ''last set or adjusted.'' Thus, the June 1995 CPI is used to calculate the inflation factors for the statutory forfeiture amounts in sections 362(b), 386(b), 503(b)(2)(D) (the amount for a single violation or single day of a violation), and section 507(b). The June 1999 CPI is used to calculate the inflation factor for the statutory forfeiture amount in section 223(b). The June 2003 CPI is used to calculate the inflation factors for the remaining statutory forfeiture amounts, except for section 503(b)(2)(C). The Broadcast Decency Enforcement Act of 2005, which was signed into law on June 15, 2006, implemented by the Commission on June 1, 2007, and codified at section 503(b)(2)(C), increased the maximum forfeiture penalties for obscene, indecent, and profane broadcasts. The date on which the Commission implemented the Broadcast Decency Enforcement Act constitutes the date on which the maximum forfeiture amount was ''last set or adjusted.'' Therefore, the June 2007 CPI is the relevant measure for purposes of calculating the inflation factor for the maximum statutory forfeiture amount pursuant to section 503(b)(2)(C). This measure is the same as the CPI for ''June of the preceding Year.'' The forfeiture maxima under section 503(b)(2)(C) remains unchanged.

Guidelines for Assessing Forfeitures

The Commission and its staff may use these guidelines in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceiling per violation or per day for a continuing violation stated in section 503 of the Communications Act and the Commission's rules are described in § 1.80(b)(5)(iii). These statutory maxima became effective September 2, 2008. Forfeitures issued under other sections of the Act are dealt with separately in section III of this note.

* * * * *

Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors

* * * * *

Violation	Statutory amount ($)
Sec. 202(c) Common Carrier Discrimination	9,600, 530/day.
Sec. 203(e) Common Carrier Tariffs	9,600, 530/day.
Sec. 205(b) Common Carrier Prescriptions	18,200.
Sec. 214(d) Common Carrier Line Extensions	1,320/day.
Sec. 219(b) Common Carrier Reports	1,320.
Sec. 220(d) Common Carrier Records & Accounts	9,600/day.
Sec. 223(b) Dial-a-Porn	75,000/day.
Sec. 364(a) Forfeitures (Ships)	7,500 (owner).
Sec. 364(b) Forfeitures (Ships)	1,100 (vessel master).
Sec. 386(a) Forfeitures (Ships)	7,500/day (owner).
Sec. 386(b) Forfeitures (Ships)	1,100 (vessel master).
Sec. 634 Cable EEO	650/day.

(5) * * *

(iii) * * *

U.S. code citation	Maximum penalty after DCIA adjustment ($)
47 U.S.C. 202(c)	9,600 530
47 U.S.C. 203(e)	9,600 530
47 U.S.C. 205(b)	18,200
47 U.S.C. 214(d)	1,320
47 U.S.C. 219(b)	1,320
47 U.S.C. 220(d)	9,600
47 U.S.C. 223(b)	75,000
47 U.S.C. 362(a)	7,500
47 U.S.C. 362(b)	1,100
47 U.S.C. 386(a)	7,500
47 U.S.C. 386(b)	1,100
47 U.S.C. 503(b)(2)(A)	37,500 375,000
47 U.S.C. 503(b)(2)(B)	150,000 1,500,000
47 U.S.C. 503(b)(2)(C)	325,000 3,000,000
47 U.S.C. 503(b)(2)(D)	16,000 112,500
47 U.S.C. 507(a)	750
47 U.S.C. 507(b)	110
47 U.S.C. 554	650

[FR Doc. E8–17254 Filed 7–30–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1570

[Docket No. TSA–2008–0011]

RIN 1652–AA65

False Statements Regarding Security Background Checks

AGENCY: Transportation Security Administration, DHS.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule codifies in the Code of Federal Regulations recently-enacted statutory provisions that prohibit public transportation agencies, railroad carriers, and their respective contractors and subcontractors from knowingly misrepresenting Federal guidance or regulations concerning security background checks for certain individuals.

DATES: *Effective Date:* This rule is effective July 31, 2008.

Comment Date: Comments must be received by September 2, 2008.

ADDRESSES: You may submit comments on this rulemaking, identified by the Transportation Security Administration (TSA) docket number of this interim final rule, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written 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 20590–0001; Fax 202–493–2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan your submission and post it to FDMS.

See **SUPPLEMENTARY INFORMATION** for formatting and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Ellen Siegler, Assistant Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2723; facsimile (571) 227–1379; e-mail *Ellen.Siegler@dhs.gov.*

SUPPLEMENTARY INFORMATION: This interim final rule is being adopted without prior notice and prior public comment. However, the TSA will still provide an opportunity for public comment on this rulemaking. TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. See **ADDRESSES** above for information on where to submit comments.

Please identify the docket number of this interim final rule at the beginning of each comment. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the

rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the receipt date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI).[1] TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is publicly available, and will be available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on this rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place such comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and will note in the public docket that TSA has received such materials from the commenter. However, if TSA determines that portions of these comments may be made publicly available, TSA may include redacted versions in the public docket. If TSA receives a request to examine or copy information that is not in the public docket, TSA will treat that request as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and under DHS' FOIA regulation (published in 6 CFR part 5).

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of comments received into our dockets by the name of the individual submitting each comment (or signing each comment, in the cases of comments submitted on behalf of associations, businesses, labor unions, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477) (available online at *http://DocketInfo.dot.gov*).

You may review TSA's electronic public docket on the Internet at *http://www.regulations.gov*. In addition, DOT's Docket Management Facility provides paper copies of docket materials, equipment to facilitate docket review, and staff assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility from 9 a.m. to 5 p.m., Monday through Friday (excluding legal holidays), or you may call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue, SE., Washington, DC 20590.

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at http://www.tsa.gov and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual whose contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this interim final rule. Make sure to identify the docket number of this rulemaking in communications with TSA.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the individual whose contact information is listed in **FOR FURTHER INFORMATION CONTACT** . Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Good Cause for Immediate Adoption

This action is being taken without providing a prior opportunity for notice and comment, and it provides for an effective date less than 30 days after publication in the **Federal Register**.

Sections 553(b) and (d) of the Administrative Procedure Act (APA) (5 U.S.C. 553) authorize agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under section 553(b), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement of section 553.

TSA finds that notice and public comment to this final rule are impracticable, unnecessary, and contrary to the public interest. The provisions in this interim final rule adopt verbatim sections 1414(e) (6 U.S.C. 1143(e)) and 1522(e) (6 U.S.C. 1170(e)) of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–153 (9/11 Act). Under sections 1414(e) and 1522(e) of the 9/11 Act, it is now a violation of that statute for public transportation agencies, railroad carriers, and their respective contractors and subcontractors to knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the DHS Secretary related to security background check requirements for covered individuals when conducting a security background check. This rule adds to the Code of Federal Regulations (CFR), without change, the same prohibitions as directed by the statute. This rule does not prohibit any conduct that is not already prohibited by the statute. Accordingly, it is appropriate for TSA to issue this regulation as an interim final rule. For the same reason, TSA finds

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

that there is good cause to make this rule effective immediately.

I. Summary

This final rule codifies in the Code of Federal Regulations sections 1414(e) and 1522(e) of the 9/11 Act, which prohibit public transportation agencies, railroad carriers, and their respective contractors and subcontractors from knowingly misrepresenting Federal guidance or regulations concerning security background checks for covered individuals. Under this rule, entities operating mass transit systems, passenger rail systems, and freight rail carriers must understand TSA's regulations and guidance and represent these background checks accurately to their employees.

This regulation will apply to regulations and guidance issued by TSA both before and after enactment of the 9/11 Act. At present, TSA has issued one rule and several guidance documents relating to security background checks for covered individuals. These are the Transportation Worker Identification Credential (TWIC) regulation (49 CFR part 1572) and guidance documents for freight railroad and mass transit operators. The TWIC rule applies, in relevant part, to land transportation workers who need unescorted access to secure areas of maritime facilities and to vessels regulated under the Maritime Transportation Security Act, Public Law 107–295. The railroad guidance applies to rail carriers that transport materials poisonous by inhalation (commonly referred to as Toxic Inhalation Hazard (TIH) materials). The guidance can be found at *http://www.tsa.gov/what_we_eo/layers/trip/freight_rail_security.shtm* . The mass transportation guidance applies to entities that operate mass transit and rail passenger systems. This guidance can be found at *http://www.tsa.dhs.gov/assets/pdf/guidance_employee_background_checks.pdf.*

II. 9/11 Act—False Statements Regarding Security Background Checks by Public Transportation Agency or Railroad Carrier

The 9/11 Act was enacted on August 3, 2007. Sections 1414 and 1522 of the Act address guidance issued by the Assistant Secretary of TSA concerning security background checks of covered individuals employed by public transportation agencies, railroad carriers, and their respective contractors and subcontractors. In particular, sections 1414(e) and 1522(e) prohibit public transportation agencies, railroad carriers, and their contractors and subcontractors from knowingly misrepresenting the scope, application, or meaning of any rules, directives, or guidance concerning background checks to employees, arbiters in an arbitration proceeding, or any other relevant persons.

Sections 1414(e) and 1522(e) expressed this concern about misrepresentation in nearly-identical language and directed TSA to issue a rule addressing that concern within one year of the statute's enactment. Section 1414(e), addressing public transportation, provides:

> A public transportation agency or a contractor or subcontractor of a public transportation agency may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check. Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a regulation that prohibits a public transportation agency or a contractor or subcontractor of a public transportation agency from knowingly misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

Similarly, section 1522(e) provides:

> A railroad carrier or a contractor or subcontractor of a railroad carrier may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check. Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a regulation that prohibits a railroad carrier or a contractor or subcontractor of a railroad carrier from knowingly misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

This interim final rule codifies the language of sections 1414(e) and 1522(e) of the 9/11 Act into 49 CFR part 1570. It also codifies the definitions of ''covered individual'' as contained in sections 1414(a) and 1515(a), ''public transportation agency'' in section 1402(5), ''railroad'' and ''railroad carrier'' in sections 1501(7) and (8), respectively, and ''security background check'' in sections 1414(a) and 1522(a). The regulatory text of this rule is essentially identical to the statutory provisions.

III. TSA's Background Check Initiatives

To date, TSA has issued one regulation and several guidance documents that relate to background checks in the public transportation and railroad sectors. In the future, DHS and TSA may undertake other initiatives. Today's rulemaking prohibits public transportation agencies, railroad carriers, and their respective contractors and subcontractors from knowingly misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary of the Department of Homeland Security related to security background check requirements for covered individuals when conducting a security background check.

Prior to the enactment of the 9/11 Act, TSA issued regulations requiring credentialing and security threat assessments for certain maritime and land transportation workers. Specifically, under the TWIC regulations, individuals who require unescorted access to secure areas of maritime ports and vessels must undergo security threat assessments and must obtain biometric credentials to be used in access control systems installed by regulated facilities and vessels.[2] TSA conducts a security threat assessment, including a criminal history records check against a specified list of disqualifying criminal offenses, before issuing a TWIC. Some public transportation and railroad carrier employees may require TWICs under the TSA TWIC rule if they require unescorted access to secure areas of regulated vessels or maritime facilities.

Also prior to the enactment of the 9/11 Act, TSA issued guidance recommending that entities operating mass transit and passenger rail systems, and railroad carriers that transport TIH materials, conduct background checks on key employees. In 2006 DHS and DOT recommended that TIH railroad carriers establish procedures for background checks for contractor employees with unmonitored access to

[2] 49 CFR part 1572.

company-designated critical infrastructure.[3]

On February 12, 2007, DHS and DOT issued additional guidance to TIH railroad carriers concerning the recommended scope and procedures for voluntarily conducted background checks. DHS and DOT noted that many TIH railroad carriers use criminal background checks to assess the suitability of their employees. DHS and DOT recommended that, to the extent that TIH railroad carriers choose to conduct criminal background checks for individuals with unmonitored access to company-designated critical infrastructure, they should consider using the Federally-established list of disqualifying crimes applicable to hazmat drivers and port transportation workers contained in 49 CFR 1572.103. DHS and DOT further recommended that the railroad industry should consider establishing a vigorous internal redress process for adversely affected job applicants and personnel, including an appeal and waiver process similar to the processes established for holders of commercial driver's licenses who apply for hazardous materials endorsements[4] and for port transportation workers.[5]

In 2006, TSA and the Federal Transit Administration (FTA) jointly issued guidance recommending a number of practices to improve the security of their systems.[6] In this guidance, TSA and FTA recommended that these systems conduct background investigations, such as criminal history and motor vehicle records checks, on all new frontline operators and maintenance employees and on those employees and contractors with access to sensitive security information and security critical facilities and systems, such as tunnels, surveillance, monitoring, and intrusion detection systems. On February 28, 2008, consistent with the February 12, 2007 guidance to TIH freight railroad carriers, TSA and FTA issued additional guidance in which they recognized that some entities operating mass transit and passenger rail systems were using criminal background checks to assess the suitability of their employees. TSA and FTA suggested that these entities consider using the Federally-established list of disqualifying crimes applicable to hazmat drivers and port transportation workers found in 49 CFR 1572.103. TSA and FTA further suggested that entities operating mass transit and passenger rail systems also consider using an appeal and waiver process similar to the process established for hazardous material drivers and port transportation workers found in 49 CFR part 1515.

Public transportation agencies, railroad carriers, and their contractors, may not misrepresent the recommendations in any of these TSA guidance documents to their employees.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501. *et seq.*) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. TSA has determined that there are no current or new information collection requirements associated with this rule.

V. Economic Impact Analyses

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). Because this rule does not add any requirements to those in the statute, the impact of this rule is negligible. Thus, TSA has not performed a cost/benefit analysis.

Executive Order 12866 Assessment

E.O. 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations as to whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Order. Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including economic significance, which is defined as having an annual impact on the economy of $100 million. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

This regulation is not significant under E.O. 12866. TSA has concluded, however, that the costs of the rule will be minimal for the reasons presented below. This rule codifies the language of sections 1414(e) and 1522(e) of the 9/11 Act prohibiting knowingly misrepresenting TSA's background check requirements or recommendations and incorporates it into 49 CFR part 1570. The regulatory text is identical to the statutory provisions.

This regulation should have no economic impact as it codifies the requirement that prohibits public transportation agencies, railroad carriers and their contractor and subcontractors from knowingly misrepresenting DHS guidance, directives, or regulations concerning security background checks for covered individuals. Stated simply, it codifies the statutory mandate that these entities may not knowingly make false statements regarding DHS security background check requirements

We expect affected entities to inform their employees and contractors about their obligations via email or letter and we believe that it would involve minimal cost.

This rule will benefit individuals employed by public transportation agencies, railroad carriers, and their contractor and subcontractors. These individuals will be given correct information about DHS background check guidance or requirements.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires agencies to perform a review to determine whether a proposed or final rule will have a significant

[3] The TIH railroad guidance can be found at: *http://www.tsa.gov/what_we_do/layers/trip/freight_rail_security.shtm.*

[4] In accordance with 49 U.S.C. 5103a, holders of commercial driver's licenses who apply for hazardous materials endorsements must undergo security threat assessments under 49 CFR part 1572. Procedures for waivers and appeals are found at 49 CFR part 1515.

[5] 49 CFR 1572.103.

[6] The transit guidelines can be found at on the internet at: *http://transit-safety.volpe.dot.gov/Security/SecurityInitiatives/ActionItems/actionlist.asp#14.*

economic impact on a substantial number of small entities when the Administrative Procedure Act (APA) requires notice and comment rulemaking. TSA has not assessed whether this rule will have a significant economic impact on a substantial number of small entities, as defined in the RFA. When an agency publishes a rulemaking without prior notice and an opportunity for comment, the RFA analysis requirements do not apply. TSA is adopting this interim final rule without prior notice and opportunity for public comment. Therefore, no RFA analysis is provided.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in 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. TSA has assessed the potential effect of this rulemaking and has determined that it will not create any unnecessary obstacles to foreign commerce.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

VI. Executive Order 13132, Federalism

TSA has analyzed this final rule under the principles and criteria of E.O. 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, have determined that this action does not have federalism implications.

VII. Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

VIII. Energy Impact Analysis

The energy impact of the action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1570

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

The Amendments

■ For the reasons set forth in the preamble, the Transportation Security Administration amends Chapter XII of Title 49 of the Code of Federal Regulations, as follows:

PART 1570—GENERAL RULES

■ 1. The authority citation for part 1570 is revised to read as follows:

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469; Pub. L. 110–53 secs. 1414, 1522.

■ 2. Add § 1570.13 to read as follows:

§ 1570.13 False Statements Regarding Security Background Checks by Public Transportation Agency or Railroad Carrier.

(a) *Scope.* This section implements sections 1414(e) (6 U.S.C. 1143) and 1522(e) (6 U.S.C. 1170) of the ''Implementing Recommendations of the 9/11 Commission Act of 2007,'' Pub. L. 110–53.

(b) *Definitions.*

Covered individual means an employee of a public transportation agency or a contractor or subcontractor of a public transportation agency or an employee of a railroad carrier or a contractor or subcontractor of a railroad carrier.

Public transportation agency means a publicly-owned operator of public transportation eligible to receive Federal assistance under chapter 53 of title 49, United States Code.

Railroad has the meaning that term has in section 20102 of title 49, United States Code.

Railroad carrier has the meaning that term has in section 20102 of title 49, United States Code.

Security background check means reviewing the following for the purpose of identifying individuals who may pose a threat to transportation security, national security, or of terrorism:

(i) Relevant criminal history databases;

(ii) In the case of an alien (as defined in sec. 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), the relevant databases to determine the status of the alien under the immigration laws of the United States; and

(iii) Other relevant information or databases, as determined by the Secretary of Homeland Security.

(c) *Prohibitions.* (1) A public transportation agency or a contractor or subcontractor of a public transportation agency may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary of Homeland Security related to security background check requirements for covered individuals when conducting a security background check.

(2) A railroad carrier or a contractor or subcontractor of a railroad carrier may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary of Homeland Security related to security background check requirements for covered individuals when conducting a security background check.

Issued in Arlington, Virginia, on July 25, 2008.

Gale Rossides,

Deputy Administrator.

[FR Doc. E8–17515 Filed 7–30–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XJ38

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish for Catcher Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish by catcher processors participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 total allowable catch (TAC) of pelagic shelf rockfish allocated to catcher processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 28, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The 2008 TAC of pelagic shelf rockfish allocated to catcher processors participating in the rockfish limited access fishery in the Central GOA is 1,194 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), and as posted as the 2008 Rockfish Program Allocations at *http://www.fakr.noaa.gov/sustainablefisheries/goarat/default.htm*.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 TAC of pelagic shelf rockfish allocated to catcher processors participating in the rockfish limited access fishery in the Central GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,194 mt, and is setting aside the remaining 0 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish by catcher processors participating in the rockfish limited access fishery in the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pelagic shelf rockfish by catcher processors participating in the rockfish limited access fishery in the Central GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 25, 2008.

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

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

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

Dated: July 28, 2008.

Alan D. Risenhoover

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–17567 Filed 7–28–08; 4:20 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 148
Thursday, July 31, 2008

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. APHIS–2006–0024]

Minimum Age Requirements for the Transport of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would amend the Animal Welfare Act regulations by adding minimum age requirements for the transport in commerce of animals. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before September 2, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0024* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2006–0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0024.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1231; (301) 734–7833.

SUPPLEMENTARY INFORMATION: On May 9, 2008, we published in the **Federal Register** (73 FR 26344–26349, Docket No. APHIS–2006–0024) a proposal to amend the Animal Welfare Act regulations by adding minimum age requirements for the transport in commerce of animals.

Comments on the proposed rule were required to be received on or before July 8, 2008. We are reopening the comment period on Docket No. APHIS–2006–0024 for an additional 30 days beyond this notice. We will also consider all comments received between July 9, 2008 (the day after the close of the original comment period) and the date of this notice. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 147a: 21 U.S.C. 136 and 136(a); 44 U.S.C. 35; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 25th day of July 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–17591 Filed 7–30–08; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 54

[Docket No. PRM–54–5]

Eric Epstein; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Eric Epstein (PRM–54–5). The petition requests that the NRC amend its regulations that govern renewal of operating licenses for nuclear power plants. Specifically, the petitioner requests that the NRC conduct a comprehensive review of U.S. nuclear power plant licensees' emergency planning during the license renewal proceedings. The NRC is denying the petition because the petition presents issues that the Commission carefully considered when it first adopted the license renewal rule and denied petitions for rulemaking submitted by Andrew J. Spano, County Executive, Westchester County, New York (PRM–54–02), and Mayor Joseph Scarpelli of Brick Township, New Jersey (PRM–54–03). The Commission's position is that the NRC's emergency planning system is part of a comprehensive regulatory process that is intended to provide continuing assurance that emergency planning for every nuclear plant is adequate. Thus, the Commission has already extensively considered and addressed the types of issues raised in the petition. Also, the petition fails to present any significant new information or arguments that would warrant the requested amendment.

ADDRESSES: Publicly available documents related to this petition, including the petition for rulemaking and NRC's letter of denial to the petitioner may be viewed electronically on public computers in NRC's Public Document Room (PDR), 01F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Publicly available documents created or received at NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff at (800) 387–4209 or (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Nina Bafundo, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–1621 or Toll

Free: 1–800–368–5642, e-mail *Nina.Bafundo@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

During the 1991 license renewal rulemaking (56 FR 64943; December 13, 1991), the Commission explained that initial license-type reviews are unnecessary at license renewal because of ongoing NRC inspections, enforcement, and upgrades: ''since initial licensing, each operating plant has continually been inspected and reviewed as a result of new information gained from operating experience.'' (56 FR at 64945). These ongoing regulatory processes provide reasonable assurance that the licensing bases of currently operating plants provide and maintain an adequate level of safety. (60 FR at 22464, 22481–22482; May 8, 1995). The license renewal rule likewise reflects the NRC's determination that issues of adequate safety and protection should be addressed when they arise. *See,* 60 FR at 22481. The NRC anticipated that safety issues will inevitably emerge, but concluded that its ongoing regulatory process is comprehensive and flexible enough to manage safety concerns before the license renewal process. (71 FR 74848, 74851; December 13, 2006). Also, in making revisions to the license renewal rule, the Commission reaffirmed the vitality of its regulatory process. *See,* 60 FR 22461.

More specifically, the NRC's emergency preparedness regulations in 10 CFR part 50 require licensees to test the adequacy of their preparedness and ability to respond to emergency situations by the performance of a full-scale exercise at least once every two years, with the participation of Government agencies. These exercises are evaluated by NRC inspectors and FEMA evaluators. In the interval between these two-year exercises, licensees must conduct additional drills to ensure that they maintain adequate emergency response capabilities.

Further, the NRC actively reviews its regulatory framework to ensure that the regulations are current and effective. The agency began a major review of its emergency preparedness framework in 2005, including a comprehensive review of the emergency preparedness regulations and guidance, the issuance of generic communications regarding the integration of emergency preparedness and security, and outreach efforts to interested persons to discuss emergency preparedness issues. These activities have informed an ongoing rulemaking effort that will enhance the NRC's emergency preparedness regulations and guidance. *See,* Rulemaking Plan for Enhancements to Emergency Preparedness Regulations and Guidance, (April 17, 2007) (ML070440148); SRM–SECY–06–0200, Results of the Review of Emergency Preparedness Regulations and Guidance, (January 8, 2007) (ML070080411); SECY–06–0200, Results of the Review of Emergency Preparedness Regulations and Guidance (September 20, 2006) (ML061910707).

The Petition

This petition raises concerns nearly identical to the recent petitions by Andrew J. Spano, County Executive, Westchester County, New York (PRM–54–02) and Mayor Joseph Scarpelli of Brick Township, New Jersey (PRM–54–03), which the Commission denied after public comments. In the Spano and Scarpelli petitions, the petitioners requested that the NRC amend its regulations to provide that the agency renew a license only if the plant operator demonstrates that the plant meets all criteria and requirements that would apply if it were proposing the plant *de novo* for initial construction, including an emergency planning analysis. Similarly, this petition requests the NRC to make a ''new finding of 'reasonable assurance of adequate protection,' '' like a *de novo* review under the initial licensing process.

In the Spano and Scarpelli denials, the NRC addressed issues it had already considered at length during its license renewal rulemaking. *See,* 71 FR 74848, 74851. The Commission explained that ''the petitioners did not present any new information that would contradict positions taken by the Commission when the license renewal rule was established or demonstrate that sufficient reason exists to modify the current regulations.'' *Id.* Likewise, this petition does not pose any new concerns that would undermine the rationale for the current license renewal process.

For the reasons given by the Commission in the final license renewal rule (56 FR 64943; December 13, 1991) and again in revisions to the final rule (60 FR 22461; May 8, 1995), the scope of license renewal is appropriately limited to those issues which have a specific relevance to protecting the public health and safety during the license renewal period—i.e., age-related degradation. Issues relevant to current plant operations, like emergency planning and nuclear plant security, fall within the purview of the current regulatory process and continue into the extended operation period of a license renewal. The Commission also mandates that each plant-specific licensing basis be maintained during the renewal term in the same manner and to the same extent as during the original licensing term, thereby ensuring the protection of public health and safety and the preservation of common defense and security.

The Commission has affirmed repeatedly that ''emergency preparedness need not be reviewed again for license renewal.'' 71 FR at 74852 (referencing 56 FR at 64966). The Commission stated that ''[t]hrough its standards and required exercises, the Commission ensures that existing plans are adequate throughout the life of any plant even in the face of changing demographics and other site-related factors.'' 71 FR at 78452 (quoting 56 FR at 64966). This basic determination is reflected in the NRC's regulations at 10 CFR 50.47(a) on emergency planning requirements, in which a new finding on emergency planning issues is not required for license renewal. Further, all of the emergency planning regulations in 10 CFR 50.47, 50.54(q), 50.54(s)–(u), and Appendix E are independent of the license renewal process, and continue to apply during the extended operation term.

For these reasons, the Commission denies PRM–54–5.

Following its review of this Notice, the Commission directed that the Notice include the following comments of Commissioner Jaczko:

> I disagree with the decision to deny this petition for rulemaking. Instead, I believe the review of a license renewal application authorizing, if granted, an additional twenty-years of operation, provides the opportune time at which the agency should re-evaluate emergency preparedness issues. Currently, the only time the NRC issues a comprehensive affirmative finding that both onsite and offsite emergency plans are in place around a nuclear power plant, and that they can be implemented, is at the time it grants an initial operating license. Although there are regular assessments of these plans through exercises and reviews, we do not periodically reassess that initial reasonable assurance of adequate protection of the public—even if it was made decades ago—unless and until we find a serious deficiency in a biennial exercise. I believe considering emergency preparedness during the license renewal process would provide an opportunity to improve public confidence in the licensees and in all levels of government.

The Commission had additional views on the petition:

> The Commission majority does not share Commissioner Jaczko's dissenting view. As stated in each of our votes on this matter, and in support of the Commission's responsibility to oversee the safety and security of operating

reactors, we continue to support the view that issues of relevance to both current plant operation and operation during the license renewal period must be addressed as they arise *within the present license term* rather than at the time of renewal. Emergency planning is such an issue. Through its standards and required exercises, the Commission ensures that existing emergency plans are adequate throughout the life of any plant, even in the face of changing demographics and other site-related factors. The emergency preparedness regulations in 10 CFR part 50 require licensees to test the adequacy of their preparedness and ability to respond to emergency situations through the performance of a full-scale exercise at least once every two years. These drills and independent evaluations provide a process to ensure continued adequacy of emergency preparedness in light of changes in site characteristics. Consequently, consistent with the Commission's policy to confine the review of issues during license renewal to those uniquely relevant to protecting the public health and safety and common defense and security during the renewal period, we find no lost opportunity here and see no necessity for a review of emergency planning as part of the license renewal process.

Dated at Rockville, Maryland, this 25th day of July 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–17544 Filed 7–30–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 23

[Docket No. OJP 1473]

RIN 1121–AA59

Criminal Intelligence Systems Operating Policies

AGENCY: Office of Justice Programs, Justice.

ACTION: Proposed rule.

SUMMARY: The Office of Justice Programs is publishing this proposed rule to amend its regulations that govern the operating policies of criminal intelligence systems that receive federal funding under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (''Crime Control Act''). The regulations were issued pursuant to 42 U.S.C. 3789(g), which requires that ''criminal intelligence systems'' receiving Crime Control Act support must collect, maintain, and disseminate criminal intelligence information ''in conformance with policy standards which are prescribed by the Office of Justice Programs.'' The statute specifies that the policy standards must be written to assure that the funding and operation of the systems further the purpose of the funding provisions and assure that such systems ''are not utilized in violation of the privacy and constitutional rights of individuals.'' The existing regulations were last revised in 1993 and the purpose of the revisions proposed in this document is to clarify and update the regulations in light of the new, post-9/11 information sharing environment and investigative policies aimed at preventing terrorism.

DATES: Written comments must be submitted on or before September 2, 2008.

ADDRESSES: Comments may be mailed to Michael Dever, Bureau of Justice Assistance, 810 7th Street, NW., Washington, DC 20531. To ensure proper handling, please reference OJP Docket No. 1473 in your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Dever, Bureau of Justice Assistance, 810 7th Street, NW., Washington, DC 20531. *Telephone:* (202) 616–6500.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as name and address) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish for it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not wish to be posted online in the first paragraph of your comment and identify what information you would like redacted.

If you wish to submit confidential business information as part of your comment but do not wish for it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Discussion

The proposed rule would revise the Office of Justice Program (OJP) regulations in 28 CFR part 23 that set forth policy guidelines for Crime Control Act-funded state criminal intelligence information systems. The part 23 regulations were issued pursuant to a requirement in 42 U.S.C. 3789(g) that ''criminal intelligence systems'' receiving Crime Control Act support must collect, maintain, and disseminate criminal intelligence information ''in conformance with policy standards which are prescribed by the Office of Justice Programs.'' The statute specifies that the policy standards must be written to assure that the funding and operation of the systems further the purpose of the funding provisions and assure that such systems ''are not utilized in violation of the privacy and constitutional rights of individuals.''

The existing part 23 regulations were last revised in 1993 and the purpose of the revisions proposed in this notice is to clarify and update the regulations in light of the new, post-9/11 information-sharing environment and investigative policies aimed at preventing terrorism. Multiple initiatives are being pursued at the federal, state, and local levels to promote and strengthen information sharing among responsible government agencies that can promote risk identification and protective action, including, for example, the creation of state, local, and regional fusion centers across the country and information sharing initiatives involving Joint Terrorism Task Forces. The intent of these proposed revisions to part 23 is to ensure that the standards for sharing criminal intelligence information subject to the regulation be uniform and clear and not create unreasonable impediments to information sharing, whether real or perceived, while at the same time continuing to ensure that the systems not be used in violation of the privacy and constitutional rights of individuals.

Section 23.1

Section 23.1 contains a parenthetical list of statutory amendments to the Crime Control Act that is out of date. It is proposed that this section be revised to strike this parenthetical.

Section 23.2

Section 23.2 describes the background for the part 23 criminal intelligence operating policies. It recognizes that certain criminal activities often involve some degree of regular coordination and permanent organization involving a large number of participants over a broad geographical area. The examples currently cited of such ongoing networks of criminal activities do not include a reference to terrorism or the material support of terrorism. To clarify that the detection, exposure, investigation, and prevention of terrorist activity and conduct is an important part of the role played by criminal intelligence systems, it is proposed that ''domestic and international terrorism, including the material support thereof,'' be added to the examples of criminal activities about which it is important to gather, maintain, and share criminal intelligence information.

Section 23.3

It is proposed to remove the outdated parenthetical statutory references and to make some non-substantive grammatical/syntactical changes in this section.

Section 23.20

Paragraph (a) of section 23.20 currently states the basic operating principle that a project shall collect and maintain criminal intelligence information concerning ''an individual'' only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that conduct or activity. Because criminal conduct or activities can be engaged in by organizations as well as individuals, it is proposed that this section be amended to clarify that criminal intelligence information can be collected and maintained about organizations, as well as individuals. This clarification is consistent with section 23.3(b)(3)(i), which defines the term ''criminal intelligence information'' as meaning data that has been evaluated to determine that it ''is relevant to the identification of criminal activity engaged in by an individual who *or organization* which is reasonably suspected of involvement in criminal activity.'' (Emphasis added.) It should be noted that the inclusion of the term ''organization'' in section 23.20(a) does not affect the prohibition in section 23.20(b) of the ''[collection] or [maintenance of] criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization. * * *''

Paragraph (e) is proposed to be revised to define more clearly the circumstances under which criminal intelligence information subject to the regulations may be shared. The existing language provides that such information shall only be disseminated ''where there is a need to know and a right to know the information in the performance of a law enforcement activity.'' The terms ''need to know'' or ''right to know'' are not defined in the regulation. Instead, section 23.20(g) requires that ''[e]ach project must establish written definitions for the need to know and right to know standards for dissemination to other agencies as provided in paragraph (e) of this section.'' While some agencies may broadly interpret these terms to allow efficient sharing of criminal intelligence information with all authorized officials or entities, other agencies may construe this language more restrictively. There is no uniform definition of the information sharing standard. In addition, there is no reference in this provision to disseminating criminal intelligence information for preventative law enforcement, homeland security, or counterterrorism purposes. The terrorist attacks of September 11, 2001, have made it clear that the sharing of intelligence information should be maximized, to the extent consistent with applicable law and protection for privacy and civil liberties, among federal, state, and local agencies responsible for law enforcement, preventing terrorism, and securing our homeland. Reducing real or perceived barriers to the sharing of investigative and intelligence information that could aid in law enforcement or in the prevention of crime or terrorism is now a well-recognized priority of federal, state, and local agencies. Therefore, to provide clearer guidance on the circumstances under which criminal intelligence information may be shared, a revision to paragraph (e) is proposed that would establish a uniform standard of permissible purposes for the dissemination of criminal intelligence information, authorizing dissemination when the information falls within the law enforcement, counterterrorism, or national security responsibility of the receiving agency or may assist in preventing crime or the use of violence or any conduct dangerous to human life or property. The proposed revision also would clarify the authorities to whom information may be disseminated, including agencies with law enforcement, homeland security, or counterterrorism missions. The proposed revision also would provide that criminal intelligence information may be disseminated to officials of the Office of Justice Programs when such officials are monitoring or auditing compliance by a project with the operating principles and funding guidelines under Part 23.

Paragraph (f)(1) currently limits dissemination of criminal intelligence information only to ''law enforcement authorities'' that ''agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with'' part 23 principles. Consistent with the change in the dissemination rule in section 23.20(e), this section is proposed to be amended to clarify that the authorities to which information may be disseminated would include agencies qualified to receive the information under paragraph (e). In addition, it is proposed that paragraph (f)(1) be further amended to provide that the receiving agencies have information procedures in place that are consistent with part 23's operating principles, rather than that they ''agree to follow'' such procedures. This retains the requirement that receiving agencies implement part 23 principles, while removing the potential barrier to information sharing that requiring an ''agreement'' for each sharing arrangement might entail. It is important to note that a new proposed provision—section 23.30, paragraph (f)—will require projects to have in place, or establish within timeframes specified by OJP's Bureau of Justice Assistance (BJA), a written privacy policy specifying the operational steps being followed to comply with section 23.20 principles.

Paragraph (f)(2) creates an exception to the requirement in paragraph (f)(1) allowing the dissemination of ''an assessment of criminal intelligence information to a government official or any other individual, when necessary to avoid imminent danger to life or property.'' The term ''imminent'' is not defined. Because the provision already requires a determination that the sharing of the information assessment is ''necessary'' to avoid danger to life or property, it is proposed that the term ''imminent'' be deleted.

Changes are proposed to paragraph (g) to conform to the proposed change in paragraph (e) that substitutes a national standard of dissemination for the

existing, locally-defined ''need to know and right to know'' dissemination standard. The proposed changes do not substantively alter the longstanding requirement that criminal intelligence systems record certain information regarding the dissemination of criminal intelligence information. Taking this into account, OJP has determined that there is no need for a new Information Collection Review or burden calculation for this recordkeeping requirement in this notice of proposed rulemaking.

Paragraph (h) provides rules for projects to assure the continuing relevance and importance of criminal intelligence information and requires projects to have procedures for the periodic review of information and destruction of any information that is misleading, obsolete, or otherwise unreliable. The regulation limits the retention period to a maximum of five years without a review and validation of the information. When information has been reviewed or updated and a determination has been made that it continues to meet system submission criteria, the information has been ''validated'' and a new retention period begins. The five-year retention period was established before the events of 9/11 and the advent of the current terrorist threat environment. This relatively-short retention period may not be long enough to cover terrorist planning cycles and/or the need for historical data for terrorism threat assessment. New technologies for data storage and analysis make possible the extended retention and potential usefulness of this information for purposes of such threat assessments. In addition, information about subjects of criminal intelligence incarcerated during the five-year retention period may be unavailable to a jurisdiction upon the subject's release from prison. For these reasons, it is proposed that the retention period be changed to 10 years and that an exception be made to allow the tolling of the retention period during a subject's incarceration so that the intelligence file can be available to law enforcement upon the subject's release from prison.

Finally, paragraph (i)(1) currently prohibits making remote terminal access to intelligence information available to system participants except as specifically approved by OJP upon a determination that the system has adequate policies and procedures in place to insure that such access is available only to authorized users. System managers have informed the Department that this provision's requirement of pre-approval by OJP is outdated, given the modern access controls that routinely provide appropriate security for remote access arrangements. It is therefore proposed that this provision be revised to remove the requirement that OJP approve a system's security policy and procedures before remote-access may be implemented. Although this would remove the requirement of OJP approval, OJP expects to continue to provide projects with training and technical assistance regarding information privacy and security practices and polices, including those prescribed through the Department of Justice's Global Justice Information Sharing Initiative or successor entity.

Finally, a few non-substantive grammatical/syntactical changes are proposed variously throughout the section.

Section 23.30

Section 23.30 specifies funding guidelines that require, among other things, that intelligence systems agree to adhere to the principles set forth in section 23.20, have an agency head or official with general policy-making authority certify in writing that he takes responsibility and will be accountable for the information in the system and the system's compliance with the section 23.20 principles. In the case of interjurisdictional systems, section 23.30(d)(2) requires (1) that section 23.20 principles be made part of the system's by-laws or operating policies and (2) that agencies participating in the interjurisdictional system, as a condition of participation, ''accept in writing'' section 23.20 principles relating to the submission, maintenance, and dissemination of information. In light of advancements in technology since the rule was first published, it is proposed that the latter requirement be modified to provide that participating agencies, as a condition of ''access'' thereunder, ''affirmatively accept'' those principles. This change is proposed to account for new technology that provides methods other than writing for an individual to express acceptance of conditions of access, such as when computer users click on an ''accept'' button for an end-user's licensing agreement. Also, changing the affirmative acceptance requirement as a condition of ''access'' (as opposed to a condition of ''participation'') means that the user will be required to express his acceptance of section 23.20 principles each time access is sought, and not merely just once at the outset of an agency's participation in the interjurisdictional system.

It is also proposed that a reference to counterterrorism be added in paragraph (a) regarding the purposes for which criminal intelligence information may be collected and exchanged.

In addition (aside from some non-substantive grammatical/syntactical proposed changes), it is proposed that another requirement be added to section 23.30, in a new paragraph (f), requiring systems to have in place, or establish within timeframes specified in grant-making or other guidance by BJA, a written privacy policy that details the specific operational steps being followed to comply the section 23.20 privacy and civil liberty safeguards. It is expected that such a requirement would be imposed within BJA-specified timeframes that allow projects adequate time and support to develop such written policies. It is also contemplated that such written policies would be consistent with existing privacy guidance for justice information systems, including the Global Justice Information Sharing Initiative's privacy recommendations, DOJ privacy guidance, and other relevant privacy guidelines such as the privacy guidance for the information sharing environment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that it would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed clarifying changes in the regulations governing operating policies for federally-funded criminal intelligence systems do not involve changes that would impose significant costs on the state and local projects that manage these systems.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation. The Department of Justice has determined that this proposed rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly it has been reviewed by the Office of Management and Budget.

Executive Order 13132

This proposed rule would 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. Therefore, in

accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 23

Crime, Information, Law enforcement, Recordkeeping.

For the reasons stated in the preamble, the Office of Justice Programs proposes to amend 28 CFR Chapter I part 23 as follows:

PART 23—CRIMINAL INTELLIGENCE SYSTEMS OPERATING POLICIES

1. The authority citation for part 23 continues to read as follows:

Authority: 42 U.S.C. 3782(a); 42 U.S.C. 3789g(c).

2. Section 23.1 is revised to read as follows:

§ 23.1 Purpose.

The purpose of this regulation is to assure that all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, codified as amended at 42 U.S.C. 3711, *et seq.*, (''Crime Control Act'') are utilized in conformance with the privacy and constitutional rights of individuals and organizations.

§ 23.2 [Amended]

3. The first sentence of Section 23.2 is amended by removing ''and'' after ''bribery,'' and adding ''and domestic and international terrorism (including the material support thereof)'' after ''corruption of public officials''.

4. Section 23.3 is revised to read as follows:

§ 23.3 Applicability.

(a) The provisions of this part are applicable to all criminal intelligence systems described in section 23.1.

(b) As used in this part:

(1) Criminal Intelligence System or Intelligence System means the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information;

(2) Interjurisdictional Intelligence System means an intelligence system that involves two or more participating agencies representing different governmental units or jurisdictions;

(3) Criminal Intelligence Information means data that have been evaluated to determine that it:

(i) Is relevant to the identification of and the criminal activity engaged in by an individual who, or an organization that is reasonably suspected of involvement in criminal activity, and

(ii) Meets criminal intelligence system submission criteria;

(4) Participating Agency means an agency of local, county, State, Federal, or other governmental unit that exercises law enforcement or criminal investigation authority and that is authorized to submit and receive criminal intelligence information through an interjurisdictional intelligence system. A participating agency may be a member or a nonmember of an interjurisdictional intelligence system;

(5) Intelligence Project or Project means either the organizational unit that operates an intelligence system on behalf of and for the benefit of a single agency, or the organization that operates an interjurisdictional intelligence system on behalf of a group of participating agencies; and

(6) Validation of Information means the procedures governing the periodic review of criminal intelligence information to assure its continuing compliance with system submission criteria established by regulation or program policy.

5. Section 23.20 is amended as follows:

a. In paragraph (a), add ''or organization'' after ''individual'' both places it occurs.

b. In paragraphs (c), (d), (h), and (n), remove ''which'' each place it occurs and add ''that'' in its place; in paragraph (n), remove ''so'' from the last sentence.

c. Remove reserved paragraph (ii) immediately preceding paragraph (j).

d. Revise paragraphs (e), (f), and (g) introductory text, revise the last sentence of paragraph (h) and add a new sentence to follow it; and revise paragraph (i) to read as follows:

§ 23.20 Operating principles.

* * * * *

(e)(1) Criminal intelligence information may be disseminated to law enforcement, homeland security, or counterterrorism agencies by a project or authorized recipient for any type of detective, investigative, preventive, or intelligence activity only when the information—

(i) Falls within the law enforcement, counterterrorism, or national security responsibility of the receiving agency or

(ii) May assist in preventing a crime or the use of violence or any conduct dangerous to human life or property.

(2) Criminal intelligence information may also be disseminated to officials within the Office of Justice Programs when they are monitoring or auditing a project's compliance with the provisions of this part.

(f)(1) Except as provided in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to agencies qualified to receive the information under paragraph (e) of this section and that have procedures regarding information receipt, maintenance, security, and dissemination that are consistent with the privacy and civil liberties safeguards included in these operating principles.

(2) Paragraph (f)(1) of this section shall not limit dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when reasonably necessary to avoid danger to life or property.

(g) A project shall ensure the adoption of administrative, technical, and physical safeguards (including audit trails) to protect against unauthorized access and against intentional or unintentional damage. A record indicating to whom information has been disseminated outside the project, the reason for the dissemination, and the date of each such dissemination shall be kept. Information shall be labeled to indicate levels of sensitivity, levels of confidence, and the identity of submitting agencies and control

officials. Each intelligence project shall assure the implementation and regular review of appropriate security requirements and policies, including the following:

* * *

(h) * * * Criminal intelligence information retained in an intelligence system must be reviewed and validated for continuing compliance with system submission criteria before the expiration of the information's retention period, which in no event shall be longer than ten (10) years. The retention period relating to a subject shall be tolled while the subject is incarcerated.

(i)(1) A project shall have in place security policies and procedures to ensure that remote access to intelligence information be available only to authorized system users; and

(2) A project shall undertake no major modifications to system design without prior grantor agency approval.

* * * * *

6. Section 23.30 is amended as follows:

a. In paragraph (a), remove ''investigatory or'' and add ''investigatory,'' in its place and after ''prosecutorial'' add '', or counterterrorism''.

b. In paragraph (b) introductory text, remove ''activity'' and add ''activities'' in its place and remove ''areas of''.

c. In paragraph (b)(1), remove ''of citizens''.

d. Revise paragraphs (c) and (d) and add a new paragraph (f), to read as follows:

§ 23.30 Funding guidelines.

* * * * *

(c) Control and supervision of information collection and dissemination by an intelligence system shall be retained by the head of a government agency or an individual with general policy making authority who has been expressly delegated such control by the agency head. This official shall certify in writing that he takes full responsibility for the system's compliance with this part.

(d) (1) Official responsibility and accountability for actions taken by an inter-jurisdictional criminal intelligence system shall be assumed by the head of the governmental agency exercising control and supervision over the operation of the system or by an individual with general policy making authority who has been expressly delegated such control or supervision by the agency head. This official shall certify in writing that he takes full responsibility for the inter-jurisdictional system's compliance with this part.

(2) The principles set forth in § 23.20 shall be made part of the by-laws or operating procedures for the inter-jurisdictional system. Each participating agency, as a condition of access, must affirmatively accept those principles that govern the collection, maintenance, and dissemination of information included as part of the interjurisdictional system.

* * * * *

(f) The project has in place, or will establish within timeframes specified in grant-making or other guidance by BJA, a written privacy policy specifying the operational steps being followed to comply with § 23.20 principles.

Dated: July 16, 2008.

Jeffrey L. Sedgwick,

Acting Assistant Attorney General, Office of Justice Programs.

[FR Doc. E8–17519 Filed 7–30–08; 8:45 am]

BILLING CODE 4410–18–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1712; MB Docket No. 08–129; RM–11461]

Television Broadcasting Services; Spokane, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by KHQ, Incorporated (''KHQ''), the licensee of station KHQ–DT, DTV channel 7, Spokane, Washington, and a related channel substitution proposed by Spokane School District #81 (''Spokane School District''), licensee of noncommercial educational KSPS–DT, DTV channel *8, Spokane, Washington. KHQ requests the substitution of DTV channel 15 for channel 7 at Spokane, and Spokane School District requests substitution of DTV channel *7 for channel *8 at Spokane.

DATES: Comments must be filed on or before September 2, 2008, and reply comments on or before September 15, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve each petitioner's counsel as follows: David H. Pawlik, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005; Melodie A. Virtue, Esq., Garvey Schubert Barer, 1000 Potomac Street, NW., Fifth Floor, Washington, DC 20007–3501.

FOR FURTHER INFORMATION CONTACT: David Brown, *david.brown@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–129, adopted July 22, 2008, and released July 23, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Washington, is amended by adding channel 15 and removing channel 7 at Spokane and by adding channel *7 and removing channel *8 at Spokane.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–17571 Filed 7–30–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2008-0079; 92210-1117-0000-FY08-B4]

RIN 1018-AW18

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise designated critical habitat for marbled murrelet (*Brachyramphus marmoratus marmoratus*) under the Endangered Species Act of 1973, as amended (Act). On May 24, 1996, we designated 3,887,800 ac (ac) (1,573,340 hectares (ha)) as critical habitat for the marbled murrelet in Washington, Oregon, and California. We are proposing to revise currently designated critical habitat for the marbled murrelet by removing approximately 254,070 ac (102,820 ha) in northern California and Oregon from the 1996 designation, based on new information indicating that these areas do not meet the definition of critical habitat. This action, if adopted in its entirety, would result in a revised designation of approximately 3,633,800 ac (1,470,550 ha) as critical habitat for the marbled murrelet. In this rule, we are further proposing, under the Act, a taxonomic revision of the scientific name of the marbled murrelet from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus*.

DATES: We will accept comments received or postmarked on or before September 29, 2008. We must receive requests for public hearings in writing at the address shown in the **ADDRESSES** section by September 15, 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-AW18; 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 below for more information).

FOR FURTHER INFORMATION CONTACT: Ken Berg, Field Supervisor, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503-1273, telephone 360-753-9440, facsimile 360- 753-9008; Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266, telephone 503-231-6179, facsimile 503-231-6195; or Michael Long, Field Supervisor, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521, telephone 707-822-7201, facsimile 707-822-8411. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not revise currently designated critical habitat for the marbled murrelet by removing 254,070 ac (102,820 ha) from the 1996 designation, based on new information that is the best available information indicating that these areas do not meet the definition of critical habitat;

(2) Specific information on the amount and distribution of marbled murrelet habitat;

(3) Any foreseeable economic, national security, or other potential impacts resulting from the proposed critical habitat revision, and in particular, any impacts on small entities;

(4) Our proposal to revise 50 CFR 17.11 to adopt the taxonomic clarification for the marbled murrelet to reflect the change from *Brachyramphus marmoratus* marmoratus to *Brachyramphus marmoratus*; and

(5) Whether we could improve or modify our approach to revising critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

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. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the DATES section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information, 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, Western Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Maps of the proposed revised critical habitat are also available on the Internet at *http://www.fws.gov/westwafwo/*.

Background

The final rule designating critical habitat for the marbled murrelet was published in the **Federal Register** on May 24, 1996 (61 FR 26256), and has been posted under the ''Supporting Documents'' section for this docket in the *Federal eRulemaking Portal*: *http://www.regulations.gov* at Docket Number FWS-R1-ES-2008-0079. It is our intent to discuss only those topics directly

relevant to the proposed revision of critical habitat in this proposed rule.

The marbled murrelet is a small seabird of the Alcidae family. The marbled murrelet's breeding range extends from Bristol Bay, Alaska, south to the Aleutian Archipelago; northeast to Cook Inlet, Kodiak Island, Kenai Peninsula and Prince William Sound; south along the coast through the Alexander Archipelago of Alaska, British Columbia, Washington, and Oregon; to northern Monterey Bay in central California. Birds winter throughout the breeding range and occur in small numbers off southern California. Marbled murrelets spend most of their lives in the marine environment where they forage in near-shore areas and consume a diversity of prey species, including small fish and invertebrates. In their terrestrial environment, the presence of platforms (large branches or deformities) used for nesting is the most important characteristic of their nesting habitat. Marbled murrelet habitat use during the breeding season is positively associated with the presence and abundance of mature and old-growth forests, large core areas of old-growth, low amounts of edge habitat, reduced habitat fragmentation, proximity to the marine environment, and forests that are increasing in stand age and height.

Previous Federal Actions

For additional information on previous Federal actions concerning marbled murrelet, refer to the final listing rule published in the **Federal Register** on October 1, 1992 (57 FR 45328), and the final rule designating critical habitat published in the **Federal Register** on May 24, 1996 (61 FR 26256). In the final critical habitat rule, we designated 3,887,800 ac (1,573,340 ha) of critical habitat in 32 units on Federal and non-Federal lands. On September 24, 1997, we completed the Recovery Plan for the marbled murrelet in Washington, Oregon, and California (USFWS 1997). On January 13, 2003, we entered into a settlement agreement with the American Forest Resource Council and the Western Council of Industrial Workers, whereby we agreed to review the marbled murrelet critical habitat designation and make any revisions deemed appropriate after a revised consideration of economic and any other relevant impacts of designation. On April 21, 2003, we published a notice initiating a 5–year review of the marbled murrelet (68 FR 19569), and published a second information request for the 5–year review on July 25, 2003 (68 FR 44093). The 5–year review evaluation report was finished in March 2004 (McShane *et al.* 2004), and the 5–year review was completed on August 31, 2004. On September 12, 2006, we published a proposed revision to critical habitat for the marbled murrelet, which included adjustments to the original designation and proposed several exclusions under section 4(b)(2) of the Act (71 FR 53838). On June 26, 2007, we published a notice of availability of a draft economic analysis (72 FR 35025) related to the September 12, 2006, proposed critical habitat revision (71 FR 53838). On March 6, 2008, we published a notice in the **Federal Register** (73 FR 12067) stating that the critical habitat for marbled murrelet should not be revised at that time, which concluded our obligations under the settlement agreement.

We found that the proposed revision to marbled murrelet critical habitat should not be made due to uncertainties regarding Bureau of Land Management (BLM) revisions to its District Resource Management Plans in western Oregon. While the BLM is still revising its District Resource Management Plans in western Oregon, we have determined that there are a few areas that, due to new information that is the best available information, we believe do not meet the definition of critical habitat. Therefore, we are proposing the revisions discussed below to the 1996 critical habitat designation.

Taxonomy

Two subspecies of the marbled murrelet were previously recognized, the North American murrelet (*Brachyramphus marmoratus marmoratus*) and the Asiatic murrelet (*B. marmoratus perdix*). New published information suggests that the Asiatic murrelet is a distinct species (Friesen *et al.* 1996, 2005), and the American Ornithologists' Union officially recognized the long-billed murrelet *(B. perdix*) and the marbled murrelet (*B. marmoratus*) as distinct species in the ''Forty-first Supplement to the Checklist of North American Birds'' (American Ornithologists' Union 1997). Therefore, in this rule we are proposing to revise 50 CFR 17.11 to adopt the taxonomic clarification for the marbled murrelet to reflect the change from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus*.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species, and

(b) which may require special management considerations or protection; and

(2) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing activities that result in the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests Federal agency funding or authorization of an activity that may affect a listed species or critical habitat, the consultation requirements of section 7 would apply. However, even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain features that are essential to the conservation of the species. Critical habitat designations identify to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Occupied habitat that contains features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or

protection. Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include allofthe habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations, but are outside the critical habitat designation, may continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available to determine areas occupied at the time of listing that contain the features essential to the conservation of the marbled murrelet. On April 21, 2003, we published a notice initiating a 5–year review of the marbled murrelet (68 FR 19569), and on July 25, 2003, we published a request for additional information related to that review (68 FR 44093). An evaluation report summarizing the biological, ecological, and population information on the marbled murrelet was completed in March 2004 (McShane *et al.* 2004). That report also evaluated current threats and how they may have changed since the species was listed. The 5–year status review was completed on August 31, 2004. We also reviewed the scientific data and other information that was used to finalize the 1996 critical habitat designation, which included research published in peer-reviewed articles, agency reports, unpublished data, and various Geographic Information System (GIS) data layers (e.g., land cover type information, land ownership information, topographic information). We reviewed the conservation needs of the marbled murrelet described in the recovery plan (USFWS 1997), and considered new scientific information and data that were available from State, Federal, and Tribal agencies, as well as academia and private organizations.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12(b), in determining which areas occupied at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific PCEs required for the marbled murrelet from the biological needs of the species as described in the Background section of the final rule designating critical habitat for the marbled murrelet. The PCEs identified in the May 24, 1996, final critical habitat designation (61 FR 26254) have not been revised for purposes of this proposal, and remain applicable to this proposed revision of critical habitat for the marbled murrelet.

Criteria Used To Identify Critical Habitat

The criteria used to identify critical habitat areas described in the May 24, 1996, **Federal Register** remain applicable to this proposed revision of critical habitat for the marbled murrelet. These include suitable nesting habitat, information on presence/absence and occupancy, proximity to marine foraging habitat, large contiguous blocks of nesting habitat, rangewide distribution, and adequacy of existing protection and management (61 FR 26265).

Summary of Changes From Previously Designated Critical Habitat

Approximately 254,070 ac (102,820 ha) of critical habitat that was designated in the May 24, 1996, final rule is being proposed for removal under this revision:

(1) Critical habitat boundaries in southern Oregon and northern California would be revised based on extensive studies demonstrating that the distribution of likely nesting birds is not as far inland as delineated in 1996. Approximately 191,370 ac (77,450 ha) of critical habitat would be removed from the designation based on this new information;

(2) Approximately 62,700 ac (25,370 ha) of critical habitat designated farther than 35 miles (mi) (56.3 kilometers (km)) from the coast would be removed in Douglas and Lane counties, Oregon. These areas do not meet the criteria used to identify critical habitat in the 1996 designation, specifically the proximity to marine foraging habitat. Removing these acres from the designation would conform to the marbled murrelet recovery plan's

recommendation for protection of suitable nesting habitat within 35 mi (56.3 km) of the Pacific Ocean shoreline (USFWS 1997, p. 127, 131). This area is where the majority of known occupied marbled murrelet sites are found in Oregon (USFWS 1997, pp. 127, 131) ;

(3) We are using a more efficient method of providing legal descriptions of critical habitat for the specific areas proposed in this rule. Instead of using the Public Land Survey System (e.g., identification of boundaries using township and range information), we are presenting UTM (Universal Transverse Mercator) data points generated through GIS (Geographic Information System) mapping. While we are providing maps of the affected units, we are not including the textual descriptions in this proposed rule; these descriptions will be provided in the final rule revising designated critical habitat for the marbled murrelet.

Proposed Revised Critical Habitat Designation

We are proposing to revise the 1996 final designation of critical habitat for the marbled murrelet to reflect the removal of 3 critical habitat units and revision of 12 critical habitat units totaling approximately 254,070 ac (102,820 ha) as follows:

Approximately 191,370 ac (77,450 ha) in zone 2 in northern California and southern Oregon would be removed where extensive surveys have demonstrated marbled murrelets are very unlikely to be found (Hunter *et al.* 1997, pp. 16-25; Schmidt *et al.* 2000, pp. 16-22; U.S. Forest Service and Bureau of Land Management 2002, p. 16.). Zone 2 includes areas from 35 miles (56.3 km) to 50 miles (80.5 km) from marine environments (FEMAT 1993, p. IV-24). Both of these studies acknowledge that it is possible that marbled murrelets may occasionally use some portion of the study areas; however, if the species does occur, the number of individuals is probably very low. Accordingly, it appears that the habitat in these areas does not contain the physical and biological features in the necessary spatial configuration that is essential for the conservation of the species. Therefore, we believe these areas do not meet the definition of critical habitat.

Approximately 62,700 ac (25,370 ha) of critical habitat in Douglas and Lane Counties, Oregon, would be removed where critical habitat was designated farther than 35 miles (56.3 km) from the coast. These areas do not meet the criteria used to identify critical habitat in the 1996 designation, specifically the proximity to marine foraging habitat. This action would be consistent with the marbled murrelet working team recommendations to the Forest Ecosystem Management Assessment Team (FEMAT) for the majority of occupied sites in Oregon (FEMAT 1993, p. IV-23). This proposal would also better conform with the marbled murrelet recovery plan recommendations, by limiting critical habitat to the areas where the majority of known occupied murrelet sites are found (USFWS 1997, p. 127, 131).

Areas that would be removed from the 1996 critical habitat designation are in Douglas and Lane counties, Oregon (inland of Coos Bay, Oregon), and in northern California and southern Oregon. All other critical habitat units that were designated in the May 24, 1996, final rule contain the physical and biological features considered essential to the conservation of the species.

Other than minor adjustments and/or those units specifically identified in this proposed rule, where a critical habitat unit includes Federal lands within the boundaries of a Late Successional Reserve (LSR) established by the Northwest Forest Plan, the areas included within the LSR boundaries as they existed on May 24, 1996, remain designated as critical habitat. The critical habitat areas described below reflect our current best assessment of areas that no longer meet the definition of critical habitat for the marbled murrelet in Zone 2. To better understand the location of these proposed areas, refer to the maps included in this proposed rule or at our Western Washington Field Office's internet site at *http://www.fws.gov/westwafwo/*.

TABLE 1—AREAS PROPOSED FOR REMOVAL BY STATE

Units	Areas Removed from Designated Critical Habitat	
	Acres	Hectares
California	143,487	58,068
Oregon	110,585	44,752
Washington	0	0
TOTAL	254,071	102,821

TABLE 2—AREAS PROPOSED FOR REMOVAL BY CRITICAL HABITAT UNIT AND OWNERSHIP

Critical Habitat Unit Name from 1996 Designation	Ownership	Acres Removed	Hectares Removed
CA-01d	USFS	19,363	7,836
CA-01e	USFS	28,168	11,400
CA-10a	USFS	35,935	14,543
CA-11b	USFS	8,540	3,456
CA-11c	BLM	2,644	1,070
CA-11d	USFS	61,558	24,912
OR-03-c	BLM	146	59
OR-04-e	BLM	6,557	2,654
OR-04-f	BLM	20,736	8,391
OR-04-g	BLM	2,780	1,125
OR-04-i	BLM	25,616	10,366
OR-04-j	BLM	480	194

TABLE 2—AREAS PROPOSED FOR REMOVAL BY CRITICAL HABITAT UNIT AND OWNERSHIP—Continued

Critical Habitat Unit Name from 1996 Designation	Ownership	Acres Removed	Hectares Removed
OR-06-d	BLM	9,170	3,711
OR-07-d	USFS	26,524	10,734
OR-07-f	BLM	1,032	418
OR-07-f	USFS	4,821	1,951
	TOTALS	254,071	102,821

California. The following designated critical habitat units are being proposed for removal or revision from the 1996 designation, based on extensive surveys that have demonstrated murrelets are very unlikely to be found using the area. These units or portions thereof no longer meet the definition of critical habitat: CA-01-d (portion), CA-01-e (portion), CA-10-a (entire), CA-11-b (portion), CA-11-c (entire), and CA-11-d (entire).

Oregon. The following designated critical habitat units are being proposed for removal or revision from the 1996 critical habitat designation, based on extensive surveys that have demonstrated murrelets are very unlikely to be found using the area. These units or portions thereof no longer meet the definition of critical habitat where they extend into Oregon: CA-01-e (entire) and CA-10-a (entire), and units OR-04-g (portion), OR-07-d (portion), and OR-07-f (portion).

Oregon. The following critical habitat units in Douglas and Lane Counties, Oregon have been proposed for removal or revision where critical habitat was designated farther than 35 miles inland from the coast, based on the FEMAT murrelet zone 1 line. The marbled murrelet recovery plan, completed in 1997 (USFWS 1997), recommended limiting critical habitat to areas less than 35 miles from the coast, where the majority of known occupied murrelet sites are found. These units or portions thereof no longer meet the definition of critical habitat: OR-03-c (portion), OR-04-e (portion), OR-04-f (portion), OR-04-i (portion), OR-04-j (portion) and OR-06-d (portion).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service, 378 F.3d 1059 (9th Cir. 2004) and Sierra Club v. U.S. Fish and Wildlife Service *et al.* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the

Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Federal activities that may affect marbled murrelet or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act), or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting marbled murrelet or its designated critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or under permit, do not require section 7 consultations. Currently designated marbled murrelet critical habitat (see 50 CFR 17.95(b)) will remain designated critical habitat until this proposal is finalized. Therefore, any Federal activities that may affect currently designated critical habitat will be subject to section 7 consultation requirements.

Application of the Adverse Modification Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the marbled murrelet.

The range of the marbled murrelet has been subdivided by the Recovery Team into six Marbled Murrelet Conservation Zones (USFWS 1997, pp. 125-130), based on the need for potentially different recovery actions in various portions of the marbled murrelet's range, and the need to maintain well-distributed populations. These zones include Puget Sound (Zone 1), Western Washington Coast Range (Zone 2), Oregon Coast Range (Zone 3), Siskiyou Coast Range (Zone 4), Mendocino (Zone 5), and the Santa Cruz Mountains (Zone 6). Marbled murrelets within the conservation zones are likely to interact across zone boundaries at some level. Generally, the conservation role of marbled murrelet critical habitat units is to support nesting, roosting, and other normal behaviors (61 FR 26256). It is also necessary to produce and maintain viable marbled murrelet populations that are well distributed throughout the respective Conservation Zones (USFWS 1997 p. 116). Specific goals are described in the recovery plan, but generally include maintaining occupied sites and suitable nesting habitat for marbled murrelets. Because it will take 50 or more years to develop new nesting habitat, the short-term focus is on retaining and/or increasing terrestrial habitat (USFWS 1997 p. vi).

For a wide-ranging species such as the marbled murrelet, where multiple critical habitat units are designated, each unit has a Regional Conservation Zone (RCZ) and range-wide role in contributing to the conservation of the species. The basis for an adverse modification opinion would be whether a proposed action appreciably reduces the ability of critical habitat to remain functional to serve its identified conservation role at the RCZ and rangewide levels. Thus, an adverse modification finding would be based upon a broader inquiry than an assessment of adverse effects at the local unit level. The loss or modification of portions of critical habitat to an extent that the affected unit(s) would not be likely to adequately support sufficient numbers of nesting murrelets may represent destruction or adverse modification of marbled murrelet critical habitat.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that are carried out, funded, or authorized by a Federal agency and may affect marbled murrelet critical habitat require consultation on its effects to marbled murrelet critical habitat. Activities in critical habitat for the marbled murrelet vary in degree of impact on critical habitat from those with no effect, to those with short-term adverse effects but long-term beneficial effects, to those with adverse affects but that do not destroy or adversely modify critical habitat, and finally to those that may destroy or adversely modify critical habitat. In all cases, the current condition of the critical habitat, both locally and rangewide, and specific parameters of the action will determine the level of effect.

A variety of activities that disturb or remove PCEs may adversely affect, though not necessarily ''adversely modify'', marbled murrelet critical habitat as that term is used in section 7 consultations. These include, but are not limited to:

(1) Removal, modification, or fragmentation of forested areas that directly impact nesting structures, nesting substrate, and the vertical and horizontal cover provided by the surrounding forest. Fragmentation of forested areas can result in habitat isolation and increased edge, which negatively impacts the quality of the remaining nesting habitat primarily through increased predation; modification of the microclimate; and potential windthrow of nest trees. Any action resulting in the removal of a potential nest tree is likely to result in an adverse effect to critical habitat. Federal actions primarily affecting marbled murrelet nesting habitat include timber harvest, salvage logging, and hazard tree removal. Indirect harvest-related effects of Federal actions could include windthrow caused by harvest. In addition, road construction, recreational or other developments, and fuels reduction projects may also result in these types of effects.

(2) New and existing human activity, including recreation, agriculture, and urbanization, adjacent to and within forested areas can result in loss or modification of the PCEs. Interior forest nests in contiguous stands far from human activity appear to experience the least predation, and public lands that are easily accessible have higher levels of human use, with resultant activities that are attractive to corvids (Marzluff *et al.* 1996). The other factor which appears to increase predation rates is higher levels of landscape fragmentation (Marzluff *et al.* 1996).

The following activities may have adverse effects on murrelet critical habitat PCEs:

(1) Removal or degradation of individual trees with potential nesting platforms, or the nest platforms themselves, that results in a significant decrease in the value of the trees for future nesting use. Moss may be an important component of nesting platforms in some areas.

(2) Removal or degradation of trees adjacent to trees with potential nesting platforms that provide habitat elements essential to the suitability of the potential nest tree or platform, such as

trees providing cover from weather or predators.

(3) Removal or degradation of forested areas with a canopy height of at least 1/2 the site-potential tree height and, regardless of contiguity, within 0.8 km (0.5 mi) of individual trees containing potential nest platforms. This includes removal or degradation of trees currently unsuitable for nesting that contribute to the structure/integrity of the potential nest area (i.e., trees that contribute to the canopy of the forested area). These trees provide the canopy, stand conditions, and protection from predation important for marbled murrelet nesting.

Beneficial actions may also adversely affect, but would not be expected to adversely modify, critical habitat, since they would promote the development or improve the functional quality of critical habitat for the marbled murrelet. This could include: (1) Thinning under potential nest trees to protect the tree's nesting structures from competing trees, which would help maintain suitable nesting habitat; (2) Thinning in younger stands to speed their attainment of 1/2 site-potential tree height in the vicinity of potential nest trees, which would benefit the function of marbled murrelet critical habitat by decreasing fragmentation, maintaining microclimate of potential nest trees, and reducing the effects of predation. Actions that promote the development of potential nest trees, while maintaining the integrity of the forest stand, would also be beneficial to the function of critical habitat by increasing future nesting habitat, and providing replacement habitat for existing nest stands that may be lost to such natural events as wildfire and windthrow.

Some thinning activity may have short-term adverse effects but long-term beneficial impacts. For example, actions in existing critical habitat designed to create canopy diversity or promote the development of future nest trees may open the canopy for a short time, resulting in some potential increase in predation. However, if such effects are short-lived, current nesting habitat is not removed, and the prescription speeds the development of suitable nest trees where such trees are limited, the result may be a long-term improvement in critical habitat condition.

For a proposed action to result in destruction or adverse modification of critical habitat, it must affect the designated critical habitat to an extent that the affected unit(s) no longer serves its intended conservation role for the species or no longer retains its current ability for the primary constituent elements to be functionally established. Proposed actions requiring a section 7 consultation must be evaluated individually, in light of the baseline condition of the critical habitat unit and RCZ, unique history of the area, and effect of the impact on the critical habitat unit relative to its regional and range-wide role in the conservation of the species. The loss or substantial reduction of viable populations throughout one or more RCZs, or even a major part of an RCZ, could lead to genetic and demographic isolation of parts of the population.

All of the units designated as critical habitat contain features essential to the conservation of the marbled murrelet. All units are within the geographic range of the species, were occupied or likely to be occupied by the species at the time of listing, and are likely to be used by the marbled murrelet. Federal agencies already consult on activities in areas currently occupied by the marbled murrelet, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the marbled murrelet.

Activities that have little to no effect in one critical habitat unit or RCZ may cause serious effects in another, due to differences in existing conditions and the conservation function of critical habitat. Therefore, the Service cannot provide a detailed description of the threshold for future actions that would result in the destruction or adverse modification of critical habitat applicable throughout the range of the designated critical habitat in this proposed rule. However, we fully anticipate that some projects may be proposed in critical habitat that will adversely affect PCEs, and, in some cases, may include removal of stands of 1/2 site-potential tree height while not reaching the level of destruction or adverse modification of critical habitat. For example, the harvest of relatively small stands of trees that contribute to the function of PCEs (e.g., stands with a canopy of 1/2 site-potential tree height within 0.5 mile (0.8 km) of a potential nest tree) in a critical habitat unit with a large number of potential nest trees and a high proportion of surrounding forest cover most likely will not appreciably reduce the ability of critical habitat to remain functional at the RCZ and rangewide scales.

Actions that adversely affect forest stands that are not within 0.5 mile (0.8 km) of individual trees with potential nesting platforms would probably not adversely modify critical habitat, even if they occur within the boundaries of the area designated as critical habitat. Activities that do not affect the PCEs or the ability for the PCEs to be functionally established are unlikely to be affected by the designation. However, even though an action may not adversely affect or adversely modify critical habitat, it may still affect marbled murrelets (e.g., through disturbance) and may, therefore, still be subject to consultation under section 7 of the Act.

If you have questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat, contact a Field Supervisor listed under ''**FOR FURTHER INFORMATION CONTACT**''.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that, ''[T]he Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.'' We have considered the potential economic impacts of this proposed critical habitat revision based on information in our 2007 economic analysis (described in 72 FR 35025), and are not proposing to exclude any areas under section 4(b)(2) because of economic, national security, or other considerations. However, to ensure our final determination is based on the best available information, we are hereby soliciting comments on any foreseeable economic, national security, or other potential impacts resulting from this proposed revised designation of critical habitat, and in particular, any potential impacts on small entities, and whether the benefits of exclusion of a particular area outs weighs the benefits of inclusion.

Application of Section 4(a)(3)(B)(i) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no areas owned or controlled

by the Department of Defense within the areas being proposed for this revised critical habitat designation.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are obtaining the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our revised critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of revised critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to an address listed in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA, 5 U.S.C. 601, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must 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 effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

This proposed revision would result in an approximate 254,070 acre (102,820 ha) reduction in the critical habitat acreage that was designated in the May 24, 1996, final rule (61 FR 26256). No critical habitat will be added under this proposed revision, and the reductions occur exclusively on Federal lands. Accordingly, we do not believe that it will have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

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

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)-(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) This proposed revision would result in an approximate 254,070 ac (102,820 ha) reduction in the critical habitat acreage that was designated in the May 24, 1996, final rule (61 FR 26256). All of these acres are on Federal lands. Accordingly, we do not believe that it will significantly or uniquely affect small governments because small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. This proposed revision would remove a portion of the designated critical habitat, removing the need to consult on effects to critical habitat for those removed areas. Therefore, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of this revised designation of critical habitat for the marbled murrelet in a takings implications assessment. The takings implications assessment concludes that this revised designation of critical habitat for the marbled murrelet does not pose additional takings implications for lands within or affected by the original 1996 designation.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. We believe that the revised designation of critical habitat for the marbled murrelet will have little incremental impact on State and local governments and their activities, since the removal of 254,070 ac (102,820 ha) of currently designated critical habitat would impose no additional restrictions beyond any that may already be in place.

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform),this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have issued this proposed critical habitat revision in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the marbled murrelet.

Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the United States Court of Appeals for the Ninth Circuit (Douglas County v. Babbitt, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175 and the Department of the Interior's manual at 512 DM 2 we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

This proposed revision would result in an approximate 254,070 ac (102,820 ha) reduction in the critical habitat acreage that was designated in the May 24, 1996, final rule (61 FR 26256). None of the areas proposed for removal are on tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect this proposed rule to significantly affect energy supplies, distribution, or use, since it would involve removing approximately 254,070 ac (102,820 ha) of critical habitat from the existing critical habitat designation. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available online at *http://www.fws.gov/westwafwo/* or upon request from the Field Supervisor, Western Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary author(s) of this package are staff from the Pacific Region Ecological Services Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Public Law 99-625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Murrelet, marbled'' under ''BIRDS'' in the List of Endangered and Threatened Wildlife to read as follows: § 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * *	* * * *						
Birds							
* * *	* * * *						
Murrelet, marbled	*Brachyramphus marmoratus*	U.S.A. (AK, CA, OR, WA), Canada (B.C.)	U.S.A. (CA, OR, WA)	T	479	17.95(b)	NA
* * *	* * * *						

3.In § 17.95(b), amend the entry for ''Marbled Murrelet'' as follows:

a. Revise the heading to read as set forth below;

b. Revise paragraph 3 to read as set forth below;

c. Remove the index map for Oregon (''General configuration of final critical habitat in Oregon'') and replace it with the map titled ''Critical Habitat for the Marbled Murrelet (*Brachyramphus marmoratus*) in Oregon'', as set forth below;

d. Remove the index map for California (''General configuration of final critical habitat in California'') and replace it with the index map titled ''Critical Habitat for the Marbled Murrelet (*Brachyramphus marmoratus*) in California'', as set forth below;

e. Remove the critical habitat description and map for Unit OR–03–c and add in its place a new map for Unit OR–03–c as set forth below;

f. Remove the critical habitat description and map for Unit OR–04–e and add in its place a new map for Unit OR–04–e as set forth below;

g. Remove the critical habitat description and map for Unit OR–04–f and add in its place a new map for Unit OR–04–f as set forth below;

h. Remove the critical habitat description and map for Unit OR–04–g and add in its place a new map for Unit OR–04–g as set forth below;

i. Remove the critical habitat description and map for Unit OR–04–i and add in its place a new map for Unit OR–04–i as set forth below;

j. Remove the critical habitat description and map for Unit OR–04–j and add in its place a new map for Unit OR–04–j as set forth below;

k. Remove the critical habitat description and map for Unit OR–06–d and add in its place a new map for Unit OR–06–d as set forth below;

l. Remove the critical habitat description and map for Unit OR–07–d and add in its place a new map for Unit OR–07–d as set forth below;

m. Remove the critical habitat description and map for Unit OR–07–f and add in its place a new map for Unit OR–07–f as set forth below;

n. Remove the critical habitat description and map for Unit CA–01–d and add in its place a new map for Unit CA–01–d as set forth below;

o. Remove the critical habitat description and map for Unit CA–01–e and add in its place a new map for Unit CA–01–e as set forth below;

p. Remove the critical habitat description and map for Unit CA–10–a;

q. Remove the critical habitat description and map for Unit CA–11–b and add in its place a new map for Unit CA–11–b as set forth below;

r. Remove the critical habitat description and map for Unit CA–11–c; and

s. Remove the critical habitat description and map for Unit CA–11–d.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Marbled Murrelet (*Brachyramphus marmoratus*)

* * * * *

3. A description of the critical habitat units follows. Where a critical habitat unit includes Federal lands within the boundaries of a Late Successional Reserve (LSR) established by the Northwest Forest Plan, the areas included within the LSR boundaries as they existed on May 24, 1996, remain designated as critical habitat. Critical habitat units do not include non-federal lands covered by a legally operative incidental take permit for marbled murrelets issued under section 10(a) of the Act.

* * * * *

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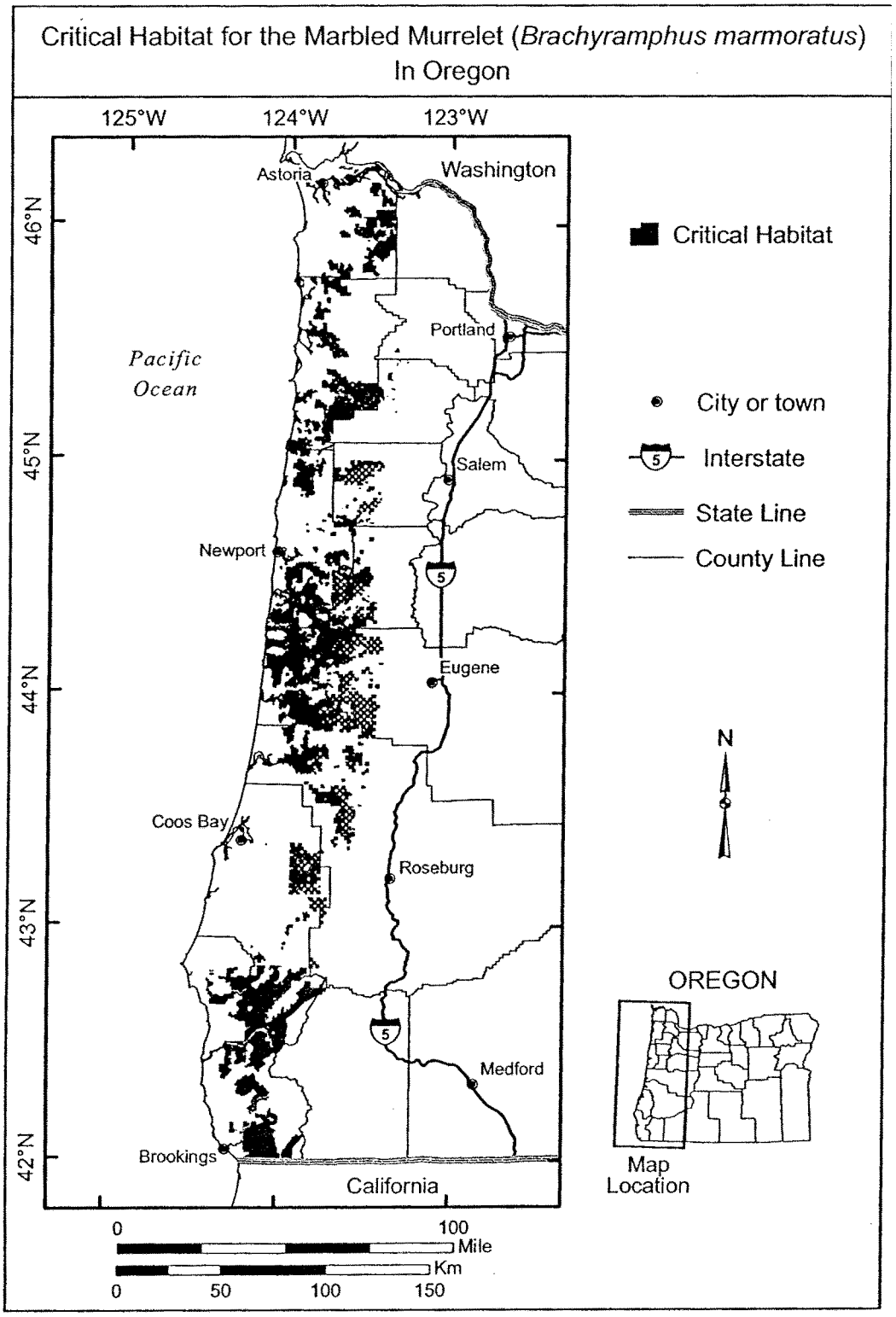
Critical Habitat for the Marbled Murrelet (Brachyramphus marmoratus) In Oregon
125°W
124°W
123°W
46°N
45°N
44°N
43°N
42°N
Astoria
Washington
Portland
Pacific Ocean
Salem
Newport
Eugene
Coos Bay
Roseburg
Medford
Brookings
California
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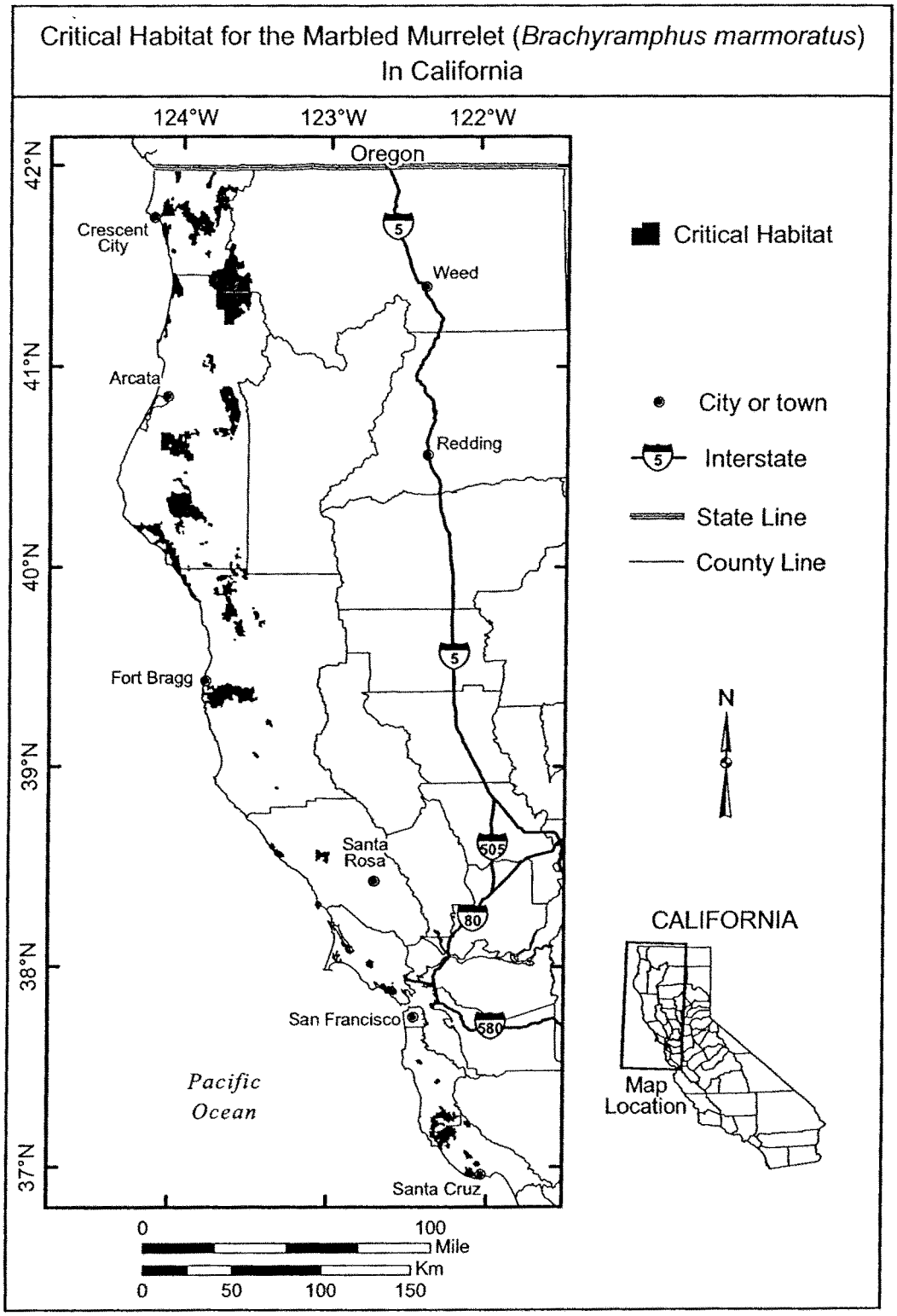
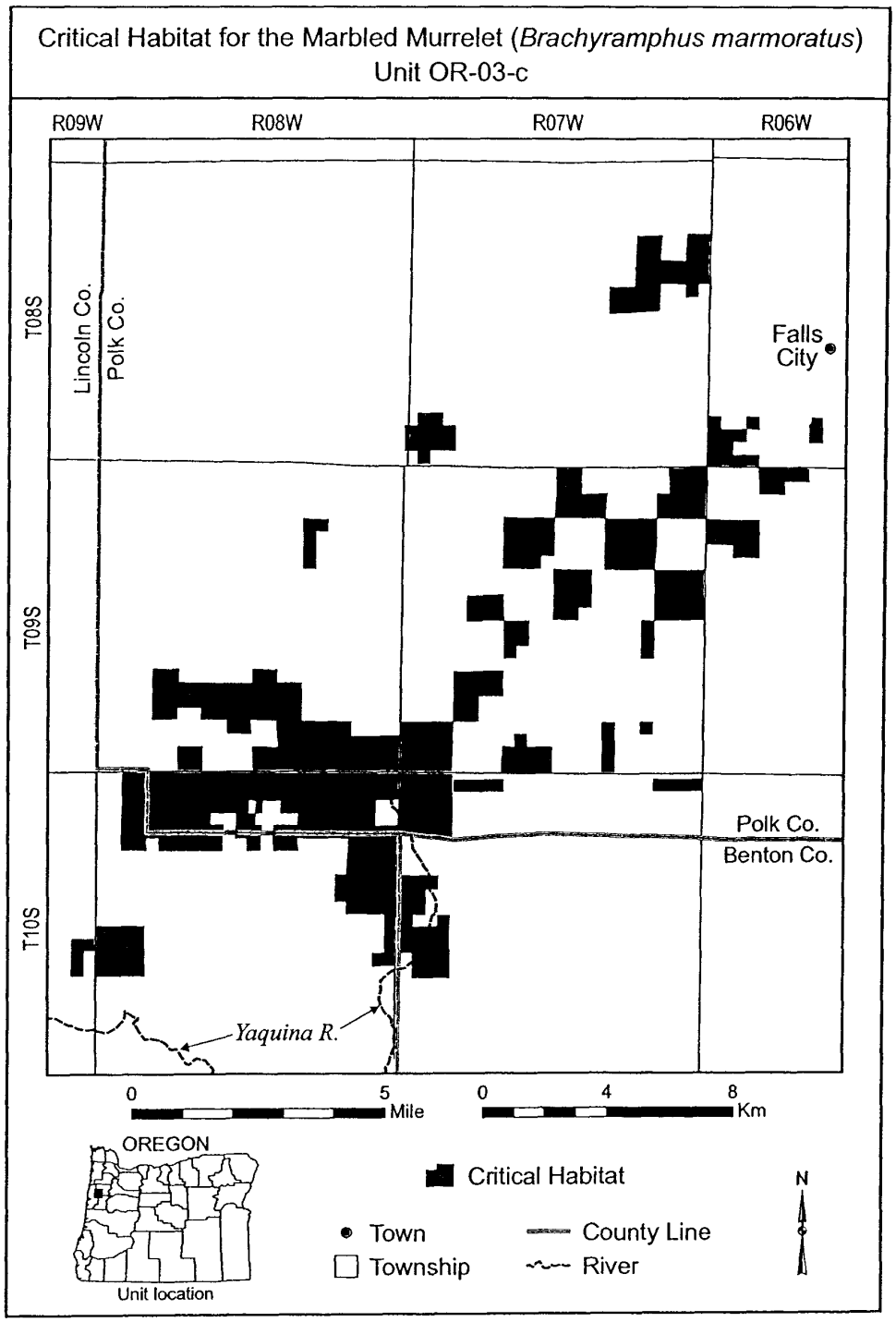
Mile
Km
0
50
100
150


Critical Habitat for the Marbled Murrelet (Brachyramphus marmoratus) In California
124°W
123°W
122°W
42°N
41°N
40°N
39°N
38°N
37°N
Oregon
Crescent City
Weed
Arcata
Redding
Fort Bragg
Santa Rosa
San Francisco
Santa Cruz
Pacific Ocean
5
505
80
580
Critical Habitat
City or town
Interstate
State Line
County Line
N
CALIFORNIA
Map Location
0
100
Mile
Km
0
50
100
150

Unit OR–03–c: Benton County, Oregon. From USGS 1:24,000 scale quadrangle: Airlie South.



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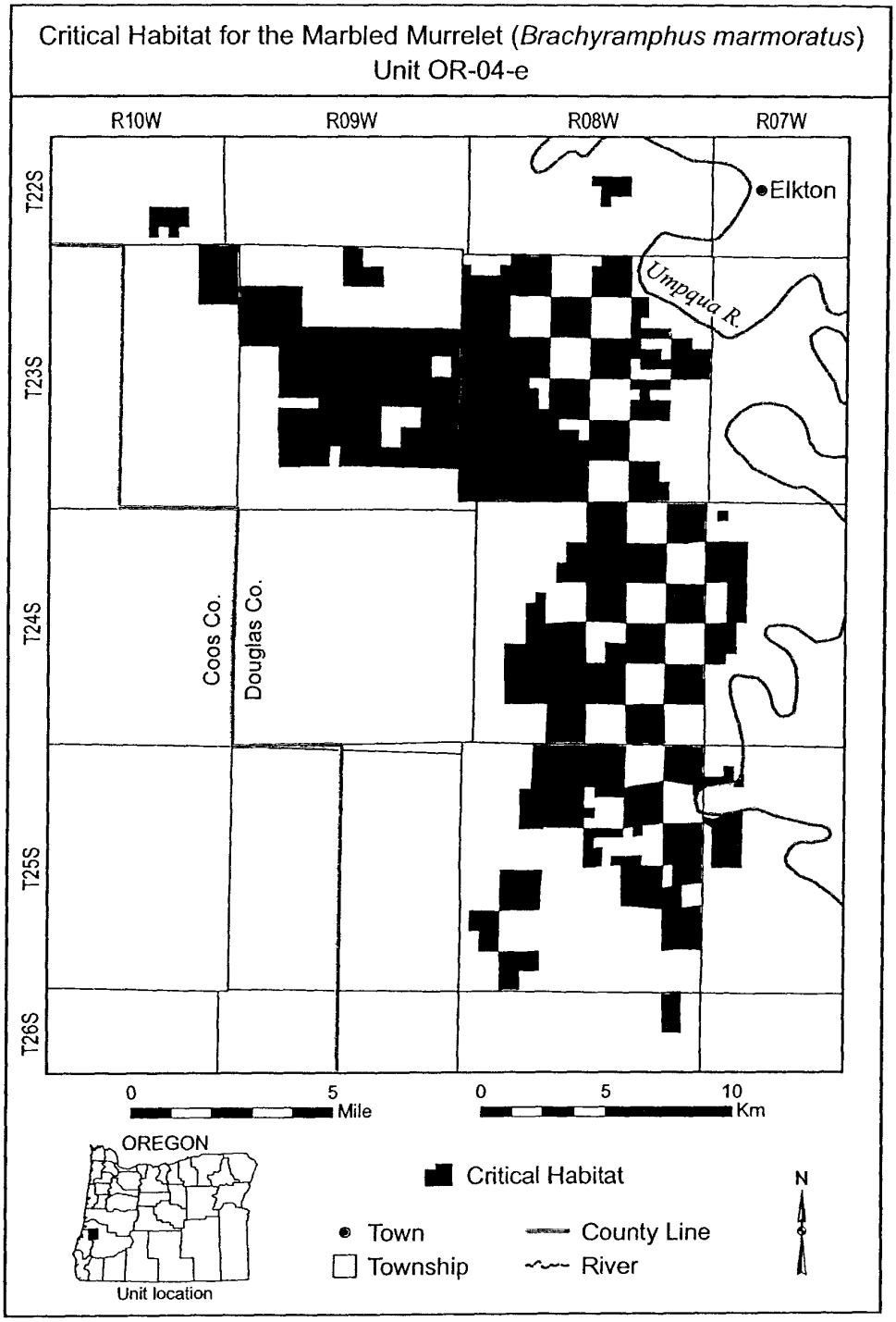
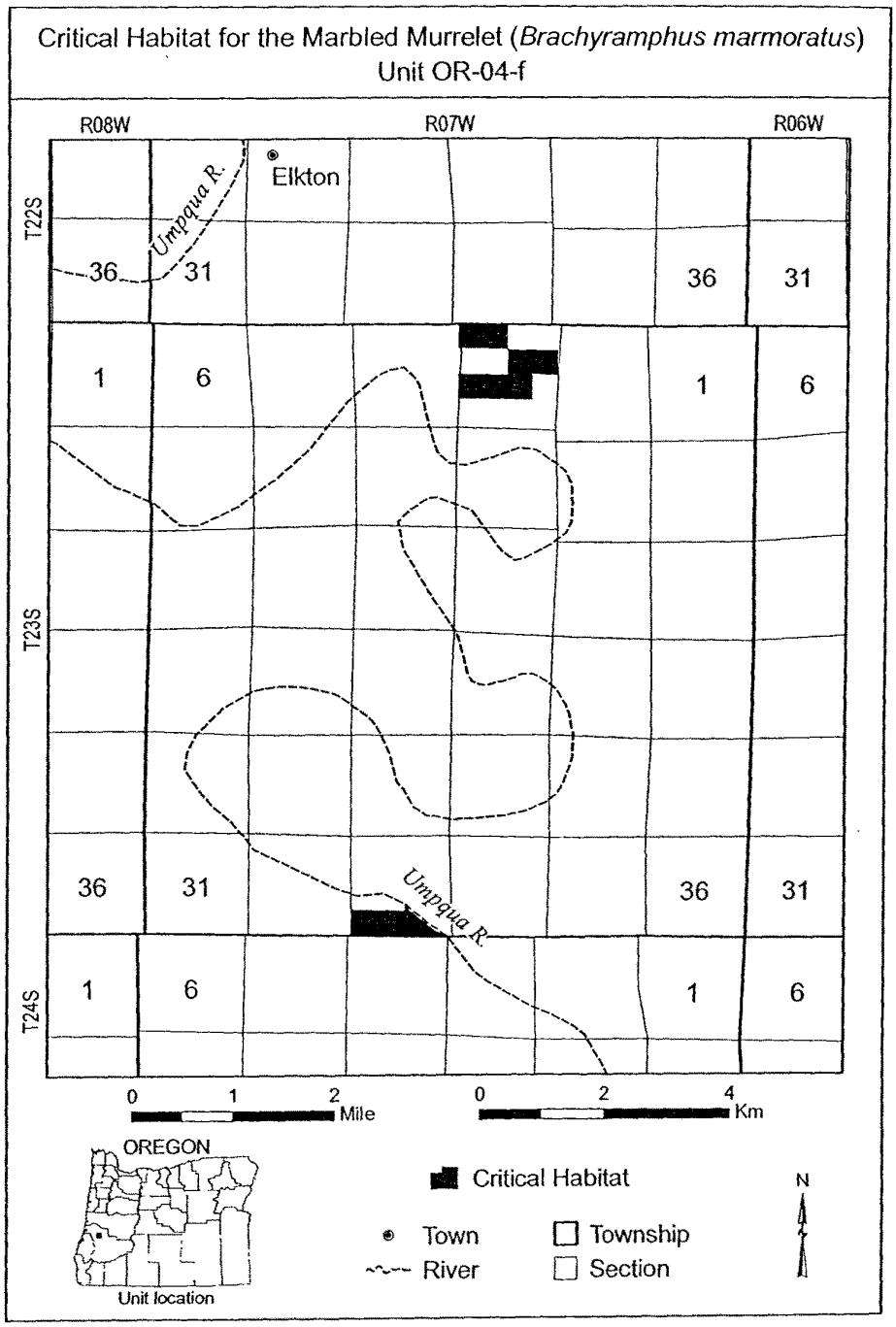
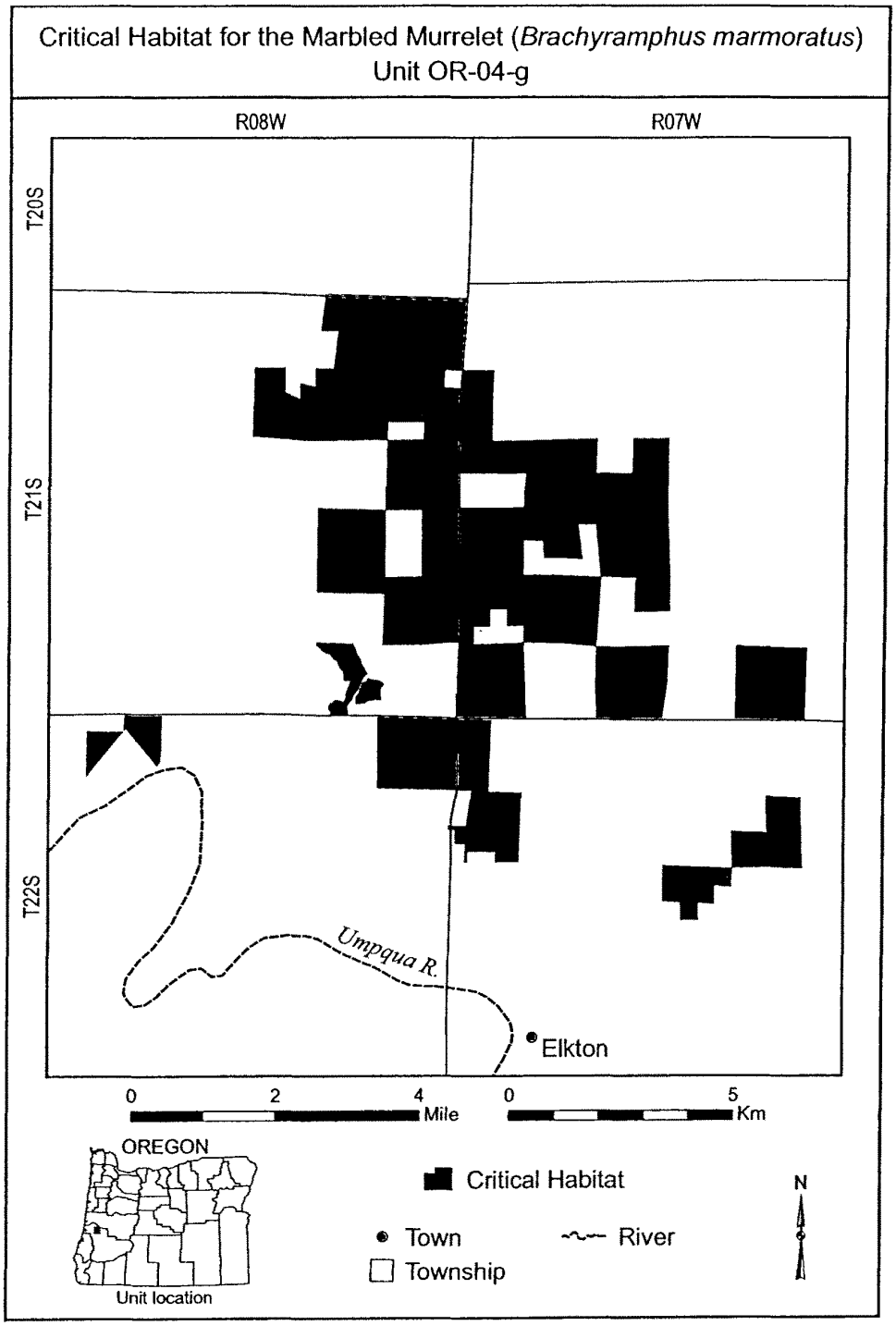
Unit OR–04–e: Douglas County, Oregon. From USGS 1:24,000 scale quadrangles: Callahan and Tyee.



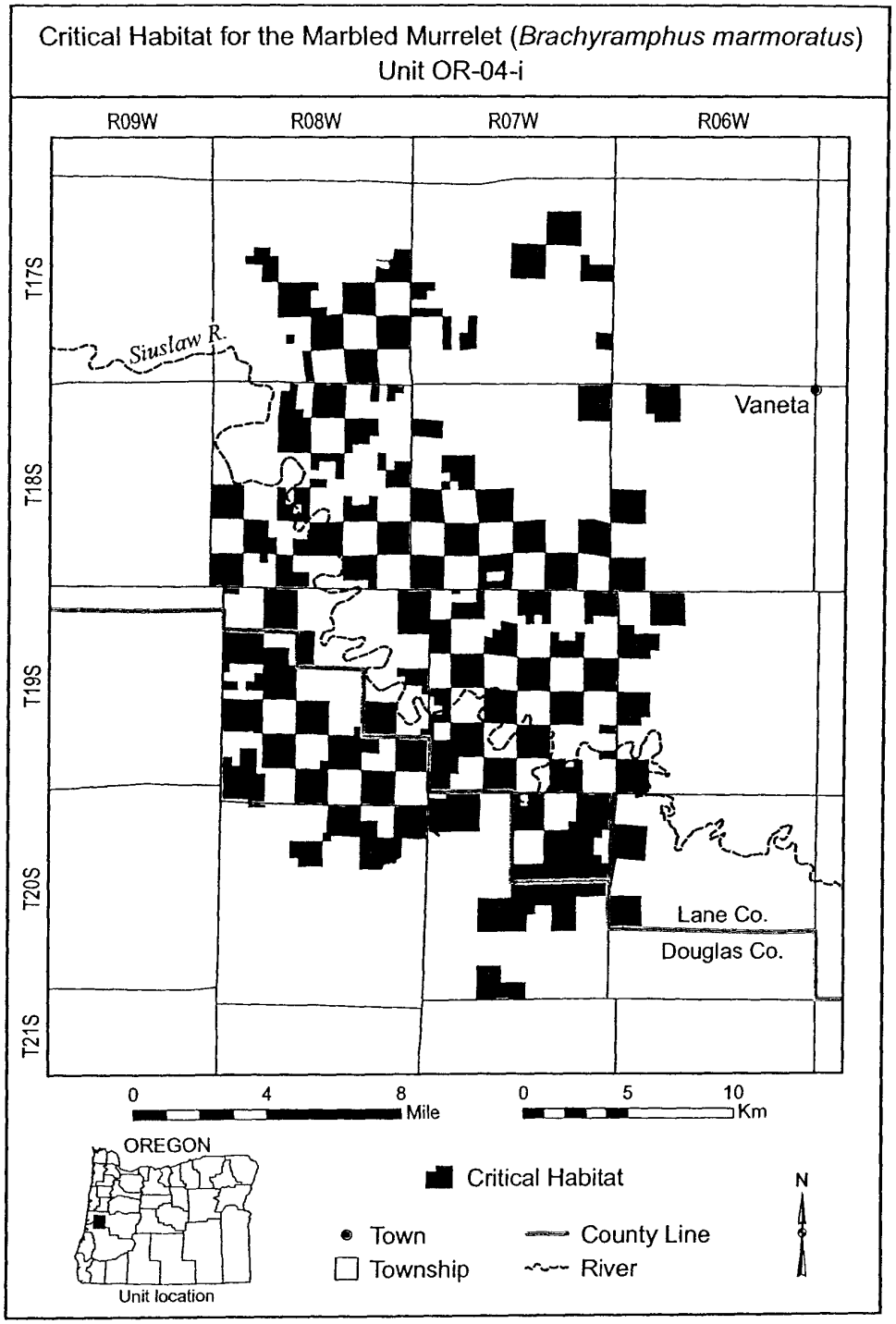
Unit OR-04-f: Douglas County, Oregon. From USGS 1:24,000 scale quadrangles: Garden Valley, Kellogg, Putnam Valley, Tyee, Tyee Mountain, Yellow Butte and Yoncalla.



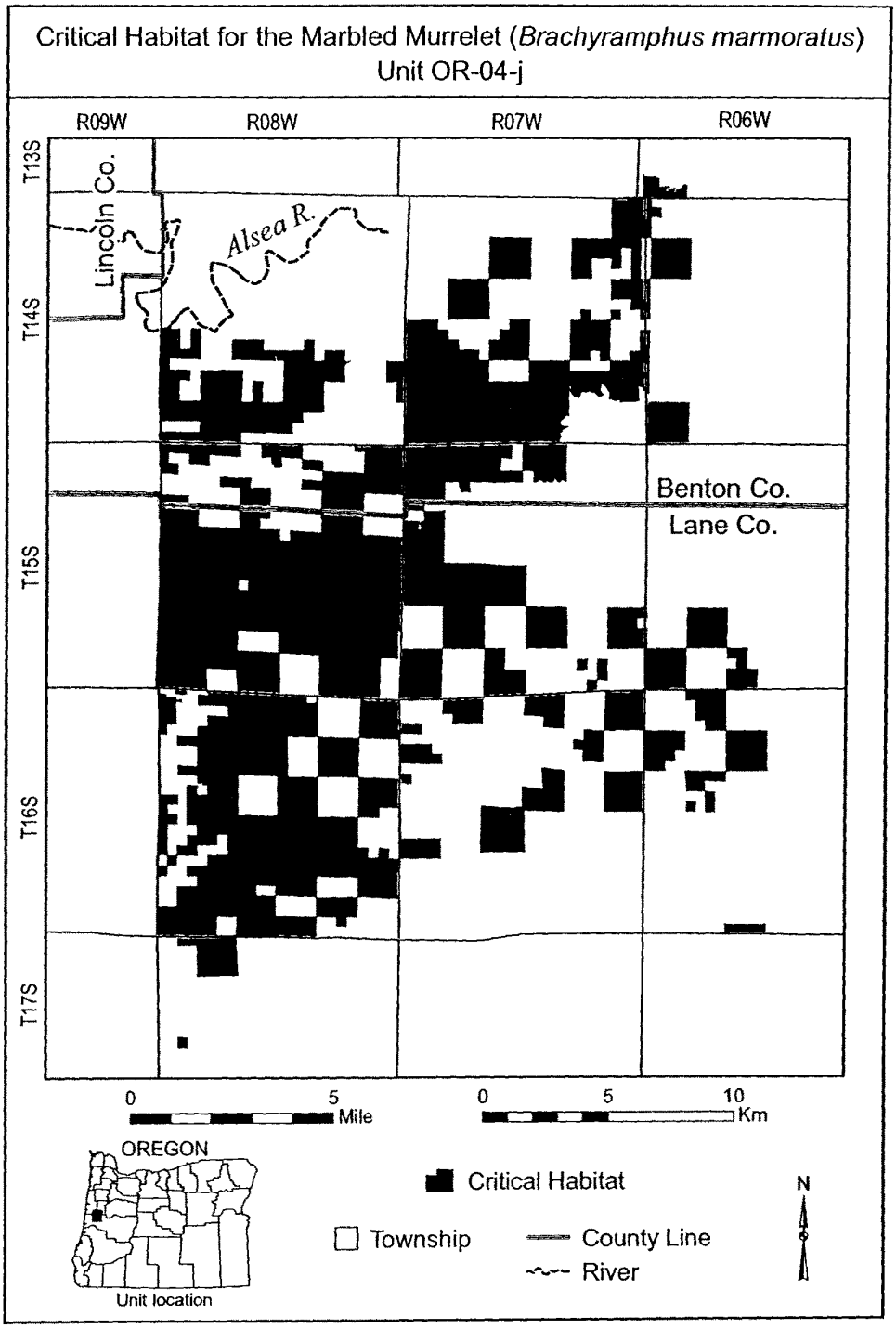
Unit OR-04-g: Douglas County, Oregon. From USGS 1:24,000 scale quadrangle: Putnam Valley.



Unit OR-04-i: Douglas and Lane Counties, Oregon. From USGS 1:24,000 scale quadrangles: Beaver Creek, Crow, Drain, High Point, Letz Creek, Noti, Putnam Valley and Veneta.



Unit OR-04-j: Douglas and Lane Counties, Oregon. From USGS 1:24,000 scale quadrangles:



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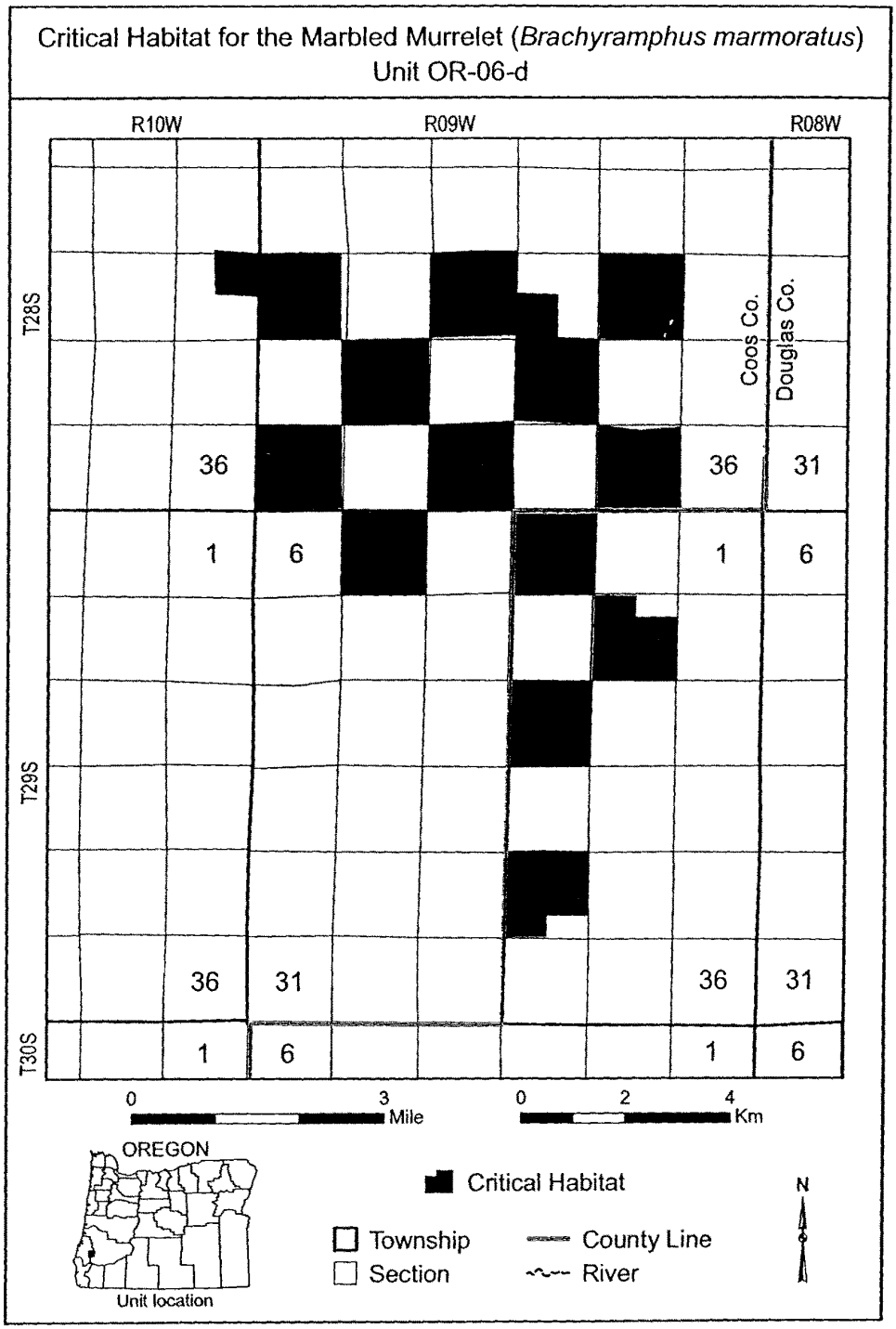
Unit OR-06-d: Coos and Douglas Counties, Oregon. From USGS 1:24,000 scale quadrangles: Camas Valley, Mt Gurney, Reston and Tenmile.



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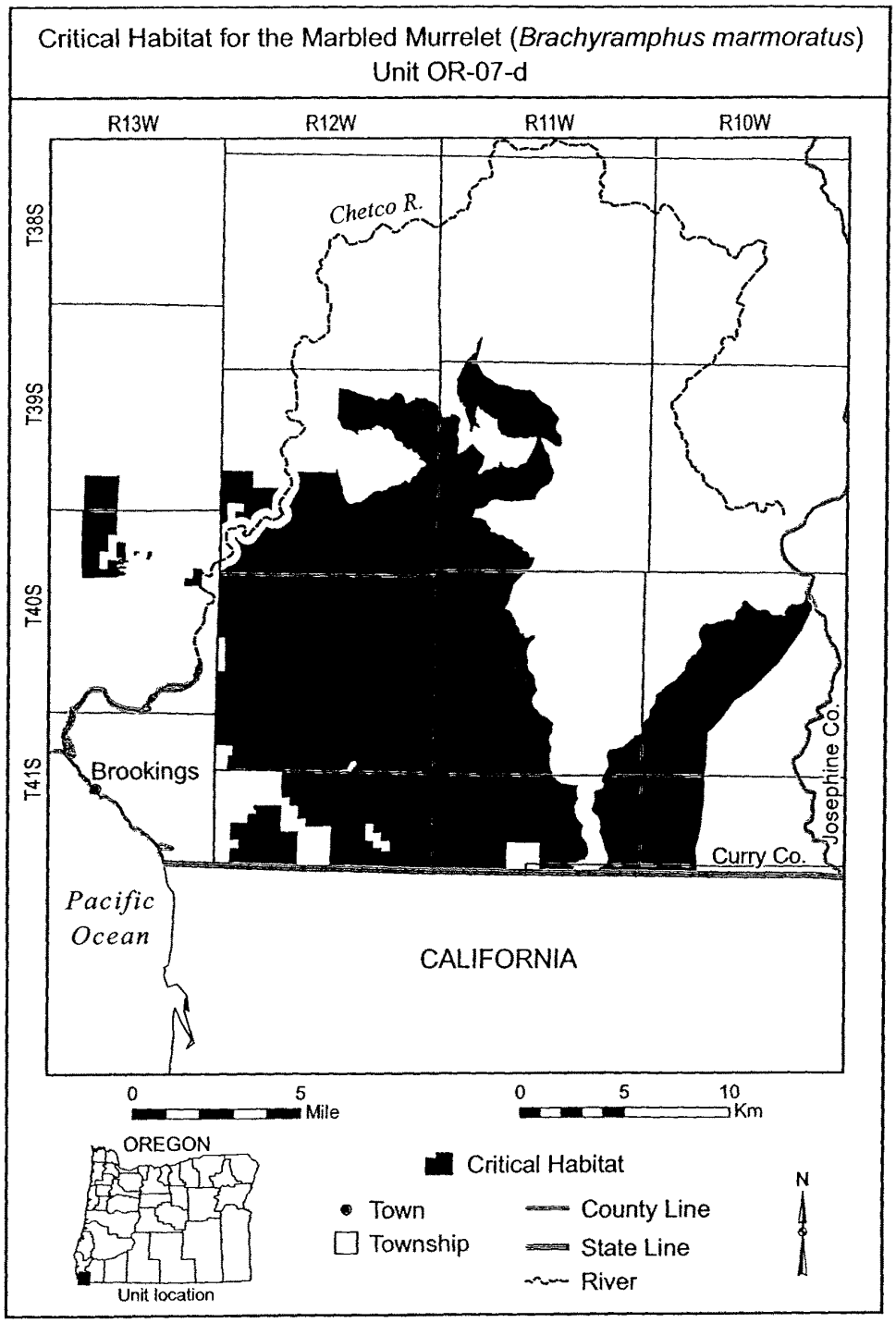
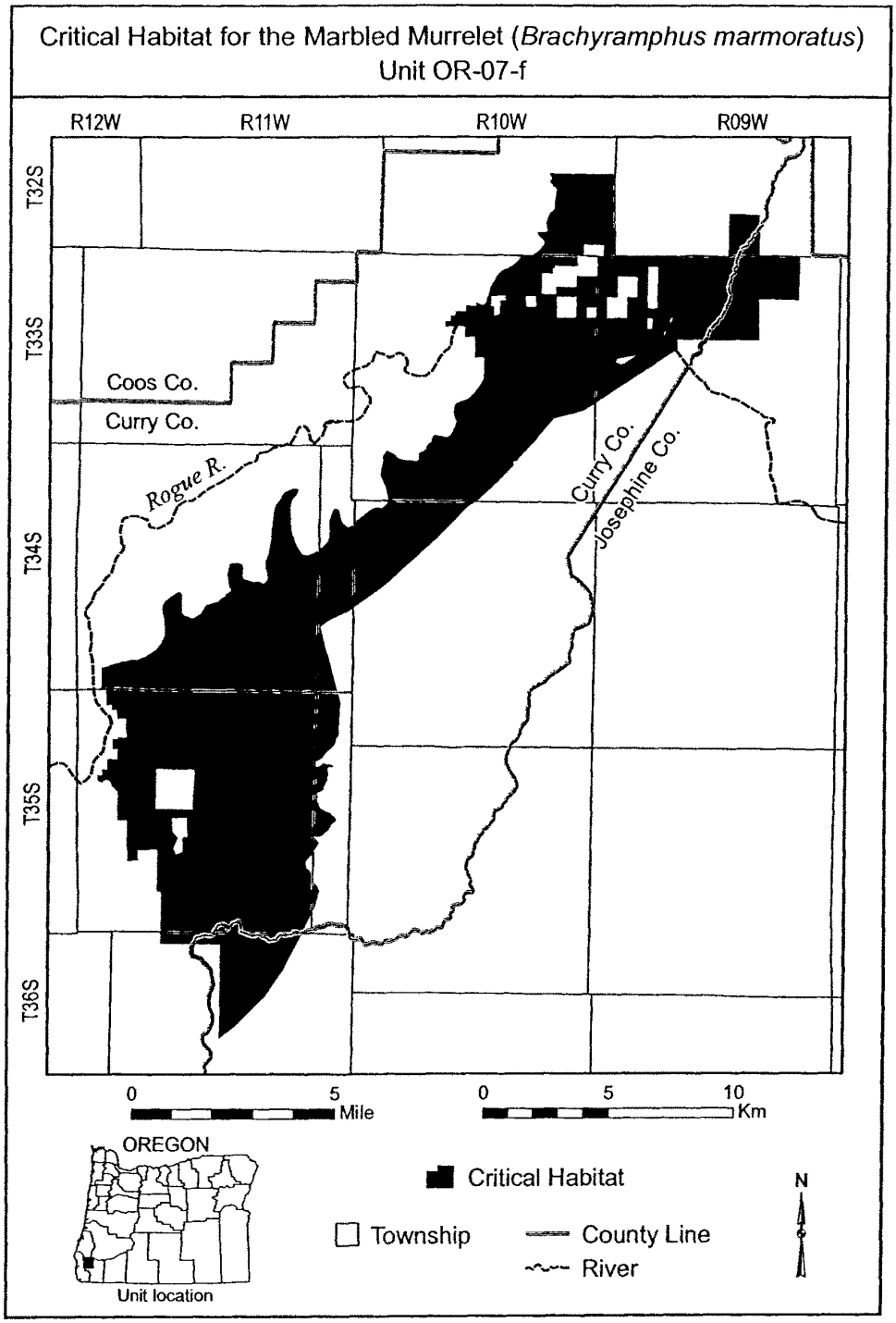
Unit OR-07-d: Curry and Josephine Counties, Oregon. From USGS 1:24,000 scale quadrangles: Biscuit Hill, Buckskin Peak, High Plateau Mountain, O'Brien and Shelly Creek Ridge.



Unit OR-07-f: Curry and Josephine Counties, Oregon. From USGS 1:24,000 scale quadrangles: Brandy Peak, Kelsey Peak, Marial and Silver Peak.



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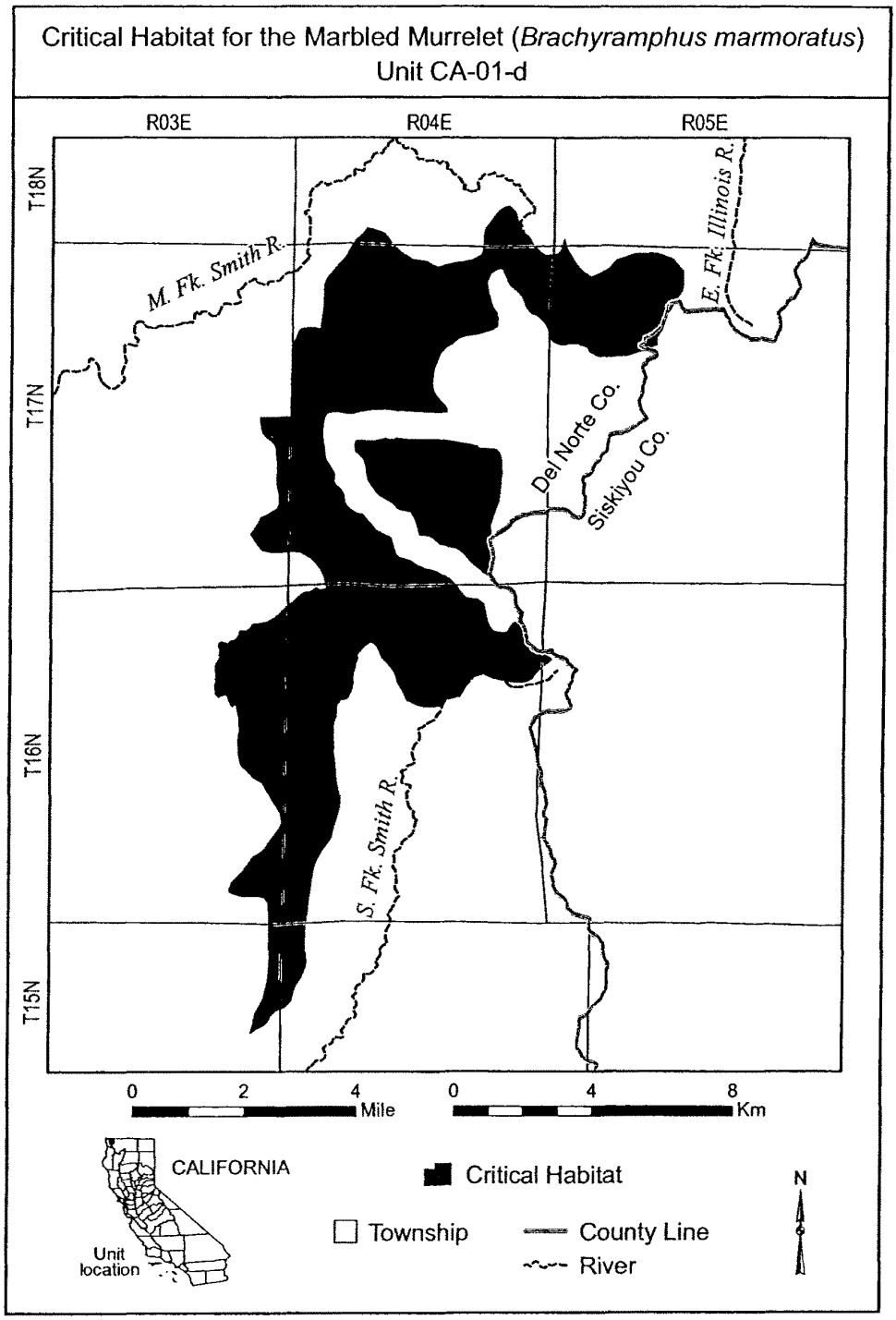
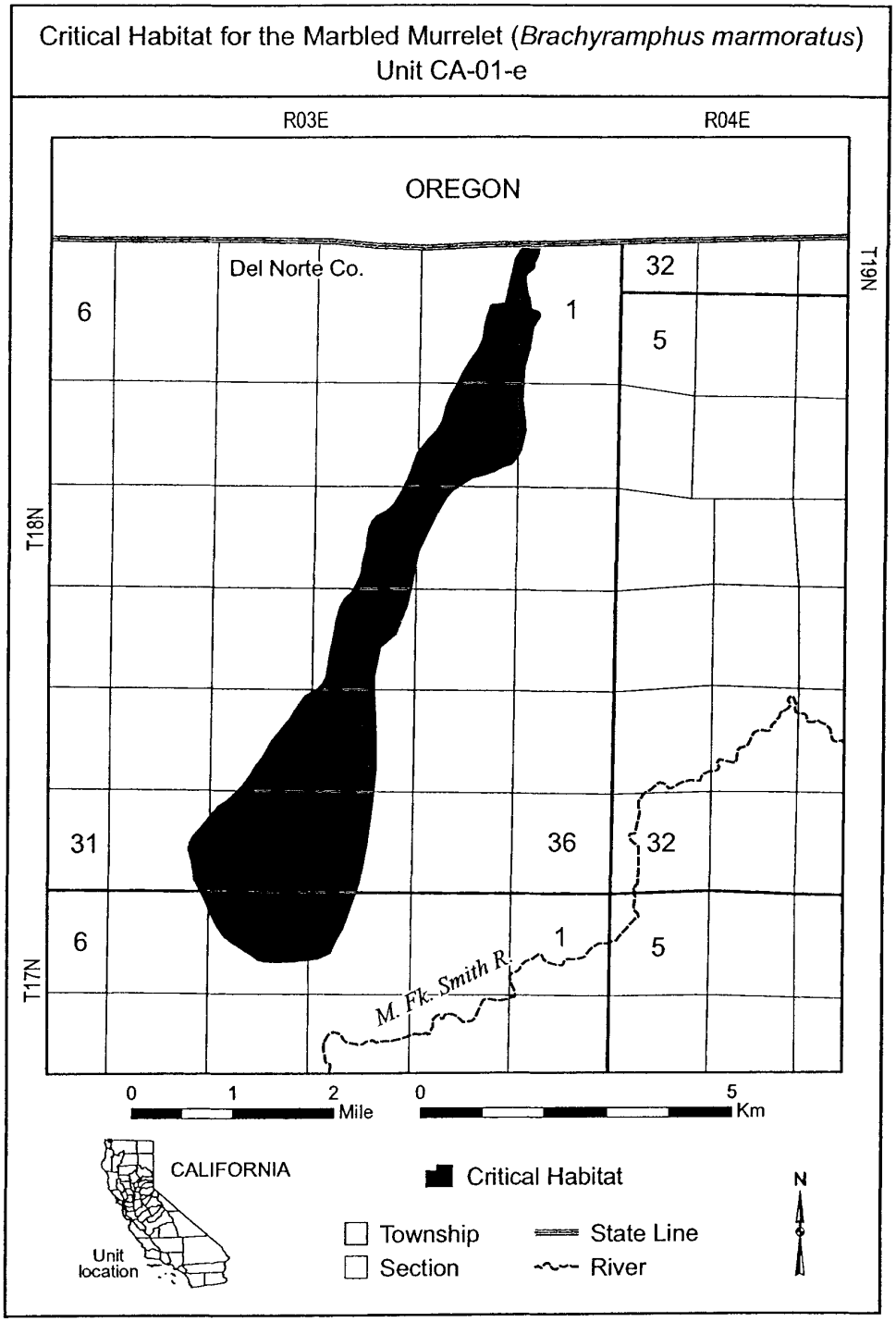
Unit CA-01-d: Siskiyou County, California. From USGS 1:24,000 scale quadrangles: Prescott Mountain, Bear Peak, Clear Creek, Chimney Rock, Dillon Mountain.



Unit CA-01-e: Del Norte County, California. From USGS 1:24,000 scale quadrangles: Takilma, Broken Rib Mountain, Polar Bear Mountain



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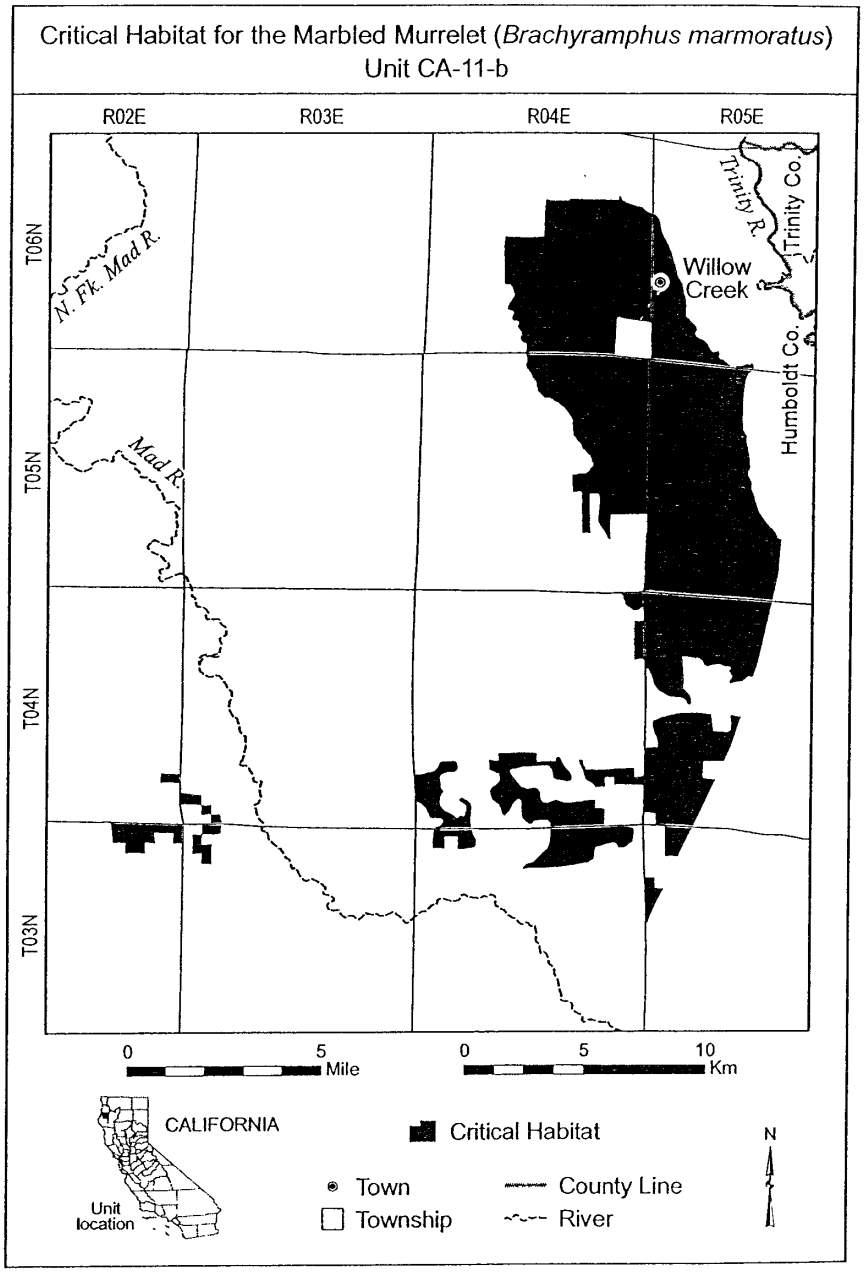
Unit CA-11-b: Humboldt County, California. From USGS 1:24,000 scale quadrangles: Hennessy Peak, Sims Mountain.



* * * * *

Dated: July 22, 2008,

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–17343 Filed 7–30–08; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register

Vol. 73, No. 148

Thursday, July 31, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0062]

Availability of Site-Specific Environmental Assessment and Pest Risk Assessment for the Interstate Movement of Garbage From Hawaii to Oregon

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a site-specific environmental assessment and pest risk assessment relative to a request to allow the interstate movement of garbage from Hawaii to a landfill in the State of Oregon. The environmental assessment has been prepared to determine whether the request is consistent with the environmental effects and impacts analyzed in our March 2008 regional programmatic environmental assessment as well as to evaluate potential site-specific environmental impacts of the proposed action. The pest risk assessment evaluates the risks associated with the interstate movement of garbage from Hawaii to Oregon. We are making these documents available to the public for review and comment.

DATES: We will consider all comments that we receive on or before September 2, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0062* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0062, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0062.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Shannon Hamm, Associate Deputy Administrator, Policy and Program Development, APHIS, 4700 River Road Unit 20, Riverdale, MD 20737–1231; (301) 734–4957.

SUPPLEMENTARY INFORMATION:

Background

The importation and interstate movement of garbage is regulated by the Animal and Plant Health Inspection Service (APHIS) under 7 CFR 330.400 and 9 CFR 94.5 in order to protect against the introduction into and dissemination within the United States of plant and animal pests and diseases.

On March 13, 2008, we published in the **Federal Register** (73 FR 13525, Docket No. APHIS–2007–0070) a notice in which we announced the availability, for public review and comment, of a regional programmatic environmental assessment relative to the interstate movement of municipal solid waste from Hawaii to landfills in the States of Idaho, Oregon, and Washington. On June 18, 2008 (73 FR 34700–34701, Docket No. APHIS–2007–0070), we published a follow-up notice in which we announced the availability of our final regional programmatic environmental assessment and finding of no significant impact.

In our March 2008 notice, we stated that as new requests to move municipal solid waste from Hawaii are received, a specific environmental analysis will be prepared relative to each request to determine whether the request is consistent with the environmental effects and impacts analyzed in our regional programmatic environmental assessment. We also stated that the specific environmental analyses prepared for each new request to move municipal solid waste will be made available for a 30-day public comment period, after which APHIS will announce its environmental and pest risk decision regarding the new municipal solid waste movement proposal.

In accordance with the process described in our March 2008 notice, we have prepared a site-specific environmental assessment to ensure that the circumstances surrounding a new request we have received fit within the criteria evaluated in the regional programmatic environmental assessment as well as to evaluate potential site-specific environmental impacts of the proposed action. The site-specific assessment, titled ''Site Specific Environmental Assessment for Off Island Transfer Proposal to Transport Municipal Solid Waste from Hawaii to Columbia Ridge Landfill,'' is accompanied by a pest risk assessment.

The pest risk assessment, titled ''The Risk of Introducing Pests to Gilliam County, Oregon via Hawaiian Plastic-Baled Municipal Solid Waste'' (June 2008), evaluates the plant pest risks associated with the interstate movement of garbage from Hawaii to the Columbia Ridge Solid Waste Landfill in Gilliam County, OR.

We are making these documents available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice. The environmental assessment and pest risk assessment may be viewed on the Internet on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the documents by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the document(s) you wish to receive when requesting copies.

Following the conclusion of the comment period, we will announce our environmental and pest risk decision regarding the new municipal solid waste movement proposal.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 25th day of July 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–17589 Filed 7–30–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of Call for Nominations.

SUMMARY: The National Urban and Community Forestry Advisory Council, (NUCFAC) will be filling three positions that will be expiring at the end of December 2008. Interested applicants may download a copy of the application and position descriptions from the U.S. Forest Service's Urban and Community Forestry Web site: *http://www.fs.fed.us/ucf/.*

DATES: Nomination applications are to be postmarked by September 3, 2008.

ADDRESSES: Nomination Applications should be addressed to: Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 1400 Independence Avenue, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff or Robert Prather, Staff Assistant to National Urban and Community Forestry Advisory Council, 1400 Independence Avenue, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Please submit hard copy nomination applications only.

Positions to be filled are for:

- A person that is not an officer or employee of any government body living in a city with a population of more than 50,000 and who has experience and has been active in urban and community forestry.
- A person representing academic institutions with an expertise in urban and community forestry activities.
- A person representing forest products, nursery, or related industries.

Dated: July 25, 2008.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. E8–17572 Filed 7–30–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Proposed Information Collection; Comment Request; List of Gear by Fisheries and Fishery Management Council

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 29, 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 Mark R. Millikin, (301) 713–2341 or *Mark.Millikin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery and Conservation and Management Act (Magnuson-Stevens Act) [16 U.S.C. 1801 *et seq.*], as amended by the Sustainable Fisheries Act (Pub. L. 104–297), the Secretary of Commerce (Secretary) is required to publish a list of all fisheries under authority of each Regional Fishery Management Council (Council) and all such fishing gear used in such fisheries (see section 305(a) of the Magnuson-Stevens Act). The list has been published and appears in 50 CFR part 600.725(v). Any person wishing to use gear not on the list, or engage in a fishery not on the list, must provide the appropriate Council or the Secretary, in the case of Atlantic highly migratory species with a 90-day advance notice. If the Secretary takes no action to prohibit such a fishery or use of such a gear, the person may proceed.

II. Method of Collection

The respondent provides written notice. No form is used.

III. Data

OMB Number: 0648–0346.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 90 minutes.

Estimated Total Annual Burden Hours: 30.

Estimated Total Annual Cost to Public: $300.

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 25, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–17490 Filed 7–30–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Quarterly Survey of the Finances of Public-Employee Retirement Systems

AGENCY: U.S. Census Bureau.

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before September 29, 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(s) and instructions should be directed to Ellen Thompson, Chief, Employment Branch, Governments Division, U.S. Census Bureau, 4600 Silver Hill Road, GOVS–6K141, Washington, DC 20233, (301–764–1531) (or via the Internet at *ellen.ann.thompson@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request an extension for the Quarterly Survey of the Finances of Public Employee Retirement Systems. The quarterly survey was initiated by the Census Bureau in 1968 at the request of both the Council of Economic Advisers and the Federal Reserve Board. It gathers data on the assets of the 100 largest state and local government public-employee retirement systems. These systems hold over $2.9 trillion in assets, which represent approximately 90 percent of all state and local government public-employee retirement system assets.

These important data are used by the Federal Reserve Board to track the public sector portion of the flow of funds accounts. The Bureau of Economic Analysis uses the data on corporate stock holdings to estimate dividends received by state and local government public-employee retirement systems. These estimates, in turn are used as a component in developing the national income and product accounts.

II. Method of Collection

Canvass methodology consists of a mail out/mail back questionnaire. Responses are screened manually, then put into an electronic format. No statistical methods are used to calculate the data.

Respondents may choose to report their data over our Internet site. In addition to reporting current quarter data on the Internet, respondents may report for the first time for the previous two quarters or submit revisions to their previously submitted data if needed.

In those instances when we are not able to obtain a response, estimates are made for nonrespondents based on historical data for that same system.

III. Data

OMB Control Number: 0607–0143.

Form Number: F–10.

Type of Review: Regular submission.

Affected Public: State and local government retirement systems.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 45 minutes.

Estimated Total Annual Burden Hours: 300.

Estimated Total Annual Cost: $6,468.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

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 25, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–17491 Filed 7–30–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–533–839)

Carbazole Violet Pigment 23 from India: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 3, 2007, the Department published a notice of opportunity to request an administrative review of the countervailing duty order on carbazole violet pigment 23 from India. On December 31, 2007, Nation Ford Chemical Company and Sun Chemical Corporation, the petitioners, requested that the U.S. Department of Commerce (the Department) conduct an administrative review of two manufacturer/exporters of subject merchandise, Alpanil Industries Limited (Alpanil) and Pidilite Industries Limited (Pidilite). The petitioners were the only party to request this administrative review. The review was initiated on January 28, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 4829 (January 28, 2008). The period of review (POR) is from January 1, 2006 through December 31, 2006. Petitioners withdrew their request for administrative review on April 25, 2008.

EFFECTIVE DATE: July 31, 2008.

CONTACT INFORMATION: Sean Carey or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3964 or (202) 482–3586, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this countervailing duty order is CVP–23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of diindolo [3,2–b:3',2'-m] triphenodioxazine, 8,18–dichloro–5,15–diethy–5,15–dihydro-, and molecular formula of C34H22Cl2N4O2.1. The subject

merchandise includes the crude pigment in any form (e.g., dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (e.g., pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the review. The merchandise subject to this review is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the merchandise in the scope of the order is dispositive.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. No other party requested an administrative review of the countervailing duty order on carbazole violet pigment 23 from India. Petitioners withdrew their request on both Alpanil and Pidilite within the 90 days of the January 28, 2008 publication of the notice of initiation of this administrative review. Therefore, in response to petitioners' withdrawal of their request for an administrative review pursuant to 19 CFR 351.213(d)(1), the Department hereby rescinds the administrative review of the countervailing duty order on carbazole violet pigment 23 from India. The Department intends to issue assessment instructions to U.S. Customs and Border Protection 15 days after the date of publication of this rescission of administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective disorder is hereby requested. Failure to comply with the regulations and terms of APO is a sanctionable violation.

This notice is published in accordance with the sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 24, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–17585 Filed 7–30–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review.

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On July 23, 2008, Productos Laminados de Monterrey S.A. de C.V. and Prolamsa, Inc. (collectively, ''Prolamsa'') filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Determination of Sales at Less Than Fair Value made by the International Trade Administration respecting Light-Walled Rectangular Pipe and Tube From Mexico. The determination was published in the **Federal Register** (73 FR 35649) on June 24, 2008. The NAFTA Secretariat has assigned Case Number USA–MEX–2008–1904–03 to this request.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement on July 23, 2008, requesting panel review of the determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 22, 2008);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is September 8, 2008); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 25, 2008.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. E8–17534 Filed 7–30–08; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ33

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application from the Washington Department of Fish and Wildlife (WDFW), for a direct take permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The duration of the proposed Permit is ten years. This document serves to

notify the public of the availability for comment of the permit application. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments on the application and draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight time on September 2, 2008.

ADDRESSES: Written comments on the application should be sent to Richard Turner, National Marine Fisheries Services, Salmon Recovery Division, 1201 N.E. Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may also be submitted by e-mail to: *graysriver.nwr@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: Comments on Grays River program. Comments may also be sent via facsimile (fax) to (503) 872–2737. Requests for copies of the permit application should be directed to the National Marine Fisheries Services, Salmon Recovery Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. The documents are also available on the Internet at *www.nwr.noaa.gov*. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 736–4737.

FOR FURTHER INFORMATION CONTACT: Richard Turner at (503) 736–4737 or e-mail: *rich.turner@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following species and evolutionarily significant units (ESUs) or distinct population segments (DPSs)

Chinook salmon (*Oncorhynchus. tshawytscha*): threatened, Lower Columbia River

Coho salmon (*O. kisutch*): threatened, Lower Columbia River

Chum salmon (*O. keta*): threatened, Columbia River

Background

Section 9 of the ESA and Federal regulations prohibit the ≥taking≥ of a species listed as endangered or threatened. The term ≥take≥ is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits to take listed species for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, under section 10(a)(1)(A) of the ESA. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

NMFS expects to take action on a ESA section 10(a)(1)(A) submittal received from the applicant. In an application received on July 11, 2008, WDFW submitted an application to NMFS for an ESA section 10(a)(1)(A) permit for the direct take of ESA-listed threatened Lower Columbia River Chinook salmon, Lower Columbia River Coho salmon, and Columbia River Chum salmon from the Grays River in Wahkiakum County, Washington. A temporary weir will be installed in the lower Grays River in order to complement existing adult salmonid monitoring efforts in the Grays River in developing accurate and precise estimates of total abundance, and to promote recovery of the Grays River fall Chinook salmon population through the removal of non-local hatchery Chinook salmon.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(A) of the ESA. If it is determined that the requirements are met, a permit will be issued to the WDFW for the purpose of carrying out the research program. NMFS will publish a record of its final action in the **Federal Register**.

Dated: July 25, 2008.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–17570 Filed 7–30–08; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Determination of Appropriateness of Standards of the United Kingdom's Financial Services Authority for Oversight and Supervision of ICE Clear Europe Limited, a Multilateral Clearing Organization

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is issuing an Order pursuant to Section 409(b)(3) of the Federal Deposit Insurance Corporation Improvement Act (FDICIA). Section 409(b)(3) provides that the Commission (or one of several other authorized U.S. financial regulators) may determine that the supervision by a foreign financial regulator of a multilateral clearing organization (MCO) for over-the-counter (OTC) instruments satisfies appropriate standards. The Commission is issuing this Order with respect to the supervision by the United Kingdom's (UK) Financial Services Authority (FSA) of ICE Clear Europe Limited (ICE Clear Europe).

DATES: *Effective Date:* July 31, 2008.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, 202–418–5092, *rwasserman@cftc.gov*, or Lois J. Gregory, Special Counsel, 816–960–7719, *lgregory@cftc.gov*, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The CFTC has issued the following Order:

Order Issued Pursuant to Section 409 of the Federal Deposit Insurance Corporation Improvement Act Determining the Appropriateness of the Standards of the United Kingdom's Financial Services Authority in the Oversight and Supervision of ICE Clear Europe Limited, a Multilateral Clearing Organization.

FDICIA Section 409 [1] provides that, in order to operate an MCO [2] for over-the-counter (OTC) derivatives instruments,[3] a clearing organization must meet one of several alternative requirements. In particular, a clearing organization will qualify to operate such an MCO if it is supervised by a foreign financial regulator that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the CFTC, as applicable, has determined satisfies appropriate standards.[4]

ICE Clear Europe, a Recognised Clearing House under the supervision of the UK FSA, has requested that the CFTC determine that the FSA's program for supervision of their clearing

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[1] 12 U.S.C. 4422.

[2] FDICIA Section 408(1), 12 U.S.C. 4421(1), defines MCO to mean ''a system utilized by more than [two] participants in which the bilateral credit exposures of participants arising from the transactions cleared are effectively eliminated and replaced by a system of guarantees, insurance, or mutualized risk of loss.''

[3] FDICIA Section 408(2), 12 U.S.C. 4421(2) defines OTC derivative instrument.

[4] FDICIA Section 409(b)(3), 12 U.S.C. 4422(b)(3). The CFTC has issued two previous orders pursuant to this authority determining that the supervision of particular MCOs by a foreign financial regulator met appropriate standards. The foreign financial regulators involved were the Norwegian Banking, Insurance and Securities Commission and the Alberta (Canada) Securities Commission. *See* 67 FR 2419 (January 17, 2002) and 71 FR 10959 (March 3, 2006), respectively.

activities satisfies appropriate standards.[5] Such a determination would permit ICE Clear Europe to operate as an MCO consistent with the requirements set forth in FDICIA Section 409(b)(3).

In reviewing this request, the Commission has considered the UK legal and regulatory regime for what are referred to as ''recognised clearing houses,'' and how that regime has been applied to ICE Clear Europe. This includes the UK's Financial Services and Markets Act, 2000[6] (FSMA), regulations thereunder,[7] and regulatory guidance provided by the FSA.[8] ICE Clear Europe provided the CFTC with its analysis of the correspondence between recognition requirements applicable to clearing houses recognized by the FSA and the core principles applicable to DCOs as set forth in CEA Section 5b.[9]

The Commission also considered additional facts, including the authority of the FSA to enforce compliance with the applicable foreign law, the foreign law's applicability to the activities of MCOs, FSA's membership in the International Organization of Securities Commissions (IOSCO), a review of the UK financial system in general (including FSA's supervision of clearing in particular) by the International Monetary Fund and World Bank (with satisfactory results), and the FSA's demonstrated ability and willingness to share information and otherwise cooperate with the CFTC.

The FSA is authorized under the FSMA to supervise the clearing of financial instruments by persons located in the UK and has the authority to enforce compliance with applicable laws, rules and regulations.[10] Clearing in the UK of OTC instruments may be conducted only by a clearing house recognized by the FSA,[11] thus MCO activity is subject to regulatory supervision by the FSA. Furthermore, the FSA has the ability and has agreed to share with the CFTC, upon request, information in its possession regarding ICE Clear Europe's activities as a recognised clearing house and to otherwise cooperate with the CFTC.[12]

As a matter of courtesy, the Commission invited comment concerning ICE Clear Europe's application from the other federal financial regulators listed in Section 409, but received none. The Commission also invited the public to comment on ICE Clear's petition by general release posted on the Commission's Web site on June 17, 2008. The Commission received comments from three individuals. Each of these comments concerned the trading of contracts in the United Kingdom, but none addressed the FSA's program for the supervision of clearing. As noted above, the supervision of trading was outside the scope of the current review.

Based upon this information, the CFTC has determined, pursuant to FDICIA Section 409(b)(3), that the supervision by the UK's FSA of ICE Clear Europe's activity in clearing OTC instruments satisfies appropriate standards. Any material changes or omissions in the facts and circumstances upon which this order is based might require the CFTC to reconsider this matter.

Issued in Washington, DC, on July 23, 2008.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E8–17357 Filed 7–30–08; 8:45 am]

BILLING CODE 6351–01–P

[5] Letter from Paul Swann, President and Chief Operating Officer of Ice Clear Europe, to David A. Stawick, Secretary, CFTC, dated March 10, 2008, with annexes. ICE Clear Europe intends to clear OTC derivatives transactions to be executed on the IntercontinentalExchange, Inc. (ICE), a U.S. exempt commercial market. *See generally* CEA § 2(h)(3), 7 U.S.C. 2(h)(3), for a discussion of exempt commercial markets. This activity will bring it within FDICIA's definition of an MCO. *See* FDICIA § 408(2)(C), 12 U.S.C. 4421(2)(C) (defining OTC derivative instrument to include any agreement, contract, or transaction exempt under CEA Section 2(h)).

[6] Financial Services and Markets Act, 2000 (Eng.). References to sections of the FSMA are hereinafter cited as ''Section [ ] FSMA.''

[7] Financial Services and Markets Act 2000 (Recognition for Investment Exchanges and Clearing Houses) Regulations (2001) SI 2001/995.

[8] The FSA provides what it describes as a ''specialized sourcebook'' entitled ''Recognised Investment Exchanges and Recognised Clearing Houses (REC) requirements applying to recognised bodies as part of the ''FSA Handbook,'' which is available at *http://fsahandbook.info/FSA/html/handbook/REC.*

[9] The issues raised under Section 409 do not include FSA's supervision of trading, and the Commission has accordingly not reviewed that aspect of FSA's regulatory program in considering the present Order.

[10] Section 2 FSMA.

[11] Section 285 FSMA. ICE Clear Europe received such recognition on May 12, 2008.

[12] *See generally* the Memorandum of Understanding between the United States CFTC and the United Kingdom FSA Concerning Consultation, Cooperation and the Exchange of Information Related to Market Oversight (November 12, 2006) and other agreements to cooperate referred to therein.

COMMODITY FUTURES TRADING COMMISSION

Fees for Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Establish the FY 2008 schedule of fees.

SUMMARY: The Commission charges fees to designated contract markets and registered futures associations to recover the costs incurred by the Commission in the operation of its program of oversight of self-regulatory organization (SRO) rule enforcement programs (17 CFR part 1 Appendix B) (National Futures Association (NFA), a registered futures association, and the contract markets are referred to as SROs). The calculation of the fee amounts to be charged for FY 2008 is based upon an average of actual program costs incurred during FY 2005, 2006, and 2007, as explained below. The FY 2008 fee schedule is set forth in the **SUPPLEMENTARY INFORMATION**. Electronic payment of fees is required.

DATES: *Effective Date:* The FY 2008 fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than September 29, 2008.

FOR FURTHER INFORMATION CONTACT: Stacy Dean Yochum, Deputy Executive Director, Commodity Futures Trading Commission, (202) 418–5157, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. For information on electronic payment, contact Angela Clark, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5178.

SUPPLEMENTARY INFORMATION:

I. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations[1] and designated contract markets (DCM), which are referred to as SROs, regulated by the Commission.

II. Schedule of Fees

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and DCMs regulated by the Commission:

Entity	Fee amount
Chicago Board of Trade	$146,077

[1] NFA is the only registered futures association.

Entity	Fee amount
Chicago Mercantile Exchange	124,734
New York Mercantile Exchange	144,893
Kansas City Board of Trade	11,119
New York Board of Trade	37,662
Minneapolis Grain Exchange	28,181
HedgeStreet	10,194
Chicago Climate Futures Exchange	8,306
U.S. Futures Exchange	14,602
OneChicago	15,836
National Futures Association	450,419
Total	992,022

III. Background Information

A. General

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating this Commission program.[2] All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based on direct program costs, plus an overhead factor.

B. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 109 percent for fiscal year 2005, 109 percent for fiscal year 2006, and 140 percent for fiscal year 2007. The increase in the overhead rate for FY 2007 is due to refinement in the agency's reporting capabilities. In past years, the overhead rate did not accurately reflect the cost of benefits. The implementation of a new financial system revealed the inaccuracy and the 2007 overhead rate reflects the correct benefits amount. These overhead rates are applied to the direct labor costs to calculate the costs of oversight of SRO rule enforcement programs.

C. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted in 1993 (58 FR 42643, Aug. 11, 1993), which appears at 17 CFR part 1 Appendix B, the Commission calculates the fee to recover the costs of its rule enforcement reviews and examinations, based on the three-year average of the actual cost of performing such reviews and examinations at each SRO. The cost of operation of the Commission's SRO oversight program varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging computation method is intended to smooth out year-to-year variations in cost. Timing of the Commission's reviews and examinations may affect costs—a review or examination may span two fiscal years and reviews and examinations are not conducted at each SRO each year. Adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs.

The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that, as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation is made as follows: The fee required to be paid to the Commission by each DCM is equal to the lesser of actual costs based on the three-year historical average of costs for that DCM or one-half of average costs incurred by the Commission for each DCM for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all DCMs for the most recent three years. The formula for calculating the second factor is: 0.5a + 0.5 vt = current fee. In this formula, ''a'' equals the average annual costs, ''v'' equals the percentage of total volume across DCMs over the last three years, and ''t'' equals the average annual costs for all DCMs. NFA has no contracts traded; hence, its fee is based simply on costs for the most recent three fiscal years.

This table summarizes the data used in the calculations and the resulting fee for each entity:

	3-year average actual costs	3-year % of volume	2008 Fee (lesser of actual or calculated fee)
Chicago Board of Trade	$146,077	32.4504	$146,077
Chicago Mercantile Exchange	124,734	54.5543	124,734
New York Mercantile Exchange	213,577	10.5981	144,893
Kansas City Board of Trade	20,918	0.1834	11,119
New York Board of Trade	62,615	1.7674	37,662
Minneapolis Grain Exchange	55,903	0.0637	28,181
HedgeStreet	20,293	0.0132	10,194
Chicago Climate Futures Exchange	16,594	0.0026	8,306
US Futures Exchange	28,692	0.0711	14,602
OneChicago	29,684	0.2764	15,836
Subtotal	719,088	.....	541,603
National Futures Association	450,419	.....	450,419
Total	1,169,507	.....	992,022

An example of how the fee is calculated for one exchange, the Minneapolis Grain Exchange, is set forth here:

a. Actual three-year average costs equal $55,903.

[2] See Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission Fees, see 52 FR 46070 (Dec. 4, 1987).

b. The alternative computation is: (.5) ($55,903) + (.5) (.000637) ($719,088) = $28,181.

c. The fee is the lesser of a or b; in this case $28,181.

As noted above, the alternative calculation based on contracts traded is not applicable to NFA because it is not a DCM and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 2005 through 2007 was $450,419 (one-third of $1,351,256). The fee to be paid by the NFA for the current fiscal year is $450,419.

Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds (See 31 U.S.C. 3720). For information about electronic payments, please contact Angela Clark at (202) 418–5178 or *aclark@cftc.gov,* or see the CFTC Web site at *http://www.cftc.gov,* specifically, *http://www.cftc.gov/cftc/cftcelectronicpayments.htm.*

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets and registered futures associations. The Commission has previously determined that contract markets and registered futures associations are not ''small entities'' for purposes of the Regulatory Flexibility Act. Accordingly, the Acting Chairman, on behalf of the Commission, certifies pursuant to 5 U.S.C. 605(b) that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on July 24, 2008, by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E8–17531 Filed 7–30–08; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0005]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed revision of a public information collection and seeks public comment on the provisions thereof. 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 of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 29, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to U.S. Army Corps of Engineers, 441 G Street, NW., Washington, DC 20314–1000, *Attn:* CECW–CO, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Application for a Department of the Army Permit; ENG Form 4345, OMB Control Number 0710–0003.

Needs and Uses: Information collected is used to evaluate, as required by law, proposed construction or filing in waters of the United States that result in impacts to the aquatic environment and nearby properties, and to determine if issuance of a permit is in the public interest. Respondents are private landowners, businesses, non-profit organizations, and government agencies. Respondents also include sponsors of proposed and approved mitigation banks and in-lieu fee programs.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal government; State; local or tribal government.

Annual Burden Hours: 984,000.

Number of Respondents: 89,450.

Responses Per Respondent: 1.

Average Burden Per Response: 11 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Corps of Engineers is required by three federal laws, passed by Congress, to regulate construction-related activities in waters of the United States. This is accomplished through the review of applications for permits to do this work.

Dated: July 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–17550 Filed 7–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket No. USA–2008–0006]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 2, 2008.

Title, Form, and OMB Number: Industry Partnership Survey; OMB Control Number 0702–0122.

Type of Request: Extension.

Number of Respondents: 1,371.

Responses Per Respondent: 1.

Annual Responses: 357.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 343.

Needs and Uses: The information collected from this survey will be used to systematically survey and measure industry contractors to better understand how they feel about SDDC's acquisition processes, and to improve the way business is conducted. The SDDC provides global surface deployment command and control and distribution operations to meet National

Security objectives in peace and war. They are working to be the Warfighter's single surface deployment/distribution provider for adaptive and flexible solutions delivering capability and sustainment on time. Respondents will be commercial firms who have contracts awarded by SDDC for several program areas.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be e-mail to Ms. Mar at *Sharon_Mar@omb.eop.gov*.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: July 23, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. E8–17551 Filed 7–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of Upcoming Teleconference Meeting; Correction.

SUMMARY: This document contains corrections for the notice that was published in the **Federal Register** of Thursday, July 24, 2008 (Volume 73, Number 143), [Page 43214–43215]. The topic of the conference call has been changed.

DATES: Wednesday, September 10, 2008, beginning at 3 p.m. and ending at approximately 6 p.m.

SUPPLEMENTARY INFORMATION: This notice should read as follows: The conference call scheduled for September 10 will be a continuation of the August 19 conference call to discuss the following topics: (1) Nomination and selection process for the Committee's officers and (2) the implications of HEA reauthorization for the Committee's activities and plans in FY2009. The election of officers will be scheduled for a later date.

Dated: July 25, 2008.

Dr. William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. E8–17526 Filed 7–30–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Reading First Advisory Committee

AGENCY: Department of Education, Office of Elementary and Secondary Education.

ACTION: Notice of Open Teleconference Meeting.

SUMMARY: This notice describes an open meeting of the Reading First Advisory Committee. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

Dates and Times: August 20, 2008, 10:30 a.m. until 12 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will take place via conference call. The phone number to access the meeting is 800–988–9352. The participant code is 1988.

FOR FURTHER INFORMATION CONTACT: Deborah Spitz, Reading First Team Leader, Reading First Advisory Committee, 400 Maryland Avenue, SW., Washington, DC 20202; *telephone*: (202) 260–3793; fax: (202) 260–8969; *e-mail: Deborah.Spitz@ed.gov*.

SUPPLEMENTARY INFORMATION: The Reading First Advisory Committee is authorized by sections 1203(c)(2)(a) and 1202(e)(2) of the Elementary and Secondary Education Act (ESEA) of 1965, as amended. The Committee is established within the Department of Education to evaluate Reading First applications submitted by States, to review the progress reports that States submit after the third year of the grant period, to advise on the awarding of Targeted Assistance Grants, and to advise the Secretary on other issues that the Secretary deems appropriate.

The purpose of this meeting will be to review the application for Targeted Assistance funds from the state of Nevada. Nevada is the only state eligible to apply for funding this year, based on the data submitted in the 2007 Annual Performance Report. A subcommittee will review Nevada's application in advance of this meeting and make a recommendation for approval or disapproval to the full Committee.

At the last open meeting on June 23, 2008, the Committee decided to work on an analysis of the *Reading First Impact Study: Interim Report*. This analysis may be discussed during the August 20, 2008 meeting.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Deborah Spitz at (202) 260–3793, no later than ten (10) days before the scheduled date of the meeting. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Request for Written Comments: There will not be an opportunity for public comment during this meeting; however, members of the public are encouraged to submit written comments. Written comments should be submitted via e-mail at least ten (10) days prior to the scheduled date of the meeting to Deborah Spitz at *Deborah.Spitz@ed.gov*. These comments will be shared with the members of the Committee.

Records are kept of all Committee proceedings and are available for public inspection at 400 Maryland Ave. SW., Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

Electronic Access to this Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*.

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.*

Amanda Farris,

Deputy Assistant Secretary, the Office of Elementary and Secondary Education.

[FR Doc. E8–17535 Filed 7–30–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 785–018]

Allegan County, MI; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 24, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 785–018.

c. *Date filed:* April 4, 2008.

d. *Applicant:* Consumers Energy Company, Michigan.

e. *Name of Project:* Calkins Bridge Hydroelectric Project.

f. *Location:* On the Kalamazoo River in Allegan County, Michigan. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James R. Coddington, Consumers Energy Company, One Energy Plaza, Jackson, MI, 49201, (517) 788–2455.

i. *FERC Contact:* Timothy Konnert, (202) 502–6359 or *timothy.konnert@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Calkins Bridge Project consists of a 42-foot-high, 1,330-foot-long dam, consisting of 1,100 feet of earth embankment and a 230-foot concrete integral powerhouse-spillway section, creating an 8.5-mile-long, 1,550 acre reservoir with a normal water surface elevation of 615.0 feet msl, a powerhouse containing three generating units with a total installed capacity of 2,550 kW, and appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit 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 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance letter—July 2008.

Issue Scoping Document 1 for comments—October 2008.

Notice of application is ready for environmental analysis—January 2009.

Notice of the availability of the EA—June 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17496 Filed 7–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–441–000; Docket No. CP08–444–000]

CenterPoint Energy Gas Transmission Company; Texas Eastern Transmission, LP; Notice of Application

July 24, 2008.

Take notice that on July 17, 2008, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP08–441–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA), and on July 21, 2008, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP08–444–000 an application pursuant to section 7(b) of the NGA for an order granting a certificate of public convenience to authorize CEGT to acquire, by operating lease, 90,000 dekatherms per day (Dth/d) of firm capacity from Texas Eastern on its Sligo Lateral Line 11–G (Sligo Lateral) in Bossier and Red River Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202)502–8659.

CEGT and Texas Eastern state that the primary term of the Sligo Lease is five years, and the lease will remain in effect from year to year thereafter unless terminated by either party with at least 18 months prior notice and necessary approvals from the Commission. Texas Eastern asserts that the lease capacity will be created by new compression that CEGT intends to construct under its blanket construction certificate. Texas Eastern states that granting the authorizations requested in the application will not increase Texas Eastern's system design capacity or affect the capacity available for service on the Texas Eastern system, nor will it affect Texas Eastern's existing tariffs.

Any questions concerning this application may be directed to Lawrence O. Thomas, Director—Rates & Regulatory, CenterPoint Energy Gas Transmission Company, PO Box 21734, Shreveport, Louisiana 71151 at (318) 429–2804, or Garth Johnson, General Manager, Certificates & Reporting, Texas Eastern Transmission, LP, PO Box 1642, Houston, Texas 77251–1642 at (713) 627–5415.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, 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: August 14, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17497 Filed 7–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 23, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–112–000.

Applicants: Brush Cogeneration Partners, Ripon Cogeneration, LLC, Fort Chicago Power Colorado LLC.

Description: Brush Cogeneration Partners *et al.* submits an application for authorization for disposition of jurisdictional facilities and request for expedited action.

Filed Date: 07/17/2008.

Accession Number: 20080718–0203.

Comment Date: 5 p.m. Eastern Time on Thursday, August 07, 2008.

Docket Numbers: EC08–113–000.

Applicants: Brush Cogeneration Partners.

Description: Brush Cogeneration Partners submits Application for Authorization under section 203 of the Federal Power Act for Disposition of Jurisdictional Facilities and Request for Expedited Action.

Filed Date: 07/17/2008.

Accession Number: 20080718–0201.

Comment Date: 5 p.m. Eastern Time on Thursday, August 7, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–81–000.

Applicants: Sherbino I Wind Farm LLC.

Description: Notice of Self-Certification as an Exempt Wholesale Generator of Sherbino I Wind Farm LLC.

Filed Date: 07/17/2008.

Accession Number: 20080717–5116.

Comment Date: 5 p.m. Eastern Time on Thursday, August 7, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–4122–028; ER99–4124–024; ER07–428–006.

Applicants: Arizona Public Service Company, PINNACLE WEST MARKETING & TRADING CO, LL, APS Energy Services Company.

Description: Notices of change in status.

Filed Date: 07/14/2008.

Accession Number: 20080714–5072.

Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER00–1952–007; ER01–1784–010; ER99–1248–009; ER08–333–003; ER03–222–009; ER08–851–002.

Applicants: Black Hills Colorado, LLC; Fountain Valley Power, LLC; Harbor Cogeneration Company, LLC; Las Vegas Cogeneration LP; Las Vegas Cogeneration II, LLC; Valencia Power, LLC.

Description: Black Hills Colorado, LLC *et al.* notifies FERC of a non-material change in status with respect to the market-based rate authority of the Southwest Generation Utilities.

Filed Date: 07/17/2008.

Accession Number: 20080721–0016.

Comment Date: 5 p.m. Eastern Time on Thursday, August 7, 2008.

Docket Numbers: ER04–157–029; ER04–714–019; EL05–89–008.

Applicants: Bangor Hydro-Electric Company; Florida Power & Light Company; New England.

Description: Central Vermont Public Service Corporation submits its additional billings report in compliance with the Commission's 3/24/08 rehearing order in Bangor Hydro-Electric Co. etc.

Filed Date: 07/14/2008.
Accession Number: 20080716–0005.
Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER05–168–005; ER06–274–010; EL05–19–006.
Applicants: Southwestern Public Service Company.
Description: Golden Spread Electric Cooperative Inc. *et al.* submits Amendment 1 to Offer of Settlement and Settlement Agreement.
Filed Date: 07/18/2008.
Accession Number: 20080722–0047.
Comment Date: 5 p.m. Eastern Time on Friday, August 8, 2008.

Docket Numbers: ER06–864–013; ER07–1117–004; ER05–1232–012.
Applicants: Bear Energy LP; BE KJ LLC; J.P. Morgan Ventures Energy Corp.
Description: Bear Energy LP *et al.* submits Third Revised Sheet 1 *et al.* to FERC Rate Schedule FERC 1.
Filed Date: 07/17/2008.
Accession Number: 20080721–0015.
Comment Date: 5 p.m. Eastern Time on Thursday, August 7, 2008.

Docket Numbers: ER06–1512–002.
Applicants: Verso Androscoggin LLC.
Description: Amendment to Request for Category 1 Seller Determination of Verso Androscoggin LLC.
Filed Date: 07/18/2008.
Accession Number: 20080718–5076.
Comment Date: 5 p.m. Eastern Time on Friday, August 8, 2008.

Docket Numbers: ER07–1372–002.
Applicants: Midwest Independent Transmission System.
Description: North American Electric Reliability Corp hereby grants Midwest ISO, Inc's request dated 4/13/07 for certification as a Joint Registered Balancing Authority, including its Local Control Centers etc.
Filed Date: 07/14/2008.
Accession Number: 20080716–0032.
Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER07–1421–003; ER07–1422–003; ER08–549–002; ER08–550–002; ER08–573–001; ER08–574–001.
Applicants: PJM Interconnection, L.L.C.; Virginia Electric and Power Company.
Description: Industrial Power Generating Company LLC *et al.* submits a Settlement Agreement and Offer Settlement.
Filed Date: 07/18/2008.
Accession Number: 20080718–0197.
Comment Date: 5 p.m. Eastern Time on Friday, August 8, 2008.

Docket Numbers: ER08–549–002; ER08–550–002; ER08–573–001; ER08–574–001.
Applicants: PJM Interconnection, L.L.C.; Virginia Electric and Power Company.
Description: Industrial Power Generating Company LLC et al. submits a Settlement Agreement and Offer Settlement.
Filed Date: 07/18/2008.
Accession Number: 20080718–0197.
Comment Date: 5 p.m. Eastern Time on Friday, August 8, 2008

Docket Numbers: ER08–637–003.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits its proposed revisions to its Open Access Transmission and Energy Markets Tariff to comply with specific directives set forth in FERC's 6/13/08 Order.
Filed Date: 07/14/2008.
Accession Number: 20080715–0142.
Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER08–746–002.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits a amendatory filing to correct the clerical error in the Open Access Transmission Tariff language proposed in the June 25, 2008 filing.
Filed Date: 07/18/2008.
Accession Number: 20080721–0014.
Comment Date: 5 p.m. Eastern Time on Friday, August 8, 2008.

Docket Numbers: ER08–821–002.
Applicants: Hazleton Generation LLC.
Description: Hazelton Generation LLC submits an application for determination that it is a Category 1 Seller.
Filed Date: 07/18/2008.
Accession Number: 20080722–0048.
Comment Date: 5 p.m. Eastern Time on Friday, August 8, 2008.

Docket Numbers: ER08–884–001; ER08–913–001.
Applicants: Midwest Independent Transmission System; Independent Transmission System Operator.
Description: Midwest Independent Transmission System Operator, Inc. *et al.* submits proposed Appendix H of the Congestion Management Process of their Joint Operating Agreements in compliance with FERC's July 1 Order.
Filed Date: 07/16/2008.
Accession Number: 20080718–0196.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 6, 2008.

Docket Numbers: ER08–996–002.
Applicants: CBA Endeavors, LLC.
Description: CBA Endeavors, LLC requests acceptance of FERC Electric Tariff, Original Volume 1 under which it will engage in wholesale sales of electric energy, and capacity at market-based rates, the grant of certain blanket approvals and waiver etc.
Filed Date: 07/14/2008.
Accession Number: 20080715–0143.
Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER08–1147–001.
Applicants: SG Energy LLC.
Description: SG Energy, LLC's Amended Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority, Original Volume 1.
Filed Date: 07/14/2008.
Accession Number: 20080716–0004.
Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER08–1250–000.
Applicants: Haverhill North Coke Company.
Description: Haverhill North Coke Company submits an application for Market-Based Rate Authority, Certain Blanket Authorizations and Request for Expedited Consideration.
Filed Date: 07/14/2008.
Accession Number: 20080715–0200.
Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER08–1258–000.
Applicants: New York Independent System Operator, Inc.
Description: Report of tariff implementation issues and request for tariff waivers of the New York Independent System Operator Inc.
Filed Date: 07/14/2008.
Accession Number: 20080715–0017.
Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER08–1259–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator Inc submits First Revised Service Agreement 1497 under FERC Electric Tariff, Third Revised Volume 1.
Filed Date: 07/14/2008.
Accession Number: 20080715–0018.
Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER08–1264–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits a revision to APS's Open Access Transmission Tariff.
Filed Date: 07/14/2008.
Accession Number: 20080715–0150.
Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER08–1265–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool submits a Letter Agreement between

SPP as Transmission Provider, American Electric Power Service Corporation as the Transmission Customer and AEP as agent for Southwestern Electric Power Company etc.

Filed Date: 07/14/2008.

Accession Number: 20080715–0149.

Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER08–1266–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed Interin Interconnection Service Agreement entered into among PJM, Virginia Electric and Power Company and Virginia Electric and Power Company.

Filed Date: 07/14/2008.

Accession Number: 20080715–0148.

Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER08–1267–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an interconnection service agreement and interconnection construction agreement among PJM PPL Renewable Energy LLC and Pennsylvania Electric Company a FirstEnergy Company.

Filed Date: 07/14/2008.

Accession Number: 20080715–0147.

Comment Date: 5 p.m. Eastern Time on Monday, August 4, 2008.

Docket Numbers: ER08–1276–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits a Service Agreement for Wholesale Distribution Service *et al.*

Filed Date: 07/17/2008.

Accession Number: 20080718–0195.

Comment Date: 5 p.m. Eastern Time on Thursday, August 7, 2008.

Docket Numbers: ER08–1277–000.

Applicants: ISO New England Inc., New England Power Pool.

Description: ISO New England, Inc *et al.* submits 1st Revised Sheet 519 *et al.* to FERC Electric Tariff 3.

Filed Date: 07/17/2008.

Accession Number: 20080718–0248.

Comment Date: 5 p.m. Eastern Time on Thursday, August 7, 2008.

Docket Numbers: ER08–1278–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Revision 6 to Appendix A First Revised FERC Rate Schedule 297 *et al.*

Filed Date: 07/17/2008.

Accession Number: 20080718–0247.

Comment Date: 5 p.m. Eastern Time on Thursday, August 7, 2008.

Docket Numbers: ER08–1279–000.

Applicants: Southaven Power, LLC.

Description: Southaven Power LLC submits a notice of cancellation of FERC Electric Tariff, First Revised Volume 1.

Filed Date: 07/18/2008.

Accession Number: 20080722–0045.

Comment Date: 5 p.m. Eastern Time on Friday, August 8, 2008.

Docket Numbers: ER08–1280–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits the Agreements include terms and conditions that do not conform to the standard form of service agreement that is in SPP's Open Access Transmission Tariff.

Filed Date: 07/18/2008.

Accession Number: 20080722–0046.

Comment Date: 5 p.m. Eastern Time on Friday, August 8, 2008.

Docket Numbers: ER08–1286–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits Revised Rate Schedule 114 with the City and County of San Francisco.

Filed Date: 07/22/2008.

Accession Number: 20080723–0033.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: ER08–1287–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company submits an executed Agreement for Dynamic Scheduling of the Apex Generating Station between Nevada Power Company and Las Vegas Power Company.

Filed Date: 07/22/2008.

Accession Number: 20080723–0032.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR06–1–017; RR07–1–004; RR07–2–004; RR07–3–005; RR07–4–004; RR07–5–005; RR07–6–004; RR07–7–004; RR07–8–005; RR07–8–005.

Applicants: North American Electric Reliability Corp.

Description: Compliance Filing of the North American Electric Reliability Corporation in Response to March 21 2008 Order in Dockets RR06–1 *et al.* including Attachments 1 through 11.

Filed Date: 07/21/2008.

Accession Number: 20080721–5060.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: RR07–14–000.

Applicants: North American Electric Reliability Corp.

Description: Compliance Filing of the North American Electric Reliability Corporation in Response to FERC Order on Filing of Reliability Enhancement Programs.

Filed Date: 07/21/2008.

Accession Number: 20080721–5179.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: RR07–16–004.

Applicants: North American Electric Reliability Corp.

Description: North American Electric Reliability Corporation's compliance filing in Response to the Commission's June 19, 2008 Order.

Filed Date: 07/21/2008.

Accession Number: 20080721–5166.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: RR08–4–002.

Applicants: North American Electric Reliability Corp.

Description: Compliance Filing in Response to Paragraph 40 of Order on Violation Severity Levels.

Filed Date: 07/21/2008.

Accession Number: 20080721–5177.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–17498 Filed 7–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 24, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–82–000.
Applicants: Wapsipinicon Wind Project, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generatory Status of Wapsipinicon Wind Project, LLC.
Filed Date: 07/23/2008.
Accession Number: 20080723–5060.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4159–014; ER06–399–008; ER06–398–008; ER04–268–011.
Applicants: Duquesne Light Company, Duquesne Power, LLC, Duquesne Keystone, LLC, Duquesne Conemaugh, LLC.
Description: Notice of Change in Status of Duquesne Light Company, *et al.* under ER98–4159, *et al.*
Filed Date: 07/23/2008.
Accession Number: 20080723–5078.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER01–751–012.
Applicants: Mountain View Power Partners, LLC.
Description: Mountain View Power Partners, LLC submits notice of change in status in connection with sale by AES Western MV Acquisition, LLC of a tax equity interest in Mountain View to JPM Capital Corporation, etc.
Filed Date: 07/21/2008.
Accession Number: 20080723–0035.
Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER05–168–006; EL05–19–007.
Applicants: Southwestern Public Service Company.
Description: Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Coop submits a compliance filing.
Filed Date: 07/21/2008.
Accession Number: 20080723–0141.
Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER05–330–003.
Applicants: City Power Marketing, LLC.
Description: Supplement to Application.
Filed Date: 07/23/2008.
Accession Number: 20080723–5084.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER05–737–002.
Applicants: Commerce Energy Inc.
Description: Commerce Energy Inc., submits analysis and rate schedule revisions.
Filed Date: 07/23/2008.
Accession Number: 20080724–0027.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER06–615–026; ER07–1257–008.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp., submits instant filing in compliance with the Commission's Order Conditionally Accepting, Subject to Modification, MRTU Compliance Filings, etc.
Filed Date: 07/21/2008.
Accession Number: 20080723–0031.
Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER06–739–015; ER06–738–015; ER03–983–012; ER07–501–011; ER07–758–008; ER08–649–006; ER02–537–016.
Applicants: East Coast Power Linden Holding, LLC; Cogen Technologies Linden Venture, L.P.; Fox Energy Company, LLC; Birchwood Power Partners, L.P.; Inland Empire Energy Center, L.L.C.; EFS Parlin Holdings, LLC; Shady Hills Power Company, L.L.C.
Description: Notice of Non-Material Change in Status (Order No. 652) of GE Companies (by Aircraft Svc. Corp.).
Filed Date: 07/23/2008.
Accession Number: 20080723–5025.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER06–864–014; ER07–1356–005; ER07–1112–004; ER07–1113–004; ER07–1115–004; ER07–1117–005; ER07–1118–004; ER07–1119–004; ER07–1120–004; ER07–1122–004; ER06–1543–010; ER00–2885–020; ER01–2765–019; ER07–1358–005; ER08–148–004; ER05–1232–013; ER02–1582–017; ER02–2102–019; ER03–1283–014.
Applicants: Bear Energy LP; BE Alabama LLC; BE Allegheny LLC; BE CA LLC; BE Colquitt LLC; BE KJ LLC; BE Rayle LLC; BE Red Oak LLC; BE Satilla LLC; BE Walton LLC; Brush Cogeneration Partners; Cedar Brakes I LLC; Cedar Brakes II, LLC; BE Louisiana LLC; Central Power & Lime INC; JPMorgan Ventures Energy Corporation; Mohawk River Funding IV, L.L.C.; Utility Contract Funding, L.L.C.; Vineland Energy, LLC.
Description: Notice of Non-Material Change in Status of JP Morgan Ventures Energy Corporation.
Filed Date: 07/21/2008.
Accession Number: 20080721–5174.
Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER07–549–003; EL07–71–002; EC06–126–005.
Applicants: NSTAR Electric Company.
Description: NSTAR Electric Company submits proposed revisions to Schedule 21–NSTAR of Section II of the ISO New England, Inc., Transmission, Markets and Services Tariff, FERC Electric Tariff 3, effective 9/20/08.
Filed Date: 07/22/2008.
Accession Number: 20080724–0031.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: ER07–749–002.
Applicants: Dyon, LLC.
Description: Dyon, LLC submits its application for Category 1 Status and amendments to its market-based rate schedule in compliance with Commission Order 697.
Filed Date: 07/21/2008.
Accession Number: 20080723–0038.
Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER08–73–002.
Applicants: California Independent System Operator C.
Description: California Indep. System Operator Corp submits its Market Redesign and Technology Upgrade.
Filed Date: 07/21/2008.
Accession Number: 20080723–0039.
Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER08–697–002.

Applicants: ISO New England Inc. and New England Pow.

Description: ISO New England Inc *et al.* submits Second Revised Sheet 7103B et al. to FERC Electric Tariff 3 to Section III.1.10.7 of Market Rule 1.

Filed Date: 07/23/2008.

Accession Number: 20080723–0037.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER08–831–002.

Applicants: Progress Energy, Inc.

Description: Progress Energy Carolinas Inc *et al.* submits their compliance filing to the Joint Open Access Transmission Tariff under ER08–831.

Filed Date: 07/21/2008.

Accession Number: 20080722–0049.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER08–980–001.

Applicants: Alliant Energy Corporate Services, Inc.

Description: Interstate Power and Light Company submits a wholesale power supply agreement that complies with FERC's letter order.

Filed Date: 07/22/2008.

Accession Number: 20080724–0029.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: ER08–891–001.

Applicants: Wisconsin Power and Light Company.

Description: Wisconsin Power and Light Company submits a redline document showing the changes that were made to wholesale power agreement with Adams Columbia Electric Coop in compliance with FERC's 6/26/08 Order.

Filed Date: 07/23/2008.

Accession Number: 20080724–0026.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER08–911–001.

Applicants: Alliant Energy Corporate Services, Inc.

Description: Wisconsin Power and Light Company submits a wholesale power agreement that complies with FERC's Letter Order issued on 6/26/08.

Filed Date: 07/23/2008.

Accession Number: 20080724–0024.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER08–924–001.

Applicants: Alliant Energy Corporate Services, Inc.

Description: Wisconsin Power and Light Company submits a redline document showing the changes that were made to wholesale power agreement.

Filed Date: 07/23/2008.

Accession Number: 20080724–0025.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER08–1147–002.

Applicants: SG Energy LLC.

Description: SG Energy, LLC submits an Amended Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Filed Date: 07/21/2008.

Accession Number: 20080723–0036.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER08–1281–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits its Exigent Circumstances Filing Requesting Authority to Amend its Tariffs to Preclude the Scheduling of Certain External Transactions etc.

Filed Date: 07/21/2008.

Accession Number: 20080722–0092.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER08–1282–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits an annual adjustment to a transmission service rate under the Interconnection Agreement between PG&E and the Sacramento Municipal Utility District.

Filed Date: 07/21/2008.

Accession Number: 20080723–0042.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER08–1283–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits a notice of termination of the Generator Special Facilities Agreement and the Generator Interconnection Agreement with Duke Energy Morror Bay LLC.

Filed Date: 07/21/2008.

Accession Number: 20080723–0041.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER08–1284–000.

Applicants: ISO New England Inc.

Description: ISO New England, Inc and the New England Power Pool Participants Committee submits revisions to the Forward Capacity Market rules conditionally accepted by the FERC on 4/16/07.

Filed Date: 07/21/2008.

Accession Number: 20080723–0043.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER08–1285–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits an electric tariff filing on eligibility for financial transmission rights.

Filed Date: 07/21/2008.

Accession Number: 20080723–0040.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: ER08–1289–000; ER08–1290–000; ER08–1291–000; ER08–1292–000; ER08–1193–000.

Applicants: California Independent System Operator C.

Description: Motion of California Independent System Operator Corporation under ER08–1193, *et al.* to Consolidate Proceedings, to Shorten Time Period for Answers, and for Expedited Commission Action.

Filed Date: 07/22/2008.

Accession Number: 20080722–5105.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–121–000.

Applicants: Florida Power & Light Company.

Description: Third Revised Tariff Sheet 23 and Third Revised Tariff Sheet 24 containing Section 2.2 of its Open Access Transmission Tariff to reflect the new pro forma provision, etc. under New Docket.

Filed Date: 07/21/2008.

Accession Number: 20080721–5054.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: OA08–122–000.

Applicants: Tampa Electric Company.

Description: Order No. 890 OATT Filing of Tampa Electric Company

Filed Date: 07/23/2008.

Accession Number: 20080723–5093.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH08–23–001.

Applicants: Boralex Inc.

Description: Boralex Inc. notice of change in material facts.

Filed Date: 07/22/2008.

Accession Number: 20080722–5104.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–17499 Filed 7–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–19–000]

T.W. Phillips Pipeline Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Bionol Clearfield Pipeline Project and Request for Comments on Environmental Issues

July 24, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will address the environmental impacts of the Bionol Clearfield Pipeline Project proposed by T.W. Phillips Pipeline Corporation (Phillips). The Commission will use the EA in its decision-making process to determine whether or not to authorize the project. This notice explains the scoping process we [1] will use to gather environmental input from the public and interested agencies on the projects. Your input will help the Commission determine the issues that need to be evaluated in the EA. Please note that the scoping period will close on August 25, 2008.

Details on how to submit written comments are provided in the Public Participation section of this notice.

This Notice of Intent (NOI) to Prepare an Environmental Assessment for the proposed Bionol Clearfield Pipeline Project is being sent to federal, state, and local government agencies, elected officials, affected landowners, environmental and public interest groups, Native American tribes, other interested parties, and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement for its project. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

Phillips proposes to construct, own, operate, and maintain certain natural gas transportation facilities within the Clearfield County, Pennsylvania. The general location of the proposed pipeline is shown in the figures included as Appendix 1.[2] The purpose of the project is to provide 12,500 dekatherms per day of firm transportation capacity for Bionol Clearfield, LLC's ethanol plant under construction in Clearfield, Pennsylvania.

Phillips proposes to construct:

- 7.74 miles of 6-inch-diameter pipeline lateral from Columbia Gas Transmission Corporation's 16-inch-diameter pipeline to the Bionol Clearfield, LLC ethanol plant, all within the Clearfield County, Pennsylvania;
- A meter station at milepost (MP) 0.0
- A regulator station at MP 7.74; and
- Three mainline valves.

Work on the project is proposed to begin in April 2009 with the proposed in-service date for July 2009.

Land Requirements for Construction

Construction of the project would disturb about 90 acres of land. After construction Phillips would retain 49 acres as new permanent right-of-way.

Generally, the width of the proposed construction right-of-way would be 75 feet, consisting of the proposed new 50-foot-wide permanent right-of-way and a 25-foot-wide temporary right-of-way used for construction only. The construction right-of-way would be reduced in areas containing sensitive resources such as wetlands and stream banks. Work at the aboveground facilities (meter station, regulator station, and mainline valves) would take place within this proposed construction right-of-way.

Additional temporary extra workspaces beyond the typical construction right-of-way limits would be required at certain feature crossings (e.g., roads, railroads, wetlands, or waterbodies, utilities), in areas with steep side slopes, in areas requiring special construction techniques, and in areas needing topsoil segregation. In addition, one to three temporary pipe storage/contractor yards along the pipeline route would also be required. Phillips would access its project construction areas primarily along existing pipeline rights-of-way and

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NW., Washington, DC 20426, or call (202) 502–8371. For instructions on connectiing to eLibrary refer to the Public Participation section of this space. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Phillips.

existing roads; however, other temporary and permanent access roads would be required for construction and operation.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an interstate natural gas pipeline should be approved. The FERC will use the EA to consider the environmental impact that could result if the project is authorized under section 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals to be considered by the Commission. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. With this NOI, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EA. All comments received will be considered during preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Threatened and endangered species;
- Air quality and noise;
- Hazardous waste; and
- Public safety.

In the EA, we will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under the FERC's Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

With this NOI, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA (see Appendix 2). These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions in Appendix 2 of this NOI.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Phillips. This preliminary list of issues may be changed based on your comments and our analysis.

- Federally listed threatened and endangered species are present in the project area.
- Pipeline route variations will be studied.
- Riparian vegetation associated with the horizontal directional drill crossing of Clearfield Creek.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Bionol Clearfield Pipeline Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC, on or before August 25, 2008.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number PF08–19–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

Environmental Mailing List

We may mail the EA for public comment. If you are interested in receiving it, please return the Mailing List Retention Form (Appendix 3). If you do not return the Mailing List Retention Form, you will be taken off the mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary link.'' Click on the eLibrary link, select ''General Search'' and enter the project docket number excluding the last three digits (PF08–17) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Phillips will establish an Internet Web site for the Bionol Clearfield Pipeline Project in the near future, which would

include contact information and information about its proposed project.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17494 Filed 7–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13226–000]

Blue Heron Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

July 24, 2008.

On May 8, 2008, Blue Heron Hydro, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ball Mountain Dam Hydroelectric Project, which would be located near the town of Jamaica on the West River at the existing U.S. Army Corps of Engineers' Ball Mountain Dam and Reservoir in Windham County, Vermont. The proposed project would utilize federal lands.

The proposed Ball Mountain Dam Hydroelectric Project would utilize U.S. Army Corps of Engineers' Ball Mountain Dam and would consist of the following new facilities: (1) An 80-foot-long, 11.5-foot-wide steel penstock, (2) a powerhouse containing 3 generating units with a total installed capacity of 3.7 MW, (3) a 2,500-foot-long, 12.5 kV underground transmission line, connecting to an existing power line; and (4) appurtenant facilities. The project would have an annual generation of 12.1 gigawatts-hours, which would be sold to a local utility.

Applicant Contact: Ms. Lori Barg, Blue Heron Hydro, LLC, 113 Bartlett Rd., Plainfield, VT 05667; *phone:* (802) 454–8458. *FERC Contact:* Tom Papsidero, (202) 502–6002.

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–13226) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17495 Filed 7–30–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0527; FRL–8374–3]

Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before September 2, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0527 and the pesticide petition number (PP) of interest, by one of the following methods:

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

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

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

Instructions: Direct your comments to EPA–HQ–OPP–2008–0527 and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

PP Number	Docket ID Number
PP 7F7252	EPA–HQ–OPP–2008–0417
PP 7F7299	EPA–HQ–OPP–2008–0528
PP 7E7276	EPA–HQ–OPP–2008–0529

III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

New Exemptions from Tolerance

1. *PP 7F7252.* Arysta LifeScience North America Corporation, 15401 Weston Parkway, Suite 150, Cary, NC, 27513, proposes to establish an exemption from the requirement of a tolerance for residues of the biochemical pesticide, polyoxin D zinc salt, zinc 5-[[2-amino-5-o-(aminocarbonyl)-2-deoxy-L-xylonoyl]amino]-1-(5-carboxy-3,4-dihydro-2,4-dioxo-1(2H)-pyrimidinyl)-1,5-dideoxy--D-allofuranuronatein, in or on almonds, cucurbits, fruiting vegetables, ginseng, grapes, pistachios, pome fruit, potatoes, and strawberries. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Chris Pfeifer, (703) 308–0031, *pfeifer.chris@epa.gov*.

2. *PP 7F7299.* AgraQuest, Inc, 1540 Drew Avenue, Davis, CA, 95618, proposes to establish an exemption from the requirement of a tolerance for residues of the biochemical insecticide and acaricide, chenopodium ambrosioides near ambrosioides, in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Chris Pfeifer, (703) 308–0031, *pfeifer.chris@epa.gov*.

3. *PP 7E7276.* SciReg, Inc. care of Laboratoires Goemar SA, 12733 Director's Loop, Woodbridge, VA, 22192, proposes to establish an exemption from the requirement of a tolerance for residues of the biochemical pesticide, laminarin, in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Chris Pfeifer, (703) 308–0031, *pfeifer.chris@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 23, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–17597 Filed 7–30–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8699–5]

Notice of Availability of Final NPDES General Permits for Noncontact Cooling Water Discharges in the Commonwealth of Massachusetts (Including Both Commonwealth and Indian Country Lands) and the State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Final NPDES General Permits MAG250000 and NHG250000.

SUMMARY: The Director of the Office of Ecosystem Protection, EPA-New England, is today providing notice of availability of the final National Pollutant Discharge Elimination System (NPDES) general permits for noncontact cooling water (NCCW) discharges to certain waters of the Commonwealth of Massachusetts (including both Commonwealth and Indian country lands) and the State of New Hampshire.

The general permits replace the NCCW general permits which expired on April 25, 2005. The general permits establish permit eligibility conditions, Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions, and management practices for facilities discharging NCCW. Owners and/or operators of facilities discharging NCCW, including those currently authorized to discharge under the expired general permits, are required to submit an NOI to be covered by one of the general permits to both EPA-New England and the appropriate State agency. EPA and the State will review the NOI and the facility will receive written notification from EPA stating whether permit coverage and authorization to discharge under one of the general permits is approved. The eligibility requirements for coverage under the general permits are discussed in detail under Part 3 of the permits. The reader is strongly urged to go to that section of the general permits to determine eligibility. The general permits do not cover new sources as defined at 40 CFR 122.2.

DATES: The general permits shall be effective on July 31, 2008, and they will expire at midnight, five (5) years from the last day of the month preceding the effective date.

ADDRESSES: The required notification information to obtain permit coverage is provided for in the general permits. This information shall be submitted to both EPA and the appropriate State. Notification information may be sent via USPS, email or fax to EPA at EPA-Region 1, Office of Ecosystem Protection (CMU), One Congress Street, Boston, Massachusetts, 02114–2023; e-mail address *NCCWGP@EPA.GOVRegion01*; or fax number (617) 918–2188. Notification information shall be submitted to the appropriate State agency at the addresses listed in the general permits, Part 5.9. See also Appendix 6, State Agency Notification Requirements and Mailing Addresses.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final general permits may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays, from Austine Frawley at *Frawley.Austine@EPA.GOV* or (617) 918–1065.

SUPPLEMENTARY INFORMATION: The general permits may be viewed over the Internet at the EPA Web site *http://www.epa.gov/region1/npdes/nccwgp.html*. To obtain a paper copy of the general permits, please contact Ms. Frawley using the contact information provided above. A reasonable fee may be charged for copying requests.

Dated: July 24, 2008.

Ira W. Leighton,

Acting Regional Administrator, Region 1.

[FR Doc. E8–17599 Filed 7–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8697–3]

Findings of Informal Review of the State of Michigan's Approved Clean Water Act Section 404 Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces EPA's findings from its informal review of the state of Michigan's approved Clean Water Act (CWA) Section 404 program. EPA finds that, at this time, formal program withdrawal proceedings should not be initiated for Michigan's approved CWA Section 404 program. EPA's Final Report of this review is now available. EPA has identified several deficiencies in Michigan's approved CWA Section 404 program; those are identified in the Final Report along with corrective actions which Michigan has proposed to take and a schedule for implementing the corrective actions.

FOR FURTHER INFORMATION CONTACT: Sue Elston, Watersheds and Wetlands Branch, at the EPA address noted above or by telephone at (312) 886–6115. The Final Report containing EPA's findings is available via the Internet at the following location: *http://www.epa.gov/region5/water/wshednps/notices.htm*. In addition, a hard copy of the information supporting today's notice is available for review at EPA Region 5, 77 West Jackson Boulevard, 16th floor, Chicago, Illinois and Library of Michigan, 702 Kalamazoo Street, Lansing, Michigan. To arrange for access to the docket materials in Chicago call (312) 886–6115 or in Lansing call (517) 373–1300.

SUPPLEMENTARY INFORMATION:

I. Background

On October 16, 1984, EPA approved the regulatory permitting program that the state of Michigan had submitted pursuant to the requirements and guidelines contained in Subsections 404(g) and 404(h) of the CWA. 33 U.S.C. 1344(g) and (h) (See 49 FR 38947, October 2, 1984.) In that notice of approval, EPA noted that the Administrator was required to approve a program submitted by a state pursuant to Subsection 404(g) of the CWA unless that program does not meet the requirements of Subsection 404(h) of the CWA. EPA stated in the notice that it had determined the program submitted by the state of Michigan met those statutory requirements. The components of the approved CWA Section 404 program are stated at 40 CFR 233.70.

The Michigan state agency authorized in 1984 to administer the approved CWA Section 404 program was the Department of Natural Resources. Later the state of Michigan reorganized its agencies and transferred authority to administer the approved CWA Section 404 program to the Department of Environmental Quality (MDEQ). EPA approved this transfer on November 14, 1997 (62 FR 61173, November 14, 1997).

On February 4, 1997 EPA received a request to review claims that Michigan's approved CWA Section 404 program had serious deficiencies and to either insist Michigan take specific remedial measures or withdraw Michigan's administration of CWA Section 404. EPA decided to treat the request as a petition to withdraw program approval and to informally review all aspects of Michigan's approved CWA Section 404 program. The EPA Regional Administrator of Region 5 informed the Director of MDEQ of the commencement of the CWA Section 404 program review in a letter dated January 22, 1998.

II. Overview of EPA Review of Michigan's CWA Section 404 Program

The scope of EPA's informal review included MDEQ permit processing,

decision making, and enforcement of Section 404 permits; and a comprehensive review of the adequacy of Michigan's current legal authorities which establish Michigan's CWA Section 404 program. EPA's review included materials submitted by MDEQ between June 1999 and the date of this Notice. Those materials included an updated program description (40 CFR 233.11); a new Michigan Attorney General statement confirming that state laws and regulations provide adequate authority to administer the CWA Section 404 program and addressing the other subjects mentioned at 40 CFR 233.12; and a compilation of all current, relevant Michigan laws and regulations. During its program review EPA reviewed hundreds of permitting files, enforcement files, and citizen complaint files that MDEQ generated between 1995 and 1999. Additionally, EPA reviewed MDEQ written decisions issued in contested permitting cases between January 1994 and early 1999. The contested case decisions represent final agency action by MDEQ in matters involving individual permits processed under the approved CWA Section 404 program. Also as part of the program review, EPA consulted with offices of the U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (Corps) which interact with MDEQ during its administration of the program. Finally, during January and May of 1999, EPA held four availability sessions to receive comments from interested persons.

In November 2002, EPA completed its preliminary review and analysis of all materials and concluded that the review findings did not warrant a recommendation to the Administrator to initiate formal program withdrawal proceedings, but did warrant corrective actions by the state of Michigan. EPA's preliminary findings and the necessary corrective actions were identified in the document titled *Results of the U.S. Environmental Protection Agency Region 5 Review of Michigan Department of Environmental Quality's Section 404 Program (Preliminary Report)*. EPA announced its preliminary findings in a **Federal Register** Notice published on January 7, 2003 (68 FR 772, January 7, 2003). EPA invited public comment, for a period of sixty (60) days, on that notice and the Preliminary Report. In a November 7, 2003 letter to the EPA Regional Administrator of Region 5, the Director of MDEQ responded to the content of EPA's Preliminary Report and proposed a series of corrective actions to be undertaken by the state in order to achieve and maintain full consistency with the CWA Section 404 program requirements. EPA completed its review of the submitted public comments, communicated further with Michigan, and performed additional analysis both as prompted by public comments and as considered appropriate by EPA. EPA has also completed its review and analysis of the corrective actions proposed by MDEQ. EPA's final findings are presented in the document titled—*Results of the U.S. Environmental Protection Agency Region 5 Review of Michigan Department of Environmental Quality's Section 404 Program (Final Report)*.

EPA found both strengths and deficiencies in Michigan's legal authorities establishing the approved CWA Section 404 program and in the program's administration by MDEQ. EPA has concluded that program withdrawal proceedings should not be initiated at this time. However, this Notice and the Final Report are not EPA's final action on the petition to withdraw. Within 36 months of the date of this notice, EPA will review all corrective actions completed by Michigan and determine whether initiating formal withdrawal proceedings is warranted. A summary of the major program deficiencies identified by EPA and the corrective actions proposed by the state follow; a more detailed analysis is contained in the Final Report. EPA considers the schedule for completion of the corrective actions to be reasonable and has adopted it in the Final Report.

III. Deficiencies in Michigan's CWA Section 404 Program and Proposed Corrective Actions

A. CWA Jurisdiction

EPA had concerns that the scope of jurisdiction provided by Michigan law was not as broad as federal CWA Section 404 jurisdiction. One major concern was that Michigan had not completed its wetland inventories and Michigan law did not extend jurisdiction over non-contiguous wetlands in any county in Michigan that had a population of less than 100,000 residents unless a wetland inventory was performed. Michigan made the commitment to perform wetland inventories in all counties with less than 100,000 residents. In January 2007, Michigan certified that MDEQ had completed the statewide wetland inventory.

During EPA's program review the U.S. Supreme Court issued two decisions which address jurisdiction over waters of the United States under the CWA. *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC); *Rapanos* v. *United States*, 547 U.S. 715 (2006). EPA considered those decisions when reviewing Michigan's CWA Section 404 program.

EPA completed its review of the jurisdictional scope of Michigan's approved CWA Section 404 program, considering the fact Michigan completed its statewide wetland inventory, the recent U.S. Supreme Court decisions and additional factors outlined in the Final Report. EPA finds the scope of jurisdiction provided by Michigan law is at least as broad as the scope of federal CWA Section 404 jurisdiction.

B. Exemptions From CWA Jurisdiction

Michigan law appears to exempt a broader range of activities than does the CWA under Subsection 404(f), including exemptions for discharges occurring as part of certain agricultural activities; discharges related to drain creation and improvement; and discharges associated with iron and copper mining tailings basins. There is no federal exemption for these activities. MDEQ has agreed to seek amendment of Part 303, the state's Wetlands Protection Act, to: (1) Limit the exemptions available under M.C.L. Section 324.30305(2)(e) to areas of established agricultural or silvicultural operations in accordance with federal law; (2) delete the exemption of agricultural drainage under M.C.L. Section 324.30305(2)(j); (3) amend M.C.L. Section 324.30305(2)(h) to delete mention of straightening, widening or deepening; (4) eliminate the exemption for iron and copper mining tailings basins under M.C.L. Section 324.30305(2)(o); and (5) delete exemption for utility and maintenance activities found at M.C.L. Sections 324.30305(2)(l) and (m) to the extent these activities are regulated under CWA Section 404. MDEQ has committed to initiating these corrective actions within 6 months of the date of this Notice and completing these corrective actions within 36 months of the date of this Notice.

C. Minor Permits Under Part 301

EPA is concerned that Part 301's provisions for minor permits do not ensure that each minor permit category will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment as required under the federal law. MDEQ has agreed to promulgate a new Part 301 rule

requiring the consideration of cumulative impacts before new minor permit categories are established. MDEQ has agreed to promulgate the rule within 24 months of the date of this Notice.

D. CWA 401(b)(1) Guidelines

EPA is concerned that Michigan law fails to incorporate the CWA Section 404(b)(1) Guidelines into its permit decision making process. One element of EPA's concern is the absence from Michigan law of a clear prohibition on the issuance of permits that will jeopardize the continued existence of a threatened or endangered (T & E) species or their critical habitat, as required by the CWA Section 404(b)(1) Guidelines. During the course of this program review, MDEQ developed administrative rules under Part 303 which have addressed some of EPA's concerns regarding the application of a feasible and prudent alternatives analysis, water dependency analysis, and burdens of proof. MDEQ has now proposed to implement a more comprehensive corrective action by promulgating administrative rules for Parts 301 and 303 that will incorporate the federal Section 404(b)(1) Guidelines by reference. MDEQ has agreed to promulgate these rules within 24 months of the date of this Notice.

E. Public Participation in Permitting Process

A state that is administering a CWA Section 404 program must provide an opportunity for public participation in the state's enforcement process by fulfilling the requirements of either 40 CFR 233.41(e)(1) or (e)(2). While MDEQ has stated that it will comply with 40 CFR 233.41(e)(2), EPA finds that Michigan's laws and rules do not clearly require the state to observe two of the three public participation requirements of 40 CFR 233.41(e)(2). To correct this situation, MDEQ has agreed to work with EPA to revise the EPA–MDEQ Memorandum of Agreement to contain two additional commitments: (1) MDEQ will not oppose intervention by any citizen when permissive intervention in a state enforcement action is authorized by Michigan law, and (2) MDEQ will ensure that all proposed settlement agreements of enforcement actions filed in state court are publicly noticed with a 30-day public comment period provided.

F. General Administration of CWA Section 404 Program

The program review found that in general, MDEQ is doing a good job of administering its CWA Section 404 program, however, EPA did identify several problems. EPA identified the need for MDEQ to modify its procedures for providing public notice of certain permit-related actions to make these procedures consistent with 40 CFR 233.32. EPA alerted MDEQ that it needs to ensure that interested persons receive public notices of permitting actions with enough time to provide comment, and that it needs to ensure that all adjacent property owners receive copies of the public notices. During this program review, MDEQ addressed the first problem by developing an internet-based system that makes public notices more readily available to the public. MDEQ has addressed the second problem by providing public notices to all adjacent landowners, not just riparian landowners.

G. Endangered Species Act

EPA found that coordination under the federal Endangered Species Act (ESA) is effective for larger projects. Yet our review found that it was not clear that minor permit projects were being effectively screened for potential impacts on T & E species. MDEQ has worked with the USFWS and EPA to develop procedures for screening minor and walk-in permits for the potential to impact T & E species and their critical habitat. These procedures will be finalized within 6 months of the date of this Notice.

H. Enforcement

The program review concludes that MDEQ has maintained a satisfactory enforcement program. MDEQ has designed the enforcement program to identify un-permitted activities and initiates enforcement responses in a timely manner. Overall, Michigan's enforcement program achieves appropriate injunctive relief through wetland restoration and wetland mitigation and seeks and obtains adequate penalties.

IV. Summary of Comments Received and EPA Response

While not required to do so according to the 404 state program regulations at 40 CFR part 233, EPA chose to invite public comment on EPA's January 2003 notice and Preliminary Report. In response to the notice (68 FR 772), EPA received 26 comment letters or e-mail responses. Commenters included two federal agencies (USFWS and the U.S. Forest Service (USFS)); the Grand Traverse Band of Ottawa and Chippewa Indians; two county drain commissioners; two representatives of the Michigan Drain Code Coalition; a member of the Indian Mission Conservation Club; and 19 individual citizens. In addition, the Michigan Wetland Action Coalition representing 52 conservation organizations provided extensive comments.

The majority of commenters agreed with the findings of EPA's Preliminary Report and were supportive of the proposed corrective actions. Four commenters stated that Michigan should continue to administer the CWA Section 404 program since they felt the state program was more stringent than the federal program and the state was doing a better job of protecting the Great Lakes than would the federal government if it administered the program under federal law. A summary of the comments received and EPA responses follow.

A. Federal Agency Comments

The USFWS provided comments on a number of issues addressed in the program review. With regard to Michigan's scope of jurisdiction, the USFWS expressed concern over the lack of a mechanism to ensure that the state's program will remain as rigorous as any program the Corps would administer, even as changes occur to CWA Section 404 jurisdiction, and to the federal Section 404 program, over time. The only remedy that EPA can identify to ensure that Michigan's CWA Section 404 program remains in compliance with the standards set forth at 40 CFR 233.1 is EPA's periodic review of the state's program and EPA's ongoing review of individual permits and cases.

The USFWS continues to have concerns with Michigan's Part 303 which provides that if MDEQ does not approve or disapprove a permit application within 90 days the application shall be considered approved. The USFWS asserts that this time constraint unduly limits the amount of time that federal agencies have to review projects. The USFWS would prefer to have the 90 day time frame deleted from state law or amend the law to make it explicit that if a permit is issued pursuant to the 90 day timeframe, the permit is considered to have been issued under state law only, and is not a CWA Section 404 permit. EPA agrees that MDEQ's 90 day time frame is not congruent with the time frames allowed under 40 CFR 233.50. However, EPA has concluded that, to date, MDEQ, EPA, and other reviewing federal agencies have been able to work to ensure that problems are resolved, or that a permit is denied, before the 90 day deadline is reached. MDEQ asserts that it will ensure that any future permits issued by MDEQ due to the existence of the 90 day deadline, without confirmation of compliance

with the CWA 404(b)(1) Guidelines, will have the legal status of a state-only permit, and not a CWA Section 404 permit. For this reason EPA does not find a corrective action is warranted.

The USFWS commented that EPA needs to submit the informal program review and EPA's review and approval of the state's corrective actions to the consultation requirements of Section 7 of the ESA. The USFWS argued that EPA is taking a federal action which imposes on EPA the obligation to formally consult with the USFWS pursuant to Section 7(a)(2) of the ESA, in order to ensure that these actions are not likely to jeopardize the continued existence of a listed species or the destruction or adverse modification of designated critical habitat. EPA disagrees with the USFWS' position on this issue. We do not intend to enter into formal consultation with the USFWS pursuant to Section 7(a)(2) of the ESA. EPA does not consider its conduct of performing this informal program review and its agreements with Michigan on corrective actions the state will implement to be a ''Federal action'' which triggers ESA Section 7 consultation. In March 2004, EPA shared its legal conclusions regarding the ESA Section 7 consultation issue with the East Lansing Field Office of the USFWS. EPA has emphasized that it is committed to working with USFWS and MDEQ to address concerns regarding whether the state's administration of the CWA Section 404 program is potentially jeopardizing T & E species or their critical habitat.

USFWS also expressed concerns that the MDEQ's process for screening proposed projects to ensure that they will not jeopardize T & E species or their critical habitat is inadequate. The USFWS offered its cooperation to remedy the shortcomings it perceived in MDEQ's review process. The USFWS also suggested that a Memorandum of Agreement between MDEQ, EPA and the USFWS be developed to address the issues the USFWS has raised with regard to T & E species issues. EPA will work with the USFWS and MDEQ on the development of a MOA to address these USFWS concerns. In addition, EPA, MDEQ and the USFWS have recently developed a new procedure for screening minor permit projects to ensure that impacts to T & E species are adequately assessed. Finally, other than the subjects discussed above, the USFWS commends the EPA's review of Michigan's CWA Section 404 program and Michigan's cooperation during the review and subsequent development of corrective actions.

The USFS indicated that it had concerns with how MDEQ is handling permitting on Wild and Scenic Rivers in Michigan. The USFS indicated that Michigan's assumption of the CWA Section 404 program did not waive the need for federal review of applications involving discharges within components of the National Wild and Scenic Rivers System. The USFS indicated that there have been instances of MDEQ staff either issuing a permit for activities for which the USFS has made an adverse finding due to Wild and Scenic River concerns, or issuing modifications to permits after a Section 7 determination was made by the USFS without coordinating with the USFS on the proposed modifications. The USFS requested EPA's support in improving coordination between the USFS and MDEQ. The MOA between EPA and the state currently requires all public notices of CWA Section 404 permit applications for projects proposed in Wild and Scenic Rivers be sent to the appropriate federal agencies for review. EPA notes that provisions in the federal regulations for federal review of CWA Section 404 permit public notices does not require EPA to provide the USFS with copies of the public notices. However, MDEQ does send the USFS public notices for projects proposed on Wild and Scenic Rivers. In the past, the USFS has not provided EPA with any comments on public notices for proposed projects that may involve Wild and Scenic Rivers issues for EPA to include in the federal comment letter that EPA sends to MDEQ pursuant to 40 CFR 233.50. EPA has informed the USFS that EPA is willing to include USFS comments which relate to CWA issues, in the federal comment letter EPA sends to MDEQ provided the USFS meets the time frames established by 40 CFR 233.50.

B. Public Comments

With regard to the state's scope of jurisdiction several commenters expressed the desire for greater protection over small and isolated wetlands. Several commenters wanted the state's inventory of wetlands in counties with populations below 100,000 expedited. Other commenters were skeptical that the inventories would be completed or believed that the inventories would be of little use. Finally, one comment indicated that amending the Michigan statute to address the jurisdictional issue would be a more timely and cost effective action. EPA acknowledges that amending the statute may be more cost effective, however, the state has already completed the inventories for the majority of the state and has committed to providing the necessary resources to complete the inventory during 2006. EPA continues to consider the performance of the wetland inventories to be an adequate corrective action.

A number of commenters concurred with EPA's findings that Michigan's exemptions for drainage, farming and construction of tailings basins for iron and copper mining were less stringent than the federal regulations and supported EPA's position that the statute needs to be amended. MDEQ has agreed to seek amendments to Part 303 to make state exemptions as stringent as the federal exemptions.

Several commenters supported the development of new rules to prescribe best management practices for certain utility work in wetlands. They also stated that if MDEQ could not provide enforcement of the best management practices, that the exemption found at M.C.L. Section 324.30305(l) and (m) should be deleted. MDEQ has agreed to limit these exemptions to activities not regulated under the CWA, to develop general permit categories to authorize the remainder of activities currently exempted, and to define best management practices for these types of utility crossings.

With regard to permitting authority issues, one group of commenters concurred with the EPA's concerns regarding Part 301 provisions for minor permits and agreed that rule changes were needed to ensure that cumulative adverse impacts will be considered before general permit categories are established. MDEQ has agreed to make the necessary rule changes.

One group of commenters disagreed with EPA's finding that the absence of an explicit recapture provision does not render the permitting program inadequate. EPA's position continues to be that part 301 has provisions that are at least as stringent as the recapture clause of the CWA Section 404(f)(2) and that the absence of an explicit recapture provision in part 303 does not render the state's CWA Section 404 permitting program inadequate because the strict application of the exemptions provisions in part 303 should prevent the need to rely on any type of recapture provision.

One group of commenters agreed with EPA's finding that there is a need to make sure that the Michigan permitting program is consistent with the Section 404(b)(1) Guidelines. These same commenters were concerned about EPA and MDEQ's contention that MDEQ can issue a state-only permit which may not adhere to the CWA Section 404(b)(1) Guidelines. These commenters felt that

the issuance of a state-only permit was confusing to the public and supports the notion that Michigan wetland permits are governed solely by Michigan law. EPA notes that Michigan permits are based on Michigan state law and agrees that the issuance of a state-only permit can be confusing in light of the fact that the Michigan program is supposed to be consistent with the CWA Section 404. It is EPA's expectation that once the proposed corrective actions are implemented, the Michigan program will be consistent with the federal program and MDEQ no longer will feel compelled by circumstances to issue state-only permits, except in cases where the 90-day timeframe for approval or disapproval has lapsed and the permit will be a state-only permit. The federal regulations do, however, recognize that there may be cases when the state neither satisfies EPA's objections nor denies the permit. In such an instance the regulations at 233.50(j) state that the Corps shall process the permit application.

A number of commenters criticized MDEQ's enforcement efforts in general. Other commenters disagreed with EPA's finding that MDEQ is adequately authorized to and is observing the federal requirements with regard to investigation of citizen complaints. Some commenters also expressed disagreement with EPA's findings that MDEQ conducts an adequate wetland enforcement program. Commenters expressed concern that MDEQ issues after-the-fact permits too often, rather than take an enforcement action. Commenters also stated that they did not think that MDEQ was adequately monitoring permittees' compliance with permit conditions. EPA agrees that an increase in MDEQ enforcement activity and monitoring of compliance with permit conditions would be beneficial to the resources and would strengthen Michigan's permitting program. EPA finds, however, that MDEQ's enforcement program as administered is adequate and effective. While EPA is not requiring that MDEQ implement any specific corrective actions with regard to its enforcement program, EPA has made a number of recommendations for improvement in the Final Report. EPA also notes that MDEQ is currently taking steps to increase the number of enforcement staff.

Summary of Findings

EPA's informal review of Michigan's CWA Section 404 program included consideration of all the information submitted by MDEQ and the comments received in response to the January 7, 2003 **Federal Register** Notice. EPA has identified several deficiencies in Michigan's CWA Section 404 program. In order to remedy these deficiencies, MDEQ has proposed certain corrective actions and a timetable for completion of these actions. EPA agrees that the state's proposed corrective actions, once implemented, will address the deficiencies identified in Michigan's CWA Section 404 program. The deficiencies and the corrective actions proposed by the state of Michigan are contained in the Final Report and in documents located in the public docket that support this Notice. EPA has concluded that program withdrawal proceedings should not be initiated at this time. However, this Notice and the Final Report are not EPA's final action on the petition to withdraw. Within 36 months of the date of this notice, EPA will review all corrective actions completed by Michigan and determine whether initiating formal withdrawal proceedings is warranted.

Dated: July 22, 2008.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E8–17588 Filed 7–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8699–4]

Proposed Past Cost Administrative Settlement Under Section 122(h)(1) of CERCLA for the Sterling Morton High School Superfund Site, Town of Cicero, Cook County, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ((CERCLA(), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement agreement pursuant to section 122(h)(1) of CERCLA for recovery of past response costs incurred by EPA in connection with the Sterling Morton High School Superfund Site, located in the Town of Cicero, Cook County, Illinois (the ''Site''). The proposed settlement has been approved by the Deputy Section Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the U.S. Department of Justice.

Under the terms of the proposed settlement agreement, within fifteen (15) days of its effective date the following parties will pay $550,000 to the Hazardous Substances Superfund: J. Sterling Morton High School District 201; Amphenol Corporation; Berkshire Investments LLC; Chemtura Corporation; CSX Transportation, Inc.; E.I. Du Pont de Nemours and Company; Getronics NV; Honeywell International Inc.; Total Logistics Control, LLC; and Vesper Holdings LLC. In each of the nine years subsequent to the effective date of the proposed agreement, J. Sterling Morton High School District 201 will pay an additional $50,000. The settlement represents recovery of approximately 91% of the response costs incurred by the Agency in connection with the time-critical removal action conducted by EPA at the Site, plus interest. In exchange for payment, the United States covenants not to sue or take administrative action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover past response costs. In addition, the settling parties are entitled to protection from contribution actions or claims for past response costs, as provided by sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4).

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency will consider all comments received, and may withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments on the proposed settlement must be submitted on or before September 2, 2008.

ADDRESSES: A copy of the proposed settlement agreement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy may also be obtained from Eileen L. Furey, Chief, Multi-Media II, Section 3, U.S. EPA Region 5, 77 W. Jackson Blvd. (Mail Code C–14J), Chicago, Illinois 60604; telephone (312) 886–7950. Written comments on the proposed settlement should be addressed to Eileen Furey at the address specified above, and should reference the Sterling Morton High School Superfund Site, Town of Cicero, Cook County, Illinois, EPA Docket No. V–W–08–C–907.

FOR FURTHER INFORMATION CONTACT: Eileen Furey at the address and phone number specified above.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

Dated: July 21, 2008.

Richard C. Karl,

Director, Superfund Division, Region 5.

[FR Doc. E8–17596 Filed 7–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8699–2]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining To Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: *http://www.epa.gov/compliance/monitoring/programs/caa/adi.html.* The letters and memoranda may be searched on the ADI by date, office of issuance, subpart, citation, control number or by string word searches. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by e-mail at: *malave.maria@epa.gov*. For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background:

The General Provisions to the NSPS in 40 Code of Federal Regulations (CFR) part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are commonly referred to as applicability determinations. See 40 CFR 60.5 and 61.06. Although the part 63 NESHAP and section 111(d) of the Clean Air Act regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping that are different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are commonly referred to as alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are commonly referred to as regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the ADI on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. Today's notice comprises a summary of 84 such documents added to the ADI on July 11, 2008. The subject, author, recipient, date and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *www.epa.gov/compliance/monitoring/programs/caa/adi.html.*

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on July 11, 2008; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter.

We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents. This notice does not change the status of any document with respect to whether it is ''of nationwide scope or effect'' for purposes of section 307(b)(1) of the Clean Air Act. Neither does it purport to make any document that was previously non-binding into a binding document.

ADI DETERMINATIONS UPLOADED ON JULY 11, 2008

Control No.	Category	Subparts	Title
700029	NSPS	Db, Dc	Boiler Derating.
700030	NSPS	Db	Initial Startup for Boiler.
700031	NSPS	Dc	Applicability to Snowmelters.
700032	NSPS	CCCC	Municipal Waste Combustion Exemption.
700033	NSPS	CCCC	Incineration of Untreated Toilet Wastes.
700034	NSPS	D	Final Boiler Derating.
700035	NSPS	CCCC	Municipal Waste Combustion Unit Exemption.
700036	NSPS	Db	Boiler Derating.
700037	NSPS	GG	Alternative Fuel Monitoring.
700038	NSPS	Dc	Reporting Reduction.
700039	NSPS	Dc	Reduction in Fuel Use Recordkeeping.
700040	NSPS	Dc	Boiler Refiring.
700041	NSPS	Dc	Alternative Fuel Monitoring.

ADI DETERMINATIONS UPLOADED ON JULY 11, 2008—Continued

Control No.	Category	Subparts	Title
700042	NSPS	A, D	Boiler Derating.
700043	NSPS	Dc	Alternative Fuel Monitoring.
700044	NSPS	O	Multiple Hearth Sludge Furnace.
700045	NSPS	A	Waiver of 30-Day Notification of Performance Evaluation.
700046	NSPS	CCCC	Municipal Waste Combustion Unit Exemption.
700047	NSPS	Dc	Reduction in Fuel Emissions Reporting.
700048	NSPS	Dc	Alternative Fuel Monitoring.
700049	NSPS	GG	Alternative Fuel Monitoring.
700050	NSPS	D	Boiler Derating.
700051	NSPS	Ec	Waste Weight Surrogate.
700052	NSPS	DD	Standards of Performance for Grain Elevators.
700053	NSPS	Ec	Incineration of Pharmaceutical Wastes.
700054	NSPS	J	Wet Gas Scrubber Opacity Alternative Monitoring.
700055	NSPS	A, GG	Alternate Performance Test Method.
700056	NSPS	III, JJJ	Work Camp Incinerator.
700057	NSPS	Y	Coal Transloader Applicability.
700058	NSPS	FFF	Rotogravure Coating Line Applicability.
700059	NSPS	A, Dc	Alternative Monitoring Plan for Boilers.
700060	NSPS	Ce, Ec	Request for Regulatory Deviation.
700061	NSPS	A, Db	Alternative Opacity Monitoring Procedure.
700062	NSPS	A, Db	Amendment to Alternative Opacity Monitoring Procedure.
700064	NSPS	H	Monitoring Frequency Reduction.
700065	NSPS	Db	Boiler Derating.
700066	NSPS	PPP	Alternative Excess Emissions Criteria.
700067	NSPS	QQQ	Emission Offset Calculations.
700068	NSPS	XX	Test Method for Loading Rail Cars at Gasoline Load.
700069	NSPS	XX	Classification of Vapor Combustor.
700070	NSPS	J	Alternative Monitoring Plan for Gasoline Loading Racks.
700071	NSPS	UUU	Synthetic Alumina from Calcining Oven.
700073	NSPS	WWW	Definition of Treatment for Landfill Gas Processing.
700074	NSPS	WWW	Definition of Treatment for Landfill Gas Processing.
700075	NSPS	CCCC	Request for Applicability Determination—Thermal Desorber.
700076	NSPS	A, TTT	Adjustment of Deadline for Compliance Statements.
700077	NSPS	IIII	Petition to Use Non-Compliant Fuel.
700078	NSPS	Ce	Request for Regulatory Deviation/Alternative Determination for Control of Dioxins/Furans (CDD/CDF).
700079	NSPS	Ce	Request for Regulatory Deviation/Alternative Determination for Control of Dioxins/Furans (CDD/CDF).
700080	NSPS	Db	Alternate Opacity Monitoring During Construction.
800001	NSPS	Dc	Alternative Fuel Usage Recordkeeping Proposal.
800002	NSPS	OOO	Test Waiver Proposal.
800003	NSPS	J	Alternative H_2S Monitoring Frequency.
800004	NSPS	J	Alternative Monitoring Proposals.
800005	NSPS	WWW	Definition of Treatment.
800006	NSPS	H	Appendix F (CEM QA) Applicability.
800007	NSPS	UUU	Method 9 Test Waiver.
800008	NSPS	OOO	Test Waiver Request.
800009	NSPS	J	Alternative H_2S Monitoring Proposal.
800010	NSPS	WWW	Operational and Monitoring Alternatives.
800011	NSPS	Cb	Alternative Monitoring Location.
800012	NSPS	WWW	Applicability of Well Monitoring Requirements.
800013	NSPS	Db	Proposal to Shorten Test Duration.
800014	NSPS	GG	Alternative Quality Assurance Procedures.
800015	NSPS	Db	Predictive Emission Monitoring System.
800016	NSPS	Db	Applicability to Wood Burner/Thermal Oil Heater/Rotary Dryer System.
M070016	MACT	EEE	Hydrogen Chloride Continuous Emissions Monitor (CEM).
M070017	MACT	UUU	Wet Gas Scrubber Opacity Alternative Monitoring.
M070018	MACT	EEE	Monitoring of Scrubber System Solid Content.
M070019	MACT	EEE	Alternative Measure to Control Combustion Gas Leaks.
M070020	MACT	G	Alternative Monitoring Plan.
M070021	MACT	EEE	Monitoring Procedure System and Time Delay for AWFCO.
M070022	MACT	R	Test Method for Loading Rail Cars at Gasoline Loading Facility.
M070023	MACT	ZZZZ	Request for Alternative Monitoring and Testing.
M070024	MACT	EEE	Responses to Comprehensive Performance Test Plan Addendum and Alternative Monitoring Application.
M070025	MACT	EEE	Response to Alternative Monitoring Application Requests.
M070026	MACT	EEE	Response to Alternative Monitoring Application Requests.
M070027	MACT	EEE	Response to Alternative Monitoring Application Requests.
M070028	MACT	EEE	Response to Alternative Monitoring Application Requests.
M070029	MACT	EEE	Response to Alternative Monitoring Application Requests.
M070030	MACT	EEE	Response to Alternative Monitoring Application Requests.
M080004	MACT	FFFF	Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

ADI DETERMINATIONS UPLOADED ON JULY 11, 2008—Continued

Control No.	Category	Subparts	Title
Z070002	NESHAP	E	Incineration of Untreated Toilet Wastes.
Z080001	NESHAP	WWW	Definition of Treatment for Landfill Gas Processing.
Z080002	NESHAP	WWW	Definition of Treatment for Landfill Gas Processing.

Abstract for [0700029]

Q: Is Blaine Larsen Farms' (BLF) boiler, located at the Dehydration Division potato processing plant in Dubois, Idaho, derated and therefore subject to the requirements of 40 CFR part 60, subpart Dc, rather than 40 CFR part 60, subpart Db?

A: Yes. EPA determines that BLF's boiler has been derated and is now subject to NSPS subpart Dc, because the burner has been replaced with one that will limit the boiler capacity to less than 100 mmBtu/hr, as verified by testing, and it meets the four derate criteria, as specified in the EPA response letter.

Abstract for [0700030]

Q: Has initial startup occurred for a boiler at the Warm Springs Forest Products Industries' facility in Warm Springs, Oregon, under 40 CFR part 60, subpart Db? The facility has conducted boil-out and curing.

A: No. Because the ''Instruction Manual for Clarification of Startup in Source Categories Affected by New Source Performance Standards'' (EPA–68–01–4143) states that startup is defined as the first time steam is produced by the boiler and used to provide heat or hot water to run process equipment or to produce electricity, EPA finds that the boil-out and curing of the refractory is therefore a pre-startup activity.

Abstract for [0700031]

Q: Is a snowmelter with a rated capacity between 10 and 100 MMBtu/hr that is operated by the Ted Stevens Anchorage International Airport subject to 40 CFR part 60, subpart Dc?

A: No. EPA determines that NSPS subpart Dc does not apply to snowmelters. Although a snowmelter is a device that combusts fuel and melts ice resulting in the heating of water, the heated water is not being used for transferring heat from one point to another for any useful purpose such as heating a building or creating steam to drive a process. Therefore, the heated water would not qualify as a heat transfer medium.

Abstract for [0700032]

Q: Is the Pioneer Natural Resources Alaska, Incorporated (PNRA) incineration unit located at its Oooguruk Development Project Offshore Drill Site camp on the North Slope, Alaska, exempted from the requirements of the NSPS for Commercial and Industrial Solid Waste Incineration Units at 40 CFR part 60, subpart CCCC?

A: Yes. Based on the information submitted in the notification required to claim the exemption under 40 CFR § 60.2020(c)(2), EPA finds that this incinerator would meet the exemption criteria in 40 CFR 60.2020(c)(2), and is therefore required to meet the applicable recordkeeping requirements established by this provision. The incinerator would meet the criteria of burning greater than 30 percent municipal solid waste or refuse-derived fuel (as defined in NSPS subparts Ea, Eb, AAAA, and BBBB) in its fuel feed stream. This incinerator will primarily burn waste generated by a housing camp associated with the PNRA facility, along with some industrial packing and other non-hazardous waste materials from drilling support activities on site.

Abstract for [0700033]

Q1: Is Anadarko's double-chamber cyclonator forced-air solid waste incinerator with a capacity of 2.4 tons per day, constructed after November 1999, that has been seasonally located and intermittently operated at remote oil and gas exploration sites on the North Slope of Alaska since January 2003, subject to 40 CFR part 60, subpart CCCC?

A1: Yes, EPA concludes that a waste incinerator with a capacity of 2.4 tons per day, constructed after November 1999, that has been seasonally located and intermittently operated at remote oil and gas exploration sites, is subject to NSPS subpart CCCC. EPA considers this incinerator to be located at an industrial facility, and even though the incinerator may be moved from one location to the next, it will be a distinct operating unit of an industrial facility.

Q2: Is 40 CFR part 61, subpart E, the Mercury NESHAP, applicable to an incineration unit that incinerates untreated sanitary waste (solids) collected from Pacto toilets at Anadarko's remote oil and gas exploration sites on the North Slope of Alaska?

A2: No. The practice of incinerating sanitary waste composed of untreated solids from Pacto toilets does not meet the description of incinerating sludge under the Mercury NESHAP. 40 CFR 61.50 states that the rule applies to ''those stationary sources which * * * incinerate or dry wastewater treatment plant sludge.'' Under 40 CFR 61.51, sludge is defined as ''sludge produced by a treatment plant that processes municipal or industrial waste waters.'' Thus, the Mercury NESHAP would not apply.

Abstract for [0700034]

Q1: Does EPA approve the proposal of Roseburg Forest Products (RFP) of Roseburg, Oregon, to derate two boilers, regulated under 40 CFR part 60, subpart D, by eliminating the capacity of both boilers to burn oil and replacing the burners with burners that are limited to burning less than 250 MMBtu/hr of natural gas, provided that the natural gas pressure delivered to the boilers is monitored?

A1: Yes. EPA believes that the changes made by RFP meet the derate criteria because installation of a new burner is a permanent change to the boiler, which requires a system shutdown, cannot be easily undone, and is not just a change to the fuel feed system. Based on the performance test data submitted, EPA has concluded that the capacity of the boilers does not exceed the 250 MMBtu/hr applicability threshold, provided the pressures are maintained below 9.16 psig for Boiler No. 2 and 7.33 psig for Boiler No. 6 (calculated using a three-hour average). Therefore, Boilers No. 2 and No. 6 are no longer subject to NSPS subpart D, if the limits on gas pressure are monitored and maintained below the threshold values per the Title V permit.

Abstract for [0700035]

Q: Is FEX L.P.'s incineration unit located at FEX L.P.'s Artic Wolf Camp for housing associated with its Northwest National Petroleum Reserve Exploration Drilling Project on the North Slope, Alaska, exempted from the requirements of the NSPS for Commercial and Industrial Solid Waste Incineration Units, under 40 CFR part 60, subpart CCCC?

A: Yes. Based on the information submitted in the notification required to claim the exemption under 40 CFR

§ 60.2020(c)(2), EPA finds that this incinerator would meet the exemption criteria in 40 CFR 60.2020(c)(2), and is therefore required to meet the recordkeeping requirements established in this provision. The incinerator would meet the exemption criteria of burning greater than 30 percent municipal solid waste or refuse-derived fuel (as defined in NSPS subparts Ea, Eb, AAAA, and BBBB) in its fuel feed stream. This incinerator will burn primarily residential-type waste generated by a housing camp and cafeteria facilities that are associated with the FEX facility, along with industrial packing and other non-hazardous waste materials from drilling support activities on site.

Abstract for [0700036]

Q1: May Blaine Larsen Farms (BLF) derate its 40 CFR part 60, subpart Db boiler at the Dehydration Division potato processing plant in Dubois, Idaho, by restricting the fuel-metering valves? This would be accomplished with an adjustment to the valve, and the adjustment screws would either be locked into place with a locking device that requires a special tool to undo or be sealed with epoxy.

A1: No. EPA determines that this approach would not be valid to derate a boiler under NSPS subpart Db for several reasons. Neither proposed method for locking the screws would be considered permanent. A derate must reduce the capacity of the boiler without the installation of a feed rate governor. Changes that are made only to fuel feed systems are not acceptable for a derate.

Q2: May Blaine Larsen Farms derate its 40 CFR part 60, subpart Db boiler by replacing the burner?

A2: Yes. EPA finds that the replacement of the burner is an acceptable method to derate a burner under NSPS subpart Db since it meets the deration criteria, including: (1) It is a change that cannot be easily undone, (2) requires a system shutdown to accomplish or reverse, and (3) it is not just a change to the fuel feed system.

Q3: May the American Society of Mechanical Engineers Performance Test, Code 4–1998, be used as the verification test method to demonstrate a derate has been accomplished under 40 CFR part 60, subpart Db?

A3: Yes. EPA finds that this method has been used before to successfully demonstrate that a derate has been accomplished under NSPS subpart Db.

Q4: Is Blaine Larsen Farms test protocol verification method acceptable to demonstrate that a derate has been accomplished under 40 CFR part 60, subpart Db?

A4: Yes. EPA determines that the results of the protocol verification method would be acceptable under NSPS subpart Db if BLF continuously monitors fuel feed rates and maintains information regarding the fuel heat content in order to ensure that the unit does not exceed 100 mmBtu/hr of heat input.

Abstract for [0700037]

Q1: Does EPA approve the use of a certified nitrogen oxide continuous emission monitoring system (NO_X CEMS) to document compliance with 40 CFR part 60, subpart GG NO_X limit in lieu of a performance test for compliance analysis after the new fuel is introduced for stationary gas turbines operated by Klamath Energy, LLC of Portland, Oregon?

A1: Yes. EPA conditionally approves the use of a certified NO_X CEMS because it finds that as long as the provisions of 40 CFR § 60.334(b) are followed, CEMS are enough to satisfy compliance with the emission limit for NO_X. 40 CFR § 60.334(g) states that a performance test is required only when equipment parameters need to be established.

Q2: Does EPA waive fuel nitrogen content monitoring of 40 CFR part 60, subpart GG, if part 75 NO_X CEMS are used for the Klamath Energy plant?

A2: EPA finds that whether or not the turbine is also subject to part 75, the fuel nitrogen content monitoring is waived only if the NO_X emission allowance in the equations used to determine the NSPS subpart GG NO_X emission standards in 40 CFR § 60.332 is not claimed.

Q3: Does EPA waive the 40 CFR part 60, subpart GG requirement for water-to-fuel injection ratio monitoring because of the use of the part 75 certified CEMS for the Klamath Energy plant?

A3: Yes. EPA finds that under 40 CFR § 60.334(b) the owner or operator may, as an alternative to water-to-fuel injection monitoring, install, certify, maintain, operate, and quality assure a CEMS if the provisions of 40 CFR § 60.334(b) are followed.

Q4: Does EPA approve the use of vendor analyses under 40 CFR part 60, subpart GG, for monitoring sulfur content of the fuel oil burned for the Klamath Energy plant?

A4: Yes. EPA conditionally approves the use of vendor analyses since it finds that under 40 CFR 60.334(i)(1), the fuel oil sampling for total sulfur content can be done at each delivery. Oil sampling may be performed by a fuel supplier, provided that the sampling is performed according to either the single tank composite sampling procedure or the all-levels sampling procedure in ASTM D4057–88.

Abstract for [0700038]

Q: Does EPA approve the request from the St. Luke's Meridian Medical Center (SLMMC) facility in Meridian, Idaho, for a reduction in the submittal frequency of the fuel emission reports from semiannually to annually, for two boilers (Boilers No. 1 and No. 2) at the facility under 40 CFR part 60, subpart Dc?

A: Yes. EPA conditionally approves a reduction in the submittal frequency of the fuel emission reports from semiannually to annually on the basis that SLMMC receives only one shipment of distillate oil per year. SLMMC shall submit all fuel supplier certifications as described in 40 CFR 60.48(f)(1), postmarked by the last day of January of each year. If any additional shipments of fuel are received during the year, the fuel supplier certification will be submitted to the Idaho Department of Environmental Quality within 30 days. Each annual report shall include a certified statement signed by the owner or operator of SLMMC's facility that the fuel supplier certifications attached to the report represent all of the distillate oil received by SLMMC for the purposes of fueling the above-referenced boilers during the reporting period.

Abstract for [0700039]

Q1: Does EPA approve a request from Gossner Foods (Gossner) for a reduction in the fuel usage recordkeeping requirement in 40 CFR 60.48c from daily to monthly for Gossner's two boilers in Heyburn, Idaho, which fire natural gas as the primary fuel and propane as a backup fuel?

A1: Yes. EPA approves this request based on a memorandum dated February 20, 1992, from the EPA Office of Air Quality Planning and Standards, which states that there is little value in requiring daily recordkeeping of the amounts of fuel combusted for an affected unit that fires only natural gas under NSPS subpart Dc. This is because subpart Dc does not have any emission limitations for units that fire only natural gas. Therefore, the purpose of this recordkeeping is to verify that only natural gas is fired. Propane is considered to be a type of natural gas.

Q2. Does EPA approve a request from Gossner to use one gas meter to record monthly natural gas and/or propane usage for Gossner's two boilers?

A2: Yes. EPA approves this request. EPA finds that the Gossner proposal to divide each boiler design heat input capacity by the total of the design heat

input capacities of each boiler, and use this to prorate the natural gas and/or propane usage of each boiler on a monthly basis, when more than one boiler is firing natural gas and/or propane simultaneously, will adequately determine the natural gas and/or propane usage by each boiler.

Abstract for [0700040]

Q: Does EPA approve an alternative plan for monitoring opacity at the Basic American Foods (BAF) facility in Blackfoot, Idaho, in lieu of a Continuous Opacity Monitoring System (COMS), under 40 CFR part 60, subpart Dc, where the COMS will not provide accurate measurements due to water vapor from a proposed wet scrubber?

A: Yes. According to the provisions of 40 CFR 60.13(h)(i)(1), a written application for alternative opacity monitoring requirements can be submitted when ''installation of a continuous emission monitoring system or monitoring device specified by this part would not provide accurate measurement due to liquid water or other interferences caused by substances with the effluent gasses.'' EPA has previously approved similar requests, which are posted on EPA's applicability determination index. (See EPA Determination Control Numbers 0000010 and 0300073.) In previous requests, EPA has determined that the continuous monitoring of the scrubbing liquid flow rate and the pressure drop of the gas stream across the scrubber is acceptable as an alternative monitoring to the COMS. EPA approves the alternative monitoring plan that the Idaho Department of Environmental Quality has recommended and BAF has agreed to.

Abstract for [0700041]

Q1: Does EPA approve monthly instead of daily monitoring of exclusive use of low-sulfur distillate oil in a 40 CFR part 60, subpart Dc affected boiler operated by Hampton Lumber Mill at a facility in Darrington, Washington?

A1: Yes. EPA approves monthly instead of daily monitoring of exclusive use of low-sulfur distillate oil in an NSPS subpart Dc affected boiler.

Q2: For this same facility, does EPA approve the use of fuel receipts from a low-sulfur distillate oil supplier as a monthly monitoring method under 40 CFR part 60, subpart Dc?

A2: Yes. EPA approves the use of fuel receipts from a low-sulfur distillate oil supplier as a monthly monitoring method under NSPS subpart Dc.

Q3: Does EPA find that the amount of low-sulfur distillate oil used at that facility can be divided evenly between two similar boilers under 40 CFR part 60, subpart Dc?

A3: Yes. EPA finds that the amount of low-sulfur distillate oil used at a facility can be divided evenly between two similar boilers under NSPS subpart Dc, as long as they have the same rated capacity and operate in a way that emissions from either boiler are substantially similar if based on the same amount of fuel.

Abstract for [0700042]

Q: Do changes proposed by Roseburg Forest Products (RFP) to two large boilers in Dillard, Oregon, result in the boilers being derated under 40 CFR part 60, subpart D? RFP has eliminated the capacity of both boilers to burn oil and made changes to the boilers that reduce the total heat input capacity for both boilers to less than 245.7 MMBtu/hr for natural gas. RFP proposed to conduct additional monitoring and performance testing to verify that the capacity of the boilers has been reduced.

A: Although the changes RFP has made to its boilers appear to meet many of the criteria for derating boilers, EPA requires submission of source test data verifying that the capacity of the boilers has been reduced before EPA will determine that the RFP boilers have been derated. Any such verification testing should be conducted while each boiler is operating at its maximum capacity for a 24-hour period for each fossil fuel that the boiler has the capability of burning. EPA expects RFP to monitor the gas pressure during the performance test to verify the correlation of gas pressure to heat input. In addition, to ensure reliability of the performance test results, RFP should submit a performance test plan to EPA for approval prior to the test and follow the general provisions of 40 CFR part 60, subpart A, for performance tests, such as notifying EPA in advance of the test.

Abstract for [0700043]

Q1: Does EPA approve monthly instead of daily monitoring of natural gas usage in a 40 CFR part 60, subpart Dc affected boiler at the proposed J. R. Simplot Company facility near Mountain Home, Idaho?

A1: Yes. EPA approves monthly instead of daily monitoring of natural gas usage in this NSPS subpart Dc affected boiler.

Q2: Does EPA approve the use of fuel receipts from a gas supplier to serve as a monthly monitoring method under 40 CFR part 60, subpart Dc, for an affected boiler at the proposed J. R. Simplot Company facility near Mountain Home, Idaho?

A2: Yes. EPA approves the use of fuel receipts from a gas supplier to serve as monthly monitoring method under NSPS subpart Dc.

Q3: Does EPA find that all of the natural gas used at a facility can be attributed to the 40 CFR part 60, subpart Dc affected boilers, if there is some gas used by a unit that is a facility not covered by any other regulation, as proposed by the J. R. Simplot Company facility near Mountain Home, Idaho?

A3: Yes. EPA finds that all of the natural gas used at a facility can be attributed to the NSPS subpart Dc affected boilers, even if there is some gas used by another unit, as long as that other unit is a facility not covered by any other regulation.

Q4: Does EPA find that the amount of natural gas used at a facility can be divided evenly between two similar boilers under 40 CFR part 60, subpart Dc, as proposed by the J. R. Simplot Company facility near Mountain Home, Idaho?

A4: Yes. EPA finds that the amount of natural gas used at a facility can be divided evenly between two similar boilers under NSPS subpart Dc, as long as they have the same rated capacity and operate in a way that emissions from either boiler are substantially similar if based on the same amount of fuel.

Abstract for [0700044]

Q: Is the Anchorage Water and Wastewater Utility (AWWU) subject to 40 CFR part 60, subpart O, based on changes and upgrades that are planned for the emission control system on AWWU's multiple hearth sludge furnace (MHF) at the Asplund Wastewater Treatment Facility?

A: EPA determines that the MHF continues to be subject to NSPS subpart O. The MHF was constructed in 1986 and is subject to NSPS subpart O, which is applicable to a facility constructed after June 11, 1973. The upgrades to AWWU's facility do not affect applicability status because the facility is already subject to NSPS subpart O based on the date of construction.

Abstract for [0700045]

Q: Does EPA grant a waiver to Flint Hills Resources Alaska of the 30-day notification of performance evaluation for recently installed sulfur dioxide (SO_2) Continuous Emission Monitoring System according to 40 CFR 60.7(a)(5) and 60.8(d)?

A: Yes. EPA grants a waiver of the 30-day notification of performance evaluation, under 40 CFR 60.19(f)(3), because of the need to meet deadlines

that have been laid out in a Compliance Order by Consent.

Abstract for [0700046]

Q: Is Anadarko Petroleum Corporation's incineration unit at the Jacobs Ladder Exploration Drilling Project on the North Slope, Alaska, exempted from the requirements of 40 CFR part 60, subpart CCCC?

A: Based on the information submitted in the notification required to claim the exemption under 40 CFR 60.2020(c)(2), EPA finds that this incinerator would meet the exemption criteria in 40 CFR 60.2020(c)(2), and is therefore required to meet the recordkeeping requirements established in this provision. Under 40 CFR 60.2020(c)(2), an exemption is provided for units that burn greater than 30 percent municipal solid waste or refuse-derived fuel (as defined in NSPS subparts Ea, Eb, AAAA, and BBBB) in their fuel feed stream. This incinerator will burn primarily residential-type waste generated by a housing camp and cafeteria facilities that is associated with the Anadarko facility, along with some industrial packing and other non-hazardous waste materials from drilling support activities on site.

Abstract for [0700047]

Q: Does EPA approve a reduction in the submittal frequency of the fuel emission reports to annually for two boilers using natural gas, except for approximately eight hours per month when diesel fuel is used as a backup, under 40 CFR part 60, subpart Dc, at the St. Luke's Regional Medical Center in Boise, Idaho?

A: Yes. EPA approves a reduction in the submittal frequency of the fuel emission reports to annually. For a boiler that only fires natural gas and distillate oil with sulfur content of less than 0.5 percent, these reports consist only of fuel oil suppliers' certifications and a certified statement of the owner or operator. Because this facility receives only one shipment of distillate oil per year, it would be redundant to require more than annual submittal of this information. As long as the facility receives only one shipment of distillate oil a year, it shall submit all fuel supplier certifications as described in 40 CFR 60.48(f)(1), postmarked by the last day of January of each year.

Abstract for [0700048]

Q1: Does EPA approve a reduction in the fuel usage recordkeeping requirement in 40 CFR part 60, subpart Dc, from daily to monthly when only pipeline quality natural gas is and will be fired in two boilers operated by Boise Paper Solutions of Boise Cascade Corporation?

A1: Yes. EPA approves a reduction in the fuel usage recordkeeping requirement in 40 CFR 60.48c from daily to monthly when only pipeline quality natural gas is and will be fired in the boilers.

Q2: Does EPA approve the use of monthly natural gas bills to fulfill the recordkeeping requirement in 40 CFR part 60, subpart Dc as proposed by Boise Paper Solutions of Boise Cascade Corporation?

A2: Yes. EPA approves the use of monthly natural gas bills to fulfill the recordkeeping requirement of 40 CFR 60.48c, provided that all natural gas on the fuel receipt is attributed to use in the two boilers, regardless of the small amount that may be used for other purposes, such as space heating, and that the amount of natural gas used in each boiler is apportioned in equal proportions.

Abstract for [0700049]

Q: Does EPA approve a reduction in the monitoring schedule for fuel gas sulfur content from quarterly to semiannually under 40 CFR part 60, subpart GG, at Calpine Hermiston Power Plant in Oregon, based upon demonstrated compliance and low variability for six quarters?

A: Yes. EPA approves this alternative fuel monitoring request. In addition, based on amendments to NSPS subpart GG, promulgated on July 8, 2004, the requirement to monitor the sulfur content of natural gas may be waived.

Abstract for [0700050]

Q: Does EPA approve a source test protocol for determinations of the maximum heat input for use in a boiler derate demonstration, under 40 CFR part 60, subpart D, at the Roseburg Forest Products facility in Roseburg, Oregon?

A: Yes. Based upon a review of the source test protocol and the Piping and Instrument Diagram for the natural gas systems for both boilers, EPA concludes that, under NSPS subpart D, if the source test is conducted according to the protocol, it should provide the information required to verify the maximum heat input, namely, gas flow rate, calorific value, and supply pressure.

Abstract for [0700051]

Q: May a ''bag counting'' surrogate method for determining the weight of incinerated waste be used to determine whether the co-fired combustor exemption of 40 CFR part 60, subpart Ec, applies to a BP Exploration Alaska Incorporated waste incinerator located at the Northstar Development Facility in the Beaufort Sea?

A: No. EPA finds that the surrogate method described will not provide the accuracy required by the recordkeeping requirements of NSPS subpart Ec. It is not clear from the request whether a distinction is made between the differences in the weight of a typical bag of hospital and medical/infectious waste and the weight of a typical bag of other waste. Also, if an average weight of a bag of hospital and medical/infectious waste is used, this may underestimate the actual amount of hospital and medical/infectious waste that is being burned. Thus, EPA has determined that the proposed surrogate method cannot be used for the determination of whether the co-fired combustor exemption in 40 CFR 60.50c(c) is met. EPA will consider a different weight surrogate method that adequately ensures that the exemption is met with a margin for error.

Abstract for [0700052]

Q1: Does the addition of storage capacity, which did not increase the hourly grain handling capacity, trigger applicability of 40 CFR part 60, subpart DD, for the Busch Agricultural Resources, Incorporated (BARI) Malt Plant Facility in Idaho Falls, Idaho?

A1: Yes. EPA determines that the increase in storage capacity triggers NSPS subpart DD applicability. The grain storage capacity exceeded 2.5 million bushels in 2002 when the permanent storage capacity was increased to 4 million bushels. Because the permanent storage capacity for this facility exceeds 2.5 million bushels, the facility meets the definition of a grain terminal elevator, as defined in NSPS subpart DD, and is subject to the NSPS. In addition, 60.304(b)(4) of subpart DD, which states that ''the installation of permanent storage capacity without an increase in hourly grain handling capacity by itself would not be considered a modification of an existing facility'', does not apply to BARI. Section 60.304(b)(4) of subpart DD does not apply to those affected facilities that are constructed at the time applicability was triggered or subsequent to that time.

Q2: Is 40 CFR part 60, subpart DD, applicable to the following activities and equipment at the BARI Idaho Falls Malt Plant Facility in Idaho Falls, Idaho:

(1) Malt load out operations;

(2) Residual/byproduct storage and load out operations;

(3) Conveyors located inside the malt house that are used to move barley and off-kiln malt through the malt house operation; and

(4) A baghouse filter that is dedicated solely to controlling dust emissions from grain and malt handling within the malt house operation.

A2: EPA determines the applicability for each of the specific activities and equipment at BARI, as follows:

(1) NSPS subpart DD is not applicable to malt load out operations.

(2) NSPS subpart DD is not applicable to the storage and load out operations of residuals or byproducts provided it is not possible for these operations to handle grain. Reject hulls, grain fragments or dirt that is handled and stored separately, as well as malted barley and malting by-products, are not considered grain.

(3) Equipment being used is subject to NSPS subpart DD if it handles unmalted barley part of the time, and malted and unmalted barley at the same time because it is handling some amount of grain, as well as conveyors located inside the malt house that are used to move unmalted barley. However, conveyors located inside the malt house that are used to move off-kiln malt are not subject to NSPS subpart DD.

(4) Emissions from a baghouse that is controlling dust from grain and malt handling within the malt house operation are subject to NSPS subpart DD, because the commingled emissions include grain handling emissions that are subject to NSPS subpart DD.

Abstract for [0700053]

Q: Does the incineration of pharmaceutical wastes disposed of by Providence Alaska Medical Center, a hospital in Alaska, require an incineration facility, under 40 CFR part 60, subpart Ec, or 40 CFR part 62, subpart HHH, to demonstrate compliance with Hospital/Medical/Infectious Waste Incinerator (HMIWI) rules?

A: Yes. EPA finds the HMIWI regulation applies to the incineration of hospital, medical, and infectious wastes. EPA defines ''hospital waste'' broadly, and it includes any waste or discarded materials generated at a hospital, except unused items returned to the manufacturer. Thus, pharmaceutical wastes generated at a hospital and disposed of by the hospital are considered ''hospital waste'' under the rules, and a facility that incinerates such waste is subject to HMIWI.

Abstract for [0700054]

Q: Does EPA approve an alternative monitoring plan in lieu of the continuous opacity monitoring (COMS) requirements of 40 CFR 60.105(a)(1) and corresponding requirements of 40 CFR part 63, subpart UUU, where a wet scrubber is to be installed on Puget Sound Refining's (PSR's) fluidized catalytic cracking unit (FCCU) in Anacortes, Washington?

A: Yes. EPA approves the monitoring of the liquid flow rate and gas flow rate for the wet gas scrubber, which is a jet-ejector design. Calculation of the liquid-to-gas ratio must be done as outlined in Tables 2 and 3 of Maximum Achievable Control Technology (MACT) subpart UUU, except that for purposes of determining and reporting excess emissions for the FCCU, a 3-hour rolling average of the liquid-to-gas ration will be used.

Abstract for [0700055]

Q: Does EPA allow the use of an alternate performance test method for stationary gas turbines, under 40 CFR part 60, subpart GG, at ConocoPhillips Alaska Incorporated's Alpine Development Project in North Slope Alaska?

A: Yes. EPA approves the use of an alternate performance test method, under NSPS subpart GG, only if the probe is designed and conforms to the tests specified in EPA Guidance Document CG–031.

Abstract for [0700056]

Q1: Should an incinerator used to dispose of camp wastes at a remote, temporary work camp in Nuiqsut, Alaska, and operated by Alaska Interstate Construction, LLC (AIC), be subject to 40 CFR part 62, subpart III, the Federal Plan Requirements for Commercial Industrial Solid Waste Incinerators (CISWI)?

A1: Yes. EPA determines that the work camp is an integral part of a commercial operation, the AIC facility, and would not be there but for generating profit as a commercial operation under 40 CFR part 62, subpart III. The term ''commercial facility'' is not defined in the CISWI regulation, but the American Heritage Dictionary defines commercial as ''having profit, success, or immediate results as [a] chief aim.'' Thus, the work camp incinerator would be considered to be located at a ''commercial or industrial facility'' and would be subject to CISWI.

Q2: Should AIC's work camp incinerator, which burns primarily municipal solid waste, be regulated under 40 CFR part 62, subpart III?

A2: Yes. EPA finds that the incinerator should be regulated under CISWI. The fact that the waste incinerated is considered to be municipal solid waste does not mean that the incinerator would not be considered to be a CISWI unit. This is apparent because of the exemption that is provided for CISWI units under 40 CFR 62.14525(c)(2) for units that burn greater than 30 percent municipal solid waste. AIC's work camp incinerator is considered to be a CISWI, but because it burns greater than 30 percent municipal solid waste, it has an exemption under NSPS subpart III.

Abstract for [0700057]

Q: Does EPA find that a coal transloader located in Port Wentworth, Georgia, next to Georgia Power's Plant Kraft Steam-Electric Generating Plant, and a coal preparation plant, which provides coal to the Plant Kraft units, are subject to 40 CFR part 60, subpart Y?

A: No. EPA has determined that the transloader is not part of the coal preparation plant on the property since it not connected to any of its breaking, crushing, screening, wet or dry cleaning, or thermal drying equipment, and thus is not subject to NSPS subpart Y. Since the coal preparation plant was constructed prior to the applicability date of October 24, 1974, it is not subject to NSPS subpart Y.

Abstract for [0700058]

Q: Is the installation of three solvent-based laminators at the Catalyst International's rotogravure urethane coating line and printing operations, located in Delaware County, Pennsylvania, subject to 40 CFR part 60, subpart FFF?

A: Yes. EPA has determined that because the two new laminators to be installed at Catalyst's Pennsylvania facility will coat a urethane web, on a continuous basis, with an adhesive that meets the definition of ink given in the NSPS subpart FFF rule using a gravure cylinder, these laminators are subject to NSPS subpart FFF.

Abstract for [0700059]

Q: Does EPA approve an alternative monitoring plan for boilers 1 and 2 that fire fuels with low sulfur content at the Hercules' Franklin, Virginia plant under 40 CFR part 60, subpart Dc?

A: EPA approves the alternative fuel sampling methodology for Hercules' boiler 2. Hercules may use fuel supplier certifications in lieu of a continuous opacity monitor (COM) to prove that very low sulfur fuels are being combusted, and get relief from particulate emission monitoring pursuant to 40 CFR 60.47c(a). EPA disapproved the alternative monitoring proposal for Hercules' boiler 1 to use scrubber parametric monitoring in lieu of installing a COM. Hercules will need to install a particulate matter (PM) continuous emission monitoring system

(CEMS) unless it can show that this is not a viable alternative to a COM.

Abstract for [0700060]

Q1. Does EPA approve a request to deviate from the assumption that a violation of the hydrogen chloride (HCl) emission occurs if the Curtis Bay Energy facilities in Baltimore, Maryland, operate their Hospital/Medical/Infectious Waste Incinerators (HMIWIs) above the maximum charge rate and below the minimum HCl sorbent flow rate simultaneously, as stated in 40 CFR part 60, subpart Ec, at § 60.56c(e)(3)? The facilities have actual hydrogen chloride (HCl) emissions data from an EPA compliant continuous HCl emissions monitor on a real-time basis.

A1. Yes. EPA agrees that the actual data, obtained from an EPA compliant continuous HCl monitor on a real-time basis, that shows HCl emissions are within the allowable limit of either 100 parts per million by volume adjusted to 7 percent oxygen measured on a dry basis at standard conditions or 93 percent reduction, is superior to using surrogate parameter of HCl sorbent flow rate. An EPA compliant continuous HCl monitor must meet Performance Specification 2 in 40 CFR part 60, specifically the Specifications and Test Procedures for SO_2 and NO_X Continuous Emission Monitoring Systems in Stationary Sources in Appendix B, and the quality assurance procedures specified in Appendix F, including the revised Relative Accuracy Test Audit (RATA) calculation procedures in Enclosure 1 of the response letter. In addition, a CEMS for oxygen must be installed, calibrated, maintained, and operated in accordance with the requirements of Appendices B and F of part 60. EPA describes additional requirements applicable for CEMS in the EPA response letter and its Enclosure 1.

Q2. Does EPA approve a request to eliminate the operating parameter monitoring requirements for maximum charge rate as specified in § 60.57c(a) and Table 3 of 40 CFR part 60, subpart Ec, at the Curtis Bay Energy Hospital/Medical/Infectious Waste Incinerators (HMIWIs) located in Baltimore, Maryland?

A2. No. EPA finds that the maximum charge rate is an operating parameter used to determine compliance with other applicable emission limits in addition to HCl emission limits. The definition for maximum charge rate given in § 60.51c of 40 CFR for a continuous and intermittent HMIWI is ''* * * 110 percent of the lowest 3-hour average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.'' By definition, the maximum charge rate is linked to compliance with all applicable emission limits which include particulate matter (PM), carbon monoxide (CO), dioxins/furans, HCl, lead (Pb), cadmium (Cd), mercury (Hg), sulfur dioxide (SO_2), nitrogen oxides (NO_X), and opacity. EPA will not grant approval to eliminate monitoring of the maximum charge rate as an operating parameter since it is linked to all emission limits and not linked only to HCl emissions.

Q3. Does EPA approve a request to eliminate the operating parameter monitoring requirements for minimum hydrogen chloride (HCl) sorbent flow rate as specified in § 60.57c(a) and Table 3 of 40 CFR part 60, subpart Ec, at the Curtis Bay Energy Hospital/Medical/Infectious Waste Incinerators (HMIWIs) located in Baltimore, Maryland?

A3. Yes. EPA conditionally approves the request to eliminate monitoring the minimum HCl sorbent flow rate as an operating parameter when the HCl emissions are measured using an EPA compliant continuous HCl monitor, as described in the EPA response letter.

Q4. Does EPA approve a request to eliminate the recordkeeping requirements for HMIWI charge dates, times, and weights and hourly charge rates as specified in § 60.58c(b)(2)(iii) in 40 CFR part 60, subpart Ec, at the Curtis Bay Energy HMIWIs, located in Baltimore, Maryland?

A4. No. EPA finds that, as previously stated in the answer to question 2 of this determination, the maximum charge rate parameters are linked to other emission limits besides HCl emission limits.

Q5. Does EPA approve a request to eliminate the recordkeeping requirements for the amount and type of HCl sorbent used during each hour of operation as specified in § 60.58c(b)(2)(vii) in 40 CFR part 60, subpart Ec, at the Curtis Bay Energy HMIWIs located in Baltimore, Maryland?

A5. Yes. EPA agrees that actual data from an EPA compliant continuous HCl monitor, as described in the EPA response letter, will provide HCl emissions information better than using surrogate parameters such as amount and type of HCl sorbent.

Abstract for [0700061]

Q: Does EPA approve an alternative opacity monitoring procedure, under 40 CFR part 60, subpart Db, for an auxiliary boiler at the Cardinal Power Plant, located in Brilliant, Ohio, that has a design heat input capacity of 652.58 million British Thermal Units per hour and that combusts only number 2 fuel oil?

A: Yes. EPA conditionally approves this alternative opacity monitoring procedure under NSPS subpart Db, and states the conditions and requirements of the approval in the EPA response letter.

Abstract for [0700062]

Q: Does EPA find that condition three of the March 15, 2006, Approval, related to visible emission readings by a certified observer using Method 9 at the auxiliary boiler stack, apply to four hours of continuous operation or cumulative operation under CFR part 60, Appendix A, at the Cardinal Operating Company's facility in Brilliant, Ohio?

A: Yes. EPA finds that condition three applies to four hours of continuous operation under NSPS subpart A.

Abstract for [0700064]

Q: Is the proposed reduction in the monitoring frequency for the 321–M machining room at the Savannah River Company's facility in Aiken, South Carolina, acceptable under 40 CFR part 60, subpart H?

A: Yes. EPA finds that replacing continuous monitoring with quarterly confirmatory sampling to verify low emissions is acceptable under NSPS subpart H, based upon review of data submitted with the proposal.

Abstract for [0700065]

Q: Is the procedure that United Distillers proposed for derating a boiler at its plant in Louisville, Kentucky in order to avoid applicability under 40 CFR part 60, subpart Db acceptable?

A: Yes. EPA conditionally approves the boiler derate since the proposal meets the criteria that a derate must be permanent and cannot be reversed with shutting down the boiler. For this unit, a derate that involves replacing a natural gas control valve with a smaller valve and changing the internal components in the fuel oil control valve to restrict the oil firing rate are acceptable under NSPS subpart Db because they cannot be reversed without shutting the unit down. As a condition for approval for this derate, United Distillers must monitor fuel usage in order to verify that the actual heat input for the unit never exceeds 100 million British thermal units per hour.

Abstract for [0700066]

Q1: Are the alternative parameter operating limits that Knauf Fiberglass has proposed to use for defining excess emissions at its Lanett, Alabama, plant

acceptable under 40 CFR part 60, subpart PPP?

A1: Yes. Based upon information provided by the manufacturer of the electrostatic precipitator (ESP) installed on Knauf's wool fiberglass insulation line, EPA finds that the requirement to monitor ESP primary current, primary voltage, and secondary current can be waived since monitoring secondary voltage, inlet water flow, and inlet water solids content will provide adequate information about ESP performance under NSPS subpart PPP.

Q2. Would EPA approve the Knauf Fiberglass request to use an alternative definition of excess emissions with respect to the certain operating parameters for which monitoring is required under subpart PPP. Specifically, Knauf Fiberglass requests that scrubber pressure drops, scrubber water flows, ESP secondary voltages, and ESP inlet water flows greater than 130 percent of baseline levels during a successful performance test and ESP inlet water solids content less than 70 percent of the baseline during a successful performance test not be considered periods of excess emissions. The term, excess emissions, is defined under NSPS subpart PPP as any monitoring data that is less than 70 percent of the lowest value or more than 130 percent of the highest value of each operating parameter recorded during the most recent performance test.

A2. Yes. Knauf Fiberglass request is acceptable. EPA agrees that control device efficiency should improve when operating in these ranges.

Abstract for [0700067]

Q: Does EPA allow emissions reductions that occurred at the Ashland Oil facility in Catlettsburg, Kentucky, when installing controls in order to comply with 40 CFR part 61, subpart FF, be used as emission offsets to avoid applicability under 40 CFR part 60, subpart QQQ, by offsetting emission increases resulting from the installation of new drains to an existing aggregate system?

A: No. EPA finds that emission reductions achieved through activities which are for the purpose of attaining compliance with another rule cannot be used as emission offsets to avoid applicability under this rule. This position has been stated in a previous EPA determination issued by Region 10 under NSPS subpart 60. [SEE ADI Control Number 9700065.]

Abstract for [0700068]

Q: Does EPA approve an alternative test method and operating limit, under 40 CFR part 60, subpart XX and 40 CFR part 63, subpart R, for the Philtex/Ryton Complex (Philtex) in Borger, Texas?

A: Yes. EPA approves an alternative testing and operating limits specified in § 60.502(h) of subpart XX and § 63.425(e) of subpart R on the basis of specific stipulations, which address: The maximum flow of vapors from loading operations; the heat content of vapors routed to the flare during loading operations; the leak tightness of rail cars; detecting leaks and repairing the vapor manifold system; verifying that excess emissions will not occur from storage tanks at the maximum pressures during loading; ensuring gasoline is loaded into only rail cars which pass the leak test; and monitoring the pressure continuously in the vapor collection manifold system.

Abstract for [0700069]

Q: Should vapor combustors be considered incineration devices or process flares under 40 CFR part 60, subpart XX?

A: EPA determines that the vapor combustor is an incinerator and thus should be tested as such. Vapor combustors do not meet the design criteria of any one of the three flare types listed in § 60.18 of the General Provisions. Additionally, vapor combustors can be emission tested using EPA reference methods.

Abstract for [0700070]

Q: Does EPA approve an alternative monitoring plan for gasoline loading racks and a hydrogen plant, under 40 CFR part 60, subpart J, located at TPI Petroleum's Ardmore petroleum refinery? TPI wants to install a continuous monitoring system for periodic fuel gas sampling, instead of a continuous emission monitoring system.

A: EPA Headquarters is reviewing the applicability of NSPS part 60, subpart J to refinery generated gas streams that are combusted in refinery combustion devices, such as in product loading rack systems and hydrogen production facilities. That review is currently on-going at a national level. These nationally significant NSPS part 60, staff in EPA Headquarters office in Washington, D.C. EPA Region 6 office does not have the authority to process this request until a national determination has been made.

Abstract for [0700071]

Q1: Does EPA find that any materials used as a feedstock on the Spherical Catalyst Manufacturing (SCM) Line 1 at UOP's Shreveport, Louisiana plant meet the 40 CFR part 60, subpart UUU usage of the term ''mineral'' (such as ''alumina'')?

A1: No. EPA finds none of the feed materials used on SCM Line 1 (pure aluminum, hydrochloric acid, and/or aluminum hydroxychloride solution) are a ''mineral,'' as the term is used in the definition of ''mineral processing plant,'' located in NSPS subpart UUU at § 60.731.

Q2: Is synthetic alumina produced on the SCM Line 1 at UOP's Shreveport, Louisiana plant, using a combination of pure aluminum, hydrochloric acid, and/or aluminum hydroxychloride solution, a process that meets that applicability criteria in § 60.730 of 40 CFR part 60, subpart UUU?

A2: No. EPA finds that the synthetic alumina produced on SCM Line 1 does not meet the applicability criteria in § 60.730 of 40 CFR part 60, subpart UUU.

Q3: Is SCM Line 1, located at UOP's Shreveport, Louisiana plant, not processing a ''mineral,'' as the term is used in 40 CFR part 60, subpart UUU, and not producing a ''mineral,'' as the term is used in the definition of the affected facility (each calciner and dryer at a ''mineral processing plant'') in subpart UUU, potentially subject to NSPS subpart UUU?

A3: No. EPA determines SCM Line 1 cannot be subject to NSPS subpart UUU, because it neither processes a ''mineral,'' nor does it produce a ''mineral,'' and, therefore, it does not meet the NSPS subpart UUU definition of a ''mineral processing plant''.

Abstract for [0700073]

Q: Does EPA consider the gas processing system which includes two turbines at the DFW Recycling and Disposal Facility in Lewisville, Texas, to be treatment under 40 CFR part 60, subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C)?

A: Yes. EPA considers the specified compression, filtration, and moisture removal from the landfill gas for use in an energy recovery device to be treatment under NSPS subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C). Because the turbines will be exempt from monitoring, they do not have to be included in the Startup, Shutdown, and Malfunction (SSM) Plan required by 40 CFR part 63, subpart AAAA. However, the treatment system supplying gas to the turbines will have to be included in the SSM Plan.

Abstract for [0700074]

Q: Does EPA consider the gas processing system which includes reciprocating internal combustion (IC) engines at the Austin Community Landfill in Austin, Texas, to be treatment under 40 CFR part 60, subpart

WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C)?

A: Yes. EPA considers the specified compression, filtration, and moisture removal from the landfill gas for use in an energy recovery device to be treatment under NSPS subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C). Because the engines will be exempt from monitoring, they do not have to be included in the Startup, Shutdown, and Malfunction (SSM) Plan required by 40 CFR part 63, subpart AAAA. However, the treatment system supplying gas to the IC engines will have to be included in the SSM Plan.

Abstract for [0700075]

Q: Does EPA consider the thermal desorber and pollution control system which treats diesel-contaminated drilling cuttings, under construction by Pollution Management, Incorporated in Beebe, Arkansas, to be subject to 40 CFR part 60, subpart CCCC?

A: No. EPA does not consider the specified treatment of this material, diesel-contaminated drilling cuttings, by low temperature thermal desorption followed by a pollution control system, to be subject to 40 CFR part 60, subpart CCCC.

Abstract for [0700076]

Q: Morton Custom Plastics Company in Harrisburg, North Carolina is subject to 40 CFR part 60, subpart TTT and requests a change in the due dates for its semiannual compliance statements. Does EPA allow an adjustment in the due dates?

A: No. The NSPS General Provisions at § 60.19 allow an adjustment in the postmark deadline for semiannual compliance statements when information is provided which indicates that an adjustment is warranted. Since Morton Custom Plastics has provided no information to support a change in the deadline, EPA does not approve the company's request.

Abstract for [0700077]

Q: The City of Winston-Salem, North Carolina, operates an emergency generator which is subject to 40 CFR part 60, subpart IIII and is required by § 60.4207(a) to use diesel fuel meeting the requirements of 40 CFR 80.510(a), beginning October 1, 2007. Does EPA approve the request that the City use the remaining non-compliant fuel in its inventory for six months following October 1, 2007, pursuant to § 60.4207(c)?

A: Yes. EPA approves the City of Winston-Salem's request under NSPS subpart IIII. Based on EPA's review of the information provided, the City's petition is approved pursuant to § 60.4207, and the City may use the remaining non-compliant fuel in the emergency generator for a period of six months past the deadline of October 1, 2007.

Abstract for [0700078]

Q1: Does EPA approve a request to deviate from the assumption that a violation of the dioxin/furan (CDD/CDF) emission occurs if the Curtis Bay Energy (CBE) facilities in Baltimore, Maryland, operate their Hospital/Medical/Infectious Waste Incinerator (HMIWI) above the maximum fabric filter inlet temperature, above the maximum charge rate, and below the minimum dioxin/furan sorbent flow rate simultaneously as stated in 40 CFR part 60, subpart Ec, at § 60.56c(e)(2)?

A1: Yes. EPA conditionally approves the request under NSPS subpart Ec to deviate from the assumption that a violation of the CDD/CDF emission limit occurs, if the facility simultaneously operates above the maximum fabric filter inlet temperature, above the maximum charge rate, and below the minimum dioxin/furan sorbent flow rate, provided five conditions are met pertaining to fabric inlet temperature, incinerator carbon monoxide emissions, opacity limits, the feed rate for the powdered activated carbon system, and the compliance characteristics of the incinerator's operation.

Q2: Does EPA approve a request to eliminate the operating parameter monitoring requirements for maximum charge rate, as specified in § 60.57c(a) and Table 3 of 40 CFR part 60, subpart Ec, at the CBE facilities in Baltimore, Maryland?

A2: No. EPA finds the maximum charge rate is an operating parameter used to determine compliance with other applicable emission limits in addition to dioxin/furan emission limits. EPA's rationale for this determination is explained in its August 7, 2006 letter to CBE regarding this matter. A brief explanation is that the definition for maximum charge rate given in § 60.51c of 40 CFR for a continuous and intermittent HMIWI is ''* * * 110 percent of the lowest 3-hour average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.'' By definition, the maximum charge rate is linked to compliance with all applicable emission limits which includes particulate matter (PM), carbon monoxide (CO), dioxins/furans, HCl, lead (Pb), cadmium (Cd), mercury (Hg), sulfur dioxide (SO_2), nitrogen oxides (NO_X), and opacity. EPA will not grant approval under NSPS subpart Ec to eliminate monitoring the maximum charge rate as an operating parameter since it is linked to all emission limits and not linked only to dioxin/furan emissions.

Q3: Does EPA approve a request to eliminate the operating parameter monitoring requirements for maximum fabric filter inlet temperature as specified in § 60.57c(a) and Table 3 of 40 CFR part 60, subpart Ec, at the CBE facilities in Baltimore, Maryland?

A3: Yes. EPA conditionally approves the request under NSPS subpart Ec, provided that requirements are met pertaining to inlet fabric filter temperature, carbon monoxide emissions, and COMS operation.

Q4: Does EPA approve a request to eliminate minimum dioxin/furan sorbent flow rate as specified in § 60.57c(a) and Table 3 of 40 CFR part 60, subpart Ec, at the CBE facilities in Baltimore, Maryland?

A4: Yes. EPA conditionally approves the request under NSPS subpart Ec, provided that the facilities install, calibrate, and maintain the powdered activated carbon (PAC) flow rate at a rate of at least 90 percent of the highest sorbent feed rate based on a 3-hour rolling average (readings taken at least once every hour) measured during the most recent performance test demonstrating compliance with mercury emission limit.

Q5: Does EPA approve a request to eliminate the recordkeeping requirements for HMIWI charge dates, times, and weight and hourly charge rates, under 40 CFR part 60, subpart Ec, at the CBE facilities in Baltimore, Maryland?

A5: No. EPA does not approve CBE's request to eliminate the recordkeeping requirements for HMIWI charge dates, times, and weights and hourly charge rates under NSPS subpart Ec. This determination is consistent with EPA's previous determination letters of July 13 and August 7, 2006 to CBE regarding this matter.

Q6: Does EPA approve a request to eliminate the recordkeeping requirements for the amount and type of dioxin/furan and sorbent used during each hour of operation under 40 CFR part 60, subpart Ec, at the CBE facilities in Baltimore, Maryland?

A6: Yes. EPA conditionally approves the request to eliminate the sorbent flow rate recordkeeping requirements for the primary control system for CDD/CDF emissions provided CBE maintains records of the date and time of identified bag failures including the date and time that failed bags were replaced. In addition, CBE shall

maintain hourly records of PAC flow rate as required by Maryland's 111(d)/129 Plan (COMAR 26.11.08.08–1) provision relating to the main operating parameter for controlling mercury emissions. For the CBE incinerator units, the PAC system provides incidental or secondary control of CDD/CDF. Also, as a final condition, EPA is requiring that the approved CBE alternative monitoring and recordkeeping requirements (including an approved SOP under Item 1) in this letter and in the other two (2) approval letters (to date July 13, 2006 and August 7, 2006) be included in a revised CBE Title V Operating Permit Application and be submitted in a timely manner to the Maryland Department of the Environment for incorporation into the Title V Operating Permit. Summary tables are in letter.

Abstract for [0700079]

Q1: Does EPA approve Curtis Bay Energy (CBE) alternative monitoring request to deviate from the assumption that a violation of the dioxin/furan (CDD/CDF) emission occurs if the facility operates their Hospital/Medical/Infectious Waste Incinerator (HMIWI) above the maximum fabric filter inlet temperature, above the maximum charge rate, and below the minimum dioxin/furan sorbent flow rate simultaneously as stated in 40 CFR part 60, subpart Ec § 60.56c(e)(2), for its two existing, large-sized, continuous HMIWI Operations located in Baltimore, Maryland?

A1: Yes, EPA conditionally approves the request to deviate from the assumption that a violation of the CDD/CDF emission limit occurs, if the facility simultaneously operates above the maximum fabric filter inlet temperature, above the maximum charge rate, and below the minimum dioxin/furan sorbent flow rate provided CBE meets the five conditions described in the EPA response letter. The five conditions were established based on EPA's review of the Remedia Catalytic Filter System performance guarantee conditions of W. L. Gore and Associates, Incorporated; the CBE standard operating procedure for Baghouse Operations; and summaries of five consecutive annual CDD/CDF stack tests (15 stack test run summaries) conducted during the period from February 2002 through February 2006.

Q2: Does EPA approve a request to eliminate the operating parameter monitoring requirements for maximum charge rate as specified in 40 CFR 60.57c(a) and Table 3 of 40 CFR part 60, subpart Ec?

A2: No. As indicated in a previous EPA response dated August 7, 2006 to CBE, the maximum charge rate is an operating parameter used to determine compliance with other applicable emission limits in addition to dioxin/furan emission limits. The definition for maximum charge rate given in 40 CFR 60.51c for a continuous and intermittent HMIWI is ''* * * 110 percent of the lowest 3-hour average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.'' By definition, the maximum charge rate is linked to compliance with all applicable emission limits which includes particulate matter (PM), carbon monoxide (CO), dioxins/furans, HCl, lead (Pb), cadmium (Cd), mercury (Hg), sulfur dioxide (SO_2), nitrogen oxides (NO_X), and opacity. EPA will not grant approval to eliminate monitoring the maximum charge rate as an operating parameter since it is linked to all emission limits and not linked only to dioxin/furan emissions. This determination is consistent with a previous EPA response to CBE dated August 7, 2006.

Q3: Does EPA approve a request to eliminate the operating parameter monitoring requirements for maximum fabric filter inlet temperature as specified in § 60.57c(a) and Table 3 of 40 CFR part 60, subpart Ec?

A3: Yes, EPA conditionally approves the request provided that the requirements described in the EPA response letter are met. This determination is consistent with two previous EPA responses to CBE dated July 13, 2006 and August 7, 2006.

Q4: Does EPA approve a request to eliminate minimum dioxin/furan sorbent flow rate as specified in § 60.57c(a) and Table 3 of 40 CFR part 60, subpart Ec?

A4: Yes, EPA conditionally approves the request provided that the requirement described in the EPA response letter is met.

Q5: Does EPA approve a request to eliminate the recordkeeping requirements for HMIWI charge dates, times, and weight and hourly charge rates?

A5: No. EPA will not approve the request to eliminate the recordkeeping requirements for HMIWI charge dates, times, and weights and hourly charge rates since these records are needed to demonstrate continuous compliance. This determination is consistent with two previous EPA responses to CBE dated July 13, 2006 and August 7, 2006.

Q6: Does EPA approve a request to eliminate the recordkeeping requirements for the amount and type of dioxin/furan and sorbent used during each hour of operation of the control equipment?

A6: Yes. EPA conditionally approves the request to eliminate the sorbent flow rate recordkeeping requirements for the primary control system for CDD/CDF emissions, as specified in § 60.57c(a) and Table 3 of 40 CFR part 60, subpart Ec, provided CBE meets the conditions for alternative monitoring and recordkeeping requirements, and submits a timely revised Title V Operating Permit Application incorporating such conditions, as specified in the EPA response letter.

Abstract for [0700080]

Q: Does EPA approve an alternative opacity monitoring procedure, under 40 CFR part 60, subpart Db, for a limited time period due to construction of new boilers and having to bypass the existing continuous opacity monitors at the University of Virginia's main heating plant in Charlottesville, Virginia?

A: Yes. Under the circumstances, EPA approves the use of Method 9 procedures, under NSPS subpart Db, for the short period that the existing continuous opacity monitor must be bypassed to tie in two new boilers.

Abstract for [0800001]

Q: Is a proposal to monitor fuel usage on a monthly basis, rather than a daily basis, acceptable under 40 CFR part 60, subpart Dc, for seven natural gas fired boilers at the Department of the Army's base in Fort Benning, Georgia?

A: Yes. Since there are no applicable emission limits under 40 CFR part 60, subpart Dc for boilers that combust natural gas, EPA determines compliance for these affected facilities can be adequately verified with monthly fuel usage records. NSPS subpart Dc contains emissions limits for sulfur dioxide and particulate, but these limits are only applicable to units that combust coal, oil, and/or wood.

Abstract for [0800002]

Q: Is the initial performance particulate testing requirement at a baghouse that controls emissions from a crusher, which runs for approximately 15 to 20 minutes per day, waived under 40 CFR part 60, subpart OOO (Standards of Performance for Nonmetallic Mineral Processing Plants) for the Carbo Ceramics Company in McIntyre, Georgia?

A: EPA conditionally approves waiving the initial performance test for particulate matter testing requirement under § 60.11(b). Carbo Ceramics Company must conduct the visible emission observation testing, required

under § 60.11(b), for a period of at least one hour (10 six-minute averages) at the exit of the baghouse, which is approved by EPA under § 60.8(b)(5) due to the intermittent use of the crusher.

Abstract for [0800003]

Q: Is the reduced hydrogen sulfide monitoring frequency that Shell Chemical proposed for a fuel gas stream generated in No. 1 Naphtha Splitter at their Mobile, Alabama refinery acceptable for 40 CFR part 60, subpart J?

A: Yes. EPA determines that Shell's proposal to reduce the monitoring frequency from four times per day to once per quarter is acceptable, based on the review of historical monitoring data submitted with the request which confirms that hydrogen sulfide is not present in the fuel gas stream.

Abstract for [0800004]

Q1: Are alternative hydrogen sulfide monitoring procedures and frequencies proposed for three fuel gas streams subject to 40 CFR part 60, subpart J, at the Hunt Refining Company facility in Tuscaloosa, Alabama acceptable?

A1: Yes. EPA finds all three of the proposed alternatives are acceptable because the hydrogen sulfide content of these streams is inherently low.

Q2: Is the alternative monitoring proposal to monitor the continuous presence of a pilot flame at an enclosed flare, subject to NESHAP subpart R, in lieu of temperature monitoring at the firebox, acceptable under 40 CFR part 60, subpart J, for the Hunt Refining Company facility in Tuscaloosa, Alabama?

A2: No. EPA denies the alternative monitoring proposal since monitoring the pilot flame at an enclosed flare alone is not adequate to demonstrate continuous compliance. This conclusion is based upon several previous EPA determinations and the revisions to NESHAP subpart R, promulgated by EPA in 2003.

Abstract for [0800005]

Q: Do the natural gas processing steps for gas collected for combustion in internal combustion engines to produce electricity at three landfills located in Florida including Trail Ridge Landfill (Baldwin), Brevard County Landfill (Cocoa), and Seminole County Landfill (Geneva), constitute ''treatment'' under 40 CFR part 60, subpart WWW?

A: Yes. EPA finds that this combination of processing steps constitutes treatment, as stated in several previous EPA determinations. In addition, the treated gas would not be subject to control requirements under subpart WWW since the gas from all three landfills is filtered to one micron, dewatered, and compressed.

Abstract for [0800006]

Q: What is the required frequency for relative accuracy test audits (RATAs) on sulfur dioxide continuous emission monitoring systems installed on sulfuric acid plants subject to 40 CFR part 60, subpart H as referred to in the letter from Koogler and Associates?

A: EPA finds that the only RATA that part 60 specifically requires for sulfur dioxide monitors installed under subpart H is the one conducted during the initial performance test on the facility. It would also be appropriate to require an additional RATA when existing monitors are being recertified. In addition, state and local agencies may require more frequent RATAs on a case-by-case basis.

Abstract for [0800007]

Q: Does EPA approve the use an alternative performance test method, under 40 CFR part 60, subpart UUU, to verify compliance with the applicable opacity limit for rotary sand dryers located inside of buildings at two Triangle Brick Company plants in Moncure, North Carolina and Wadesboro, North Carolina, if no visible emissions are detected during a 75-minute EPA Method 22 observation period on the exterior of the buildings?

A: Yes. EPA finds that the proposed performance testing procedures, consisting of Method 22 observations made on the exterior of the buildings where they are located, would be acceptable in lieu of EPA Method 9 for rotary sand dryers located inside of buildings. The EPA Method 22 procedures are similar to a compliance option under 40 CFR part 60, subpart OOO (Standards of Performance for Nonmetallic Mineral Processing Plants), allow for affected facilities located inside buildings. 40 CFR 60.8(b)(4) allows for the requirement for an initial performance test to be waived when an owner or operator demonstrates through other means that an affected facility is in compliance.

Abstract for [0800008]

Q: Does EPA approve the Duke Energy Corporation request for a waiver of the requirement to conduct Method 5 testing on forced air mechanical vents on limestone transfer towers and reagent preparation buildings at three power plants at the Marshall, Belews Creek, Allen, and Cliffside Stations in North Carolina under 40 CFR part 60, subpart OOO?

A: Yes. EPA finds that, based upon the design and operation of the affected facilities within the transfer towers and reagent preparation buildings, particulate emissions should be extremely low. Due to the low potential for emissions, waiving the Method 5 testing requirement for any forced air mechanical vent where no visible emissions are detected over the course of a one-hour Method 9 observation period would be acceptable to EPA.

Abstract for [0800009]

Q: Is monitoring the strength of the solution in the caustic scrubber for a fuel gas stream at the Chevron Products Company refinery in Pascagoula, Mississippi an acceptable alternative to continuously monitoring the hydrogen sulfide content of the fuel gas stream?

A: Yes. EPA approves the alternative monitoring plan with the condition that Chevron amends it to specify what steps the company will take if monitoring data indicates that the caustic solution is more than 80 percent spent, the maximum allowable strength.

Abstract for [0800010]

Q1: Is a proposal to delay the installation of gas collection wells in active areas that have held waste for five years or more at the Three Rivers Landfill in Aiken County, South Carolina, acceptable under 40 CFR part 60, subpart WWW?

A1: No. EPA finds that the proposal is not acceptable under NSPS subpart WWW since the collection system would be less effective than that required under provisions in 40 CFR 60.753. The use of the leachate collection system only to extract gas from active areas that have held waste for five years or more will result in a less effective system than one that incorporates both the leachate system components and properly located extraction wells.

Q2: Does EPA allow quarterly methane surface concentration monitoring to be waived for roads, active areas, truck traffic areas, and areas with slopes greater than 3:1, at the Three Rivers Landfill located in Aiken County, South Carolina under 40 CFR part 60, subpart WWW?

A2: EPA waives the monitoring for roads, but not for the other areas covered by the request under NSPS subpart WWW. Based upon previous EPA determinations, surface methane monitoring requirements cannot be waived for active areas, truck traffic areas, or areas with slopes less than 4:1.

Q3: Does EPA find that a probe may be placed near the tops of vegetation as an alternative to placing the methane

surface concentration monitoring probe within five to ten centimeters of the landfill surface, at the Three Rivers Landfill in Aiken County, South Carolina under 40 CFR part 60, subpart WWW?

A3: No. EPA finds this proposal is not acceptable under NSPS subpart WWW because dilution of the sample will result in the methane concentration being lower at the top of vegetation than it is at the landfill surface.

Q4: Does EPA waive the requirement to monitor the temperature of internal combustion engines used as control devices at the Three Rivers Landfill be waived under 40 CFR part 60, subpart WWW?

A4: No. Although EPA finds that the combustion temperature monitoring requirement cannot be waived under NSPS subpart WWW, EPA has approved temperature monitoring alternatives in the past. Therefore, Three Rivers Landfill may want to consider approval of a similar alternative for its site.

Q5: Does EPA approve the use of an orifice plate for measuring the flow rate to the flare that serves as backup control device at the Three Rivers Landfill under 40 CFR part 60, subpart WWW?

A5: Yes. The use of orifice plates are commonly used for measuring process flow rates, therefore, such practice is appropriate and does not require prior EPA approval for use at the Three Rivers Landfill.

Q6: Does EPA approve the use of a continuous relighter as an alternative to a heat sensing device, such as an ultraviolet beam sensor or thermocouple at the pilot light or in the flame, for a backup flare expected to operate for 120 days or less per year at the Three Rivers Landfill under 40 CFR part 60, subpart WWW?

A6: No. EPA determines that a continuous relighter is not an acceptable substitute for a heat sensing device under NSPS subpart WWW, as stated in a previous EPA determination.

Abstract for [0800011]

Q: Are the alternative locations that Montenay Charleston proposed for installing the carbon monoxide (CO) continuous emission monitoring systems on its municipal waste combustor units in Charleston, South Carolina acceptable under 40 CFR part 60, subpart Cb?

A: Yes. Based upon information supplied with the request, EPA finds that the CO concentration at the proposed alternative monitoring sites is representative of the concentration at the monitoring site specified in NSPS subpart Cb.

Abstract for [0800012]

Q: Does EPA approve delaying implementation of the pressure, temperature, and oxygen monitoring requirements under 40 CFR part 60, subpart WWW until September 2010, for seven wells that are located in an active area that first received waste in September 2005, at the Chestnut Ridge Landfill in Heiskell, Tennessee?

A: EPA finds that the proposal to delay monitoring for these wells would be consistent with the intent of § 60.753 in NSPS subpart WWW provided that the area of the landfill where the wells are located is not closed or does not reach final grade prior to September 2010.

Abstract for [0800013]

Q1: Is the shortened test duration that the Tennessee Valley Authority (TVA) proposed for the initial nitrogen oxides performance test on two auxiliary boilers at the Cumberland Fossil Plant in Cumberland, Tennessee acceptable under 40 CFR part 60, subpart Db?

A1: Yes. EPA finds that the TVA proposal to shorten the initial performance test to three hours is acceptable under NSPS subpart Db because of the high cost of conducting a 24-hour test outweighs any benefit associated with a test of this duration.

Q2: Is the TVA proposal to conduct future performance tests every 400 hours of operation instead of conducting annual performance tests at the Cumberland Fossil Plant in Cumberland, Tennessee acceptable under 40 CFR part 60, subpart Db?

A2: No. EPA finds that the proposal to base the schedule for future performance testing only on hours of operation is not acceptable under NSPS subpart Db due to the lack of historical information regarding the frequency of operation and the margin of compliance for the units in question. Since burning fuel in order to operate the auxiliary boilers only for testing purposes would be a waste of resources, the requirement to conduct annual tests may be waived during any year when the auxiliary units are not used for starting up the power boilers at the Cumberland Fossil Plant.

Abstract for [0800014]

Q: Is the Duke Energy proposal to use quality assurance (QA) procedures and schedules from 40 CFR part 75 to satisfy QA requirements for the combustion turbines at its electric power peaking plant in Brownsville, Tennessee acceptable under 40 CFR part 60, subpart GG?

A: Yes. EPA approves this request because the turbines in question operate intermittently, and the proposed alternative procedures reduce the likelihood that Duke will need to operate the turbines only for testing purposes during some calendar quarters under NSPS subpart GG. EPA has approved similar proposals in the past.

Abstract for [0800015]

Q: Is the proposal to use a predictive emission monitoring system (PEMS) as a substitute for a nitrogen oxides continuous emission monitoring system on Boiler No. 6 at the Oak Ridge National Laboratory (ORNL) acceptable?

A: No. EPA does not approve using a PEMS to measure nitrogen oxides emissions for Boiler No. 6 at this time. EPA would be willing to consider this proposal if ORNL submits additional information for the PEMS based on a relative accuracy test and provides a description of the quality assurance program for the PEMS.

Abstract for [0800016]

Q1: Does EPA find that 40 CFR part 60, subpart Db applies to a wood burner/thermal oil heater/rotary dryer system at the Norbord Georgia Incorporated (Norbord) oriented strand board manufacturing facility in Cordele, Georgia?

A1: Yes. EPA finds that the wood burner/thermal oil heater/rotary dryer system is a steam generating unit, and is therefore subject to NSPS subpart Db.

Q2: Does EPA approve an alternative opacity monitoring procedure for the wood burner/thermal oil heater/rotary dryer system for Norbord facility located in Cordele, Georgia, since the formation of condensate may interfere with a continuous opacity monitoring system (COMS) under 40 CFR part 60, subpart Db? Norbord proposes that the exhaust from the system be ducted through a wet electrostatic precipitator and then through two regenerative thermal oxidizers (RTOs).

A2: No. EPA finds that Norbord has not provided information to justify an alternative monitoring procedure under NSPS subpart Db. The temperature of the exhaust exiting the RTOs should exceed the dew point of the steam, therefore, there is no reason to assume that water droplets will interfere with a COMS.

Abstract for [M070016]

Q: Does EPA approve an alternative monitoring request under 40 CFR part 63, subpart EEE, for Veolia ES Technical Solutions, L.L.C. of Sauget, Illinois, to use an extractive hydrogen chloride (HCl) continuous emission monitoring system (CEMS) to demonstrate compliance with the hydrogen chloride/

chlorine gas emission standard and waive the monitoring requirements pertaining to spray dryer scrubbers set forth in 40 CFR 63.1209(o)(4)(i), (ii) and (iii)?

A: No. EPA finds the request does not include any data or information to demonstrate the HCl CEMS initial accuracy, precision, and reliability under MACT subpart EEE. Further, the request does not document periodic (daily, quarterly, and annually) quality assurance and quality control procedures for each HCl CEMS.

Abstract for [M070017]

Q: Does EPA approve an alternative monitoring plan in lieu of the continuous opacity monitoring requirements of 40 CFR 60.105(a)(1) and corresponding requirements of 40 CFR part 63, subpart UUU, where a wet scrubber is to be installed on Puget Sound Refining's fluidized catalytic cracking unit (FCCU) in Anacortes, Washington?

A: Yes. EPA approves the monitoring of the liquid flow rate and gas flow rate for the wet gas scrubber, which is a jet-ejector design. Calculation of the liquid-to-gas ratio must be done as outlined in Tables 2 and 3 of 40 CFR part 63, subpart UUU, except that for purposes of determining and reporting excess emissions for the FCCU, a 3-hour rolling average of the liquid-to-gas ration will be used.

Abstract for [M070018]

Q: Does EPA approve an alternative monitoring application (AMA), submitted in conjunction with the Comprehensive Performance Test (CPT) plan, for the Celanese Clear Lake Plant (Celanese) located in Pasadena, Texas, consisting of the use of minimum liquid levels in the condenser/absorber and entrainment separator in conjunction with minimum blowdown rate from the quench receiver to monitor solids content of the scrubber liquid under 40 CFR part 63, subpart EEE?

A: Yes. EPA conditionally approves the AMA under MACT subpart EEE if Celanese incorporates specific conditions into the CPT and automatically controls the flow of demineralized water, as specified in the EPA response letter.

Abstract for [M070019]

Q1: Does EPA find that Train I and Train II Rotary Kiln Incinerators (RKI) at the Clean Harbors facility in Deer Park, Texas, with shrouds constructed at both ends, can be used as an alternative measure to control combustion gas leaks under 40 CFR part 63, subpart EEE?

A1: Yes. EPA conditionally approves the alternative monitoring request for RKI at the Clean Harbors facility, under MACT subpart EEE. The additional requirements that RKI would need to meet are set out in the EPA response letter.

Q2: Does EPA find that Train I and Train II RKIs at the Clean Harbors facility in Deer Park, Texas, which monitor stack gas flow rate, can be used instead of flue gas flow rate under 40 CFR part 63, subpart EEE?

A2: Yes. EPA determines that stack gas flow rate can be used instead of flue gas flow rate under MACT subpart EEE.

Q3: Does EPA approve that a measurement of pressure drop across the low energy wet scrubber be waived under 40 CFR part 63, subpart EEE for Train I and Train II RKIs at the Clean Harbors facility in Deer Park, Texas?

A3: Yes. EPA approves waiving a measurement of pressure drop across the wet scrubber, under MACT subpart EEE, provided that a minimum liquid to gas ratio is established and a scrubber is operated in accordance with design specifications set out in the EPA response letter.

Q4: Does EPA find that the liquid flow rate may be monitored in lieu of liquid feed pressure for a wet scrubber under 40 CFR part 63, subpart EEE, at the Clean Harbors facility in Deer Park, Texas?

A4: EPA determines that liquid flow rate may be monitored in lieu of liquid feed pressure under MACT subpart EEE, provided that the conditions specified in response A3, above are met, as specified in the EPA response letter.

Q5: Does EPA approve a 10-second delay if the pressure in the combustion zone remain positive for 30 continuous seconds to indicate a combustion system leak before an Automatic Waste Feed Cut-off (AWFCO) is engaged under 40 CFR part 63, subpart EEE for Train I and Train II RKIs at the Clean Harbors facility in Deer Park, Texas?

A5: No. EPA does not approve the 10-second delay since the justification provided is not acceptable. EPA determines that for purposes of MACT subpart EEE, an AWFCO must be engaged any time the pressure in the combustion system is positive for more than one second.

Abstract for [M070020]

Q: Does EPA approve a revision to the alternative monitoring plan that the Agency previously approved on December 12, 2003 for the Chalmette Refinery in Chalmette, Louisiana, to allow the facility the options under 40 CFR part 63, subpart G to reduce hazardous air pollutant emissions either by greater than 98 weight-percent or to a concentration of 20 parts per million by volume, whichever is less stringent?

A: Yes. EPA approves the revision to the alternative monitoring plan under NSPS subpart G, providing the facility both options offered by the regulations. The original conditions in the December 12, 2003 letter for application to EPA to reduce the frequency of monitoring still apply.

Abstract for [M070021]

Q1: The Dow Freeport Plant (Dow) Rotary Kiln Incinerator (RKI) located in Freeport, Texas has an IP.21 (data historian system) to calculate the hourly rolling average (HRA) and 12-hour rolling average. Is it allowed to continue burning hazardous waste while IP.21 is down, under 40 CFR part 63, subpart EEE?

A1: Yes. EPA finds that the RKI can continue burning hazardous waste while IP.21 is down if the Automatic Waste Feed Cut-off (AWFCO) is initiated based on an instantaneous data, as indicated in the EPA response letter.

Q2: Can the DOW RKI have positive pressure in the combustion zone for 30 seconds to indicate a combustion system leak and before the AWFCO is engaged, under 40 CFR part 63, subpart EEE?

A2: No. EPA denies the request for any time delay before triggering an AWFCO since pressure in the combustion chamber is higher than ambient pressure.

Q3: Can a freshwater make-up rate to the scrubber system be used as an alternative to measure blowdown rate and tank level to control and monitor solids content of the scrubber liquid at the Dow RKI, under 40 CFR part 63, subpart EEE?

A3: Yes. EPA finds that the freshwater make-up rate to the scrubber system can be used as an alternative to blowdown rate and tank level with requirements to establish and monitor the liquid to gas (L/G)ratio, as specified in the EPA response letter.

Q4: For a scrubber, along with minimum liquid and maximum flue gas flow, a minimum liquid feed pressure and minimum scrubber pump amperage are monitored. Can hazardous waste be allowed to burn if one of the three parameters is out of control at the Dow RKI, under 40 CFR part 63, subpart EEE?

A4: Yes. However, EPA finds that the AWFCO will be instituted if any two of the parameters exceed the operating parameter limits (OPL) established during the Comprehensive Performance Testing (CPT).

Q5: Can an AWFCO be instituted when there is a loss in any two states of Ionizing Wet Scrubber (IWS) at the Dow RKI, under 40 CFR part 63, subpart EEE?

A5: EPA will evaluate the results of the initial CPT with any three of the four IWS units operating shows, and if these are acceptable, then Dow will be allowed to set an AWFCO for power loss when more than one IWS units is 'shut-down', as specified in the EPA response letter.

Q6: Can a requirement to establish an OPL for the temperature in the secondary combustion chamber (SCC) be waived at the Dow RKI, under 40 CFR part 63, subpart EEE?

A6: No. EPA finds that the requirement to establish an OPL for the temperature cannot be waived since the AWFCO must be triggered anytime the pressure in the SCC is higher than the ambient pressure.

Q7: Can a manufacturer's specification be used to establish a limit on the carbon bed's inlet temperature at the Dow RKI, under 40 CFR part 63, subpart EEE?

A7: EPA finds that the manufacturer's specification can be used if the facility operates the carbon bed in accordance with the manufacturer's specifications.

Q8: Can a requirement to monitor pH be waived for the acid absorber at the Dow RKI, under 40 CFR part 63, subpart EEE?

A8: A requirement to monitor pH can be waived if the absorber is operated within the HRA limits on L/G ration, minimum freshwater makeup flow rate, and total pressure drop across the scrubber.

Q9: Can pH be monitored on scrubber system comprising of an ionizing wet scrubber and a pre-scrubber and set it as AWFCO at the Dow RKI, under 40 CFR part 63, subpart EEE?

A9: Yes. EPA finds that the pH can be monitored on scrubber system and set it as AWFCO.

Q10: Can the Automatic Waste Feed Cut-off (AWFCO) be based on liquid feed pressure for individual scrubbers on the scrubber system at the Dow RKI, under 40 CFR part 63, subpart EEE?

A10: Yes. EPA finds that the AWFCO can be based on liquid feed pressure for individual scrubbers.

Abstract for [M070022]

Q: Does EPA approve an alternative test method and operating limit, under 40 CFR part 60, subpart XX and 40 CFR part 63, subpart R, for the Philtex/Ryton Complex in Borger, Texas?

A: Yes. EPA approves an alternative testing and operating limits specified in § 60.502(h) of MACT subpart XX and § 63.425(e) of subpart R on the basis of specific stipulations, which address: The maximum flow of vapors from loading operations; the heat content of vapors routed to the flare during loading operations; the leak tightness of rail cars; detecting leaks and repairing the vapor manifold system; verifying that excess emissions will not occur from storage tanks at the maximum pressures during loading; ensuring gasoline is loaded into only rail cars which pass the leak test; and monitoring the pressure continuously in the vapor collection manifold system.

Abstract for [M070023]

Q1: Should ANR Pipeline Company (ANR), which owns and operates reciprocating internal combustion engines (RICE) at a pipeline compressor station be required, under 40 CFR part 63, subpart ZZZZ, to start up the RICE for the sole purpose of recording the pressure drop across the catalyst as required by 40 CFR 63.6640(a) if it is not operating during a particular month? Does EPA approve ANR request to not start up the RICE under the condition described above for three compressor stations: The Woolfolk Compressor and the Reed City Compressor Stations in Michigan, and the Saint John Compressor Station in Indiana.

A1: Yes. EPA conditionally approves this request. ANR must document periods when the RICE is not operating, as required under § 63.6650 of MACT subpart ZZZZ.

Q2: ANR requests that EPA clarify the requirements at 40 CFR 63.6640(a) as they relate to its three compressor stations, the Woolfolk Compressor and the Reed City Compressor Stations in Michigan, and the St. John Compressor Station in Indiana. Specifically, ANR asks whether a RICE that is operated during a given month below the target window for percent load is required, under 40 CFR part 63, subpart ZZZZ, to increase the load for the sole purpose of measuring the pressure drop?

A2: No. ANR is not required to increase the load for the sole purpose of measuring pressure drop across the compressor stations. However, the ANR will be required to measure the pressure drop once the load is increased to the target window, or when operations exceed 30 days (regardless of load), and to document the time periods when the RICE is operated below the target window in its semi-annual report, as required under MACT subpart ZZZZ.

Q3: Does EPA approve that RICE, which does not have the ability to operate at full load due to restrictive operating parameters associated with the gas service that they support, be tested at a reduced load to establish the target window for measuring pressure drop across the catalyst, under 40 CFR part 63, subpart ZZZZ, at ANR facilities? ANR requests clarification in regards to three compressor stations, the Woolfolk Compressor and the Reed City Compressor Stations in Michigan, and the St. John Compressor Station in Indiana.

A3: EPA approves the alternative testing procedures for setting the target window for measuring pressure drop, under MACT subpart ZZZZ, provided that ANR establishes a lower maximum load rate and appropriate differential pressure ranges for the reduced load.

Q4: For a RICE that can never be operated at the target window, should ANR monitor the pressure drop when an established lower-load baseline is achieved in any given month, under 40 CFR part 63, subpart ZZZZ? ANR requests clarification in regards to three compressor stations, the Woolfolk Compressor and the Reed City Compressor Stations in Michigan, and the St. John Compressor Station in Indiana.

A4: Yes. EPA recommends that ANR measure monthly pressure drop when the units are operating to assure catalyst performance, even if the units are operating at a reduced load below the target window.

Abstract for [M070024]

Q1: Does EPA approve a waiver of the requirement under 40 CFR part 63, subpart EEE to establish operating parameter limits for waste viscosity, waste fuel delivery pressure, atomization pressure, etc., which ensure good operation of the firing system for a fluidized bed incinerator (FBI) with waste feeding through simple lances at the Eastman Chemical Company in Longview, Texas?

A1: EPA conditionally approves this waiver, with the condition that Automatic Waste Feed Cut-off (AWFCO) be instituted on minimum stack gas flow to ensure proper operation of fluidized bed, and amend the Comprehensive Performance Test plan, as detailed in the EPA response letter.

Q2: Does EPA approve a waiver of the requirement in 40 CFR part 63, subpart EEE, to monitor the liquid feed pressure for a hydrochloric acid and chlorine gas scrubber?

A2: EPA approves this waiver with the conditions that a minimum liquid to gas ratio for the scrubber must be established during the CPT and the scrubber must be operated in accordance with the manufacturer's design specifications.

Q3: Does EPA approve a waiver to establish a maximum combustion chamber pressure in an FBI?

A3: EPA approves this waiver with a condition to establish an upper limit for the pressure at the inlet end of the heat exchanger as an AWFCO operating parameter limit, based on historical data.

Abstract for [M070025]

Q1: Does EPA approve hourly rolling average (HRA) feed rate limitations in lieu of calculating 12-hour rolling average limits for ash, mercury, total chlorine, chlorides, and metals at Reynolds Metals Company Gum Springs Plant (Reynolds) in Arkadelphia, Arkansas, under 40 CFR part 63, subpart EEE?

A1: Yes. EPA conditionally approves the use of HRA based upon Reynolds establishing maximum feed rates during the Comprehensive Performance Test (CPT) for the pot liner mix, mercury, semi-volatile metals, low-volatile metals, and chlorine/chlorides, under MACT subpart EEE.

Q2: Can Reynolds use maximum inlet temperature at the baghouse inlet based on operating practice and engineering judgment instead of actual temperature measurement during CPT, under 40 CFR part 63, subpart EEE?

A2: Yes. EPA approves that Reynolds use maximum inlet temperature under MACT subpart EEE based on an operating practice and an engineering judgment instead of actual temperature during CPT.

Q3: Does EPA approve that Reynolds use instantaneous pressure limitations of minimum baghouse differential pressure (dp) along with continuous opacity monitoring system (COMS) reading of 15 percent to trigger an alarm and alert the operators for potential bag leak events at its facility, under 40 CFR part 63, subpart EEE?

A3: Yes. EPA conditionally approves the use of minimum dp, but with a 10 percent, rather than the requested 15 percent, COMS opacity reading on a 6-minute rolling average basis. Reynolds is required to maintain a minimum dip across the baghouse of 0.5 inches of water column on an instantaneous basis, as specified in the EPA response letter.

Q4: Does Reynolds get a waiver of the requirement to select operating parameter limits for the cyclones and instead use an existing operation and maintenance (O&M) plan for inspecting, maintenance, and performing corrective measures under 40 CFR part 63, subpart EEE?

A4: Yes. EPA approves the use of the existing O&M plan until proper OPLs are identified by EPA or the Arkansas Department of Environmental Quality, and limits are established under MACT subpart EEE.

Q5: Does EPA approve a request to waive the requirements to select parameters to ensure good operation of the waste firing system in the case where liquid waste is not atomized or injected into a flame zone at the Reynolds Metals Company Gum Springs Plant in Arkadelphia, Arkansas, under 40 CFR part 63, subpart EEE?

A5: EPA finds that a waiver under MACT subpart EEE is not needed because combustible liquid waste is not atomized or injected into a flame zone, so the requirement to establish parameter limits to ensure good operation of the liquid waste firing system is not applicable.

Abstract for [M070026]

Q1: Does EPA approve the use of data from Kiln 1, under 40 CFR part 63, subpart EEE, to show compliance and set operating parameter limits for Kiln 2 at the Ash Grove Cement Company Foreman Arkansas Plant (Ash Grove)? Note that Kiln 1 and Kiln 2 are identical in design, construction, and process operations. Kilns burn the same waste feed streams.

A1: Yes. EPA approves this request under MACT subpart EEE, because Kiln 1 and Kiln 2 are identical in every respect, including design, construction, and process operations. Both Kilns burn the same waste feed streams.

Q2: Does EPA approve that the Ash Grove use stack test data from mode 1 (hazardous waste in combustion chamber) to establish operating parameter limits (OPLs) for mode 2 (hazardous waste not in combustion chamber), under 40 CFR part 63, subpart EEE?

A2: Yes. EPA conditionally approves the request to use stack test data from mode 1 to establish OPLs for mode 2 under MACT subpart EEE. The OPLs developed using mode 1 should be based upon a worst case scenario, as mentioned in the EPA response letter.

Q3: Does EPA approve that the Ash Grove show destruction and removal efficiency (DRE) compliance for Kiln 3 (larger capacity unit) based on DRE test results from Kiln 1 (smaller capacity unit), under 40 CFR part 63, subpart EEE?

A3: Yes. EPA approves this request under MACT subpart EEE. Since the Resource Conservation and Recovery Act (RCRA) permit temperature requirements have been found to ensure compliance with the standard, stack testing of Kiln 1 will validate that no changes in the systems have occurred that will impact this proven relationship. The request to base minimum temperature OPLs on prior RCRA permit provisions will be determined following submittal and review of the Ash Grove's Comprehensive Performance Test (CPT) data results.

Q4: Does EPA approve extrapolation of metal feed rates under 40 CFR part 63, subpart EEE, for Kiln 2 based on results from a stack test conducted on Kiln 1 at the Ash Grove Cement Company Foreman Arkansas Plant?

A4: EPA is not able to make a determination under MACT subpart EEE until it has reviewed and accepted the CPT data results.

Q5: Does EPA find that the Ash Grove can compute the hourly rolling average based on the available clock minutes of data rather than lengthening the period of time over which an average is calculated when there are missing minutes within the clock period hour, under 40 CFR part 63, subpart EEE?

A5: Yes. EPA approves the alternative calculation method, which is specified in the current RCRA permit, under MACT subpart EEE. The proposed calculation method will provide equivalent performance to the method specified in the hazardous waste combustors (HWC) MACT rule since it is the same as the method used to establish OPLs. As required by the HWC MACT, the continuous monitoring system (CMS) must have 95 percent data availability to continue feeding hazardous waste. An Automatic Waste Feed Cut-off will take place should less than 95 percent data availability occur, or should the CMS fail to operate.

Abstract for [M070027]

Q1: Does EPA approve monitoring of combustion air and vent gas flow rates in lieu of stack gas flow rate as a measure of residence time, under 40 CFR part 63, subpart EEE, at the BASF facility located in Geismar, Louisiana?

A1: No. EPA finds that the information provided is insufficient to make any determination. The facility must provide mass balance and calculation of residence time for the three units as well as provide a variety of Piping and Instrument Diagrams.

Q2: Does EPA waive a requirement to monitor pH of the scrubber liquid as an operating parameter limit, under 40 CFR part 63, subpart EEE, at the BASF facility located in Geismar, Louisiana?

A2: No. EPA finds that the information provided is insufficient to make any determination. The facility must provide analysis of all feed streams including the process vents, and show the Maximum Theoretical Emission Concentration (MTEC)

approach for chlorine/chloride (MTEC) calculations.

Abstract for [M070028]

Q1: Does EPA approve a request to waive the requirement under 40 CFR part 63 subpart 1209(l)(2) and 1209(o)(3)(iii) to monitor liquid feed pressure for the low energy wet scrubber on the Toluene Diisocyanate (TDI) Unit at the Lyondell Chemical Company in Lake Charles, Louisiana?

A1: No. EPA does not approve the waiver request. If the combustor is equipped with a low energy wet scrubber, Lyondell must establish a limit on minimum liquid feed pressure to the wet scrubber based on manufacturer's specifications and comply with the limit on an hourly rolling average.

Q2: Does EPA approve the facility's proposal to use hourly rolling average in lieu of 12-hour rolling average for ash, chloride, and metals, as required by 40 CFR part 63, subpart 1209(c)(4) Analysis of Feedstreams?

A2: Yes. EPA approves the request because Lyondell treats only a limited number of on-site generated waste streams in the TDI Process Incinerator. The waste streams generated from the on-site processes are of a relatively consistent composition.

Q3: Does EPA approve use of fail-safe system with a local pressure indicator gauge (non-CMS) to ensure proper atomizing air pressure and institute waste feed cutoff when pressure falls below 30 psig, in accordance with 40 CFR part 63, subpart 1209(j)(4), destruction and removal efficiency (DRE)?

A3: Yes. EPA approves the request because although this fail-safe system is not part of the continuous monitoring system or the Automatic Waste Feed Cut-off system, it provides equivalent compliance.

Q4: Does EPA approve pump speed/pump curves (extrapolation) as a backup feed rate measurement methodology to the mass flow rate to meet the requirements of 40 CFR part 63, subpart 1209(j)(3) and 1209(k)(4), destruction and removal efficiency DRE?

A4: Yes. EPA approves the request because with either method, the TDI residue feed rate data is displayed in the control room and recorded by the production unit's data historian.

Abstract for [M070029]

Q1: Does EPA approve monitoring of total freshwater makeup rate in lieu of blowdown rate and tank level to control and monitor solids content of the scrubber liquid, under 40 CFR part 63, subpart EEE, concerning the Thermal Treatment Unit (TTU) at the Dow plant located in Plaquemine, Louisiana?

A1: Yes. EPA conditionally approves the alternative monitoring request under MACT subpart EEE, subject to conditions about freshwater make-up rate, minimum liquid levels, and scrubber characteristics and performance, as specified in the EPA response letter.

Q2: Does EPA approve the request to waive the requirement to monitor the liquid feed pressure for the scrubbers, under 40 CFR part 63, subpart EEE, concerning the TTU at the Dow plant located in Plaquemine, Louisiana?

A2: Yes. EPA conditionally approves the waiver request to not monitor the liquid feed pressure for the scrubbers at TTU, under MACT subpart EEE since the liquid feed pressure limit is not a critical parameter for the performance of the 'low energy' scrubbers for the TTU. However, EPA requires further evaluation of mercury data and scrubber performance to make a final determination about the waiver request and to determine the need for a freshwater distributor in the caustic scrubber.

Q3: Does EPA grant a waiver to the TTU at the Dow plant located in Plaquemine, Louisiana, to measure the flue gas as a measure of residence time during Comprehensive Performance Testing, under 40 CFR part 63, subpart EEE?

A3: No. EPA finds that the information provided is insufficient to make a determination.

Q4: Does EPA find that the TTU at the Dow plant located in Plaquemine, Louisiana, can continue to burn waste while date historian system (IP.21) is down, under 40 CFR part 63, subpart EEE? IP.21 is used to calculate the Hourly Rolling Average (HRA) and 12-Hour Rolling Average.

A4: Yes. EPA conditionally approves the request under MACT subpart EEE, which would require that the facility manually calculates HRA, submits this information to EPA, and complies with all applicable monitoring and reporting requirements, specified in the EPA response letter.

Abstract for [M070030]

Q1: Does EPA approve monitoring of total freshwater makeup rate in lieu of blowdown rate along with tank level to control and monitor solids content of the scrubber liquid, under 40 CFR part 63, subpart EEE, for the Rotary Kiln Incinerator (RKI) at the Dow plant located in Plaquemine, Louisiana?

A1: Yes. EPA conditionally approves the request under MACT subpart EEE, as described in the EPA response letter. EPA finds that measurement of freshwater make-up, maintaining minimum sump level, and maintaining liquid to gas ratio in the scrubbers will ensure proper operation of the scrubber system. It will also ensure a maximum limit for the solids in the scrubber liquid.

Q2: Does EPA waive the requirement to monitor the liquid pressure drop across the scrubber, under 40 CFR part 63, subpart EEE, for the RKI at the Dow plant located in Plaquemine, Louisiana?

A2: No. EPA finds that the provided information is insufficient to make a determination.

Q3: Does EPA approve a waiver to monitor the liquid feed pressure for the scrubbers, under 40 CFR part 63, subpart EEE, for the RKI at the Dow plant located in Plaquemine, Louisiana?

A3: Yes. EPA conditionally approves the request under MACT subpart EEE, as specified in the EPA response letter. An effective performance of a wet scrubber requires proper distribution, and mixing of both liquid and gas in the scrubber. The packed-bed scrubbers in the RKI system are cross-current flow. The scrubber liquid is fed via pumps, through strainers, and into a header system that uses spray nozzles to distribute the liquid across packing. The liquid flow is currently measured and monitored using flow meters and transmitters. A loss of liquid flow and/or interference with the spray nozzle distribution can be detected by a change in flow to the header.

Q4: Does EPA approve instituting an Automatic Waste Feed Cut-off (AWFCO) after pressure remaining positive for 30 seconds as an indicative of combustion system leak, under 40 CFR part 63, subpart EEE, for the RKI at the Dow plant located in Plaquemine, Louisiana?

A4: No. EPA does not approve a time delay of 30 seconds for instituting AWFCO. The information provided for justification is insufficient.

Q5: Does EPA approve that the Dow facility located in Plaquemine, Louisiana, burns waste while the date historian system (IP.21) is down, under 40 CFR part 63, subpart EEE? IP.21 is used to calculate the Hourly Rolling Average (HRA) and 12–Hour rolling average.

A5: EPA approves this request under MACT subpart EEE, provided that the facility manually calculates HRA, submits this information to EPA, and complies with all applicable monitoring and reporting requirements as mentioned in the EPA response letter.

Abstract for [M080004]

Q: Is Spartech's process in Stamford, Connecticut, which manufactures poly

methyl methacrylate (PMMA) acrylic sheet subject to 40 CFR part 63, subpart FFFF?

A: Yes. EPA determines Spartech's operations produce a material (PMMA) classified using the United States Standard Industrial Classification (SIC) code 282 or North American Industry Classification System (NAICS) code 325, and its operations meet all the other criteria for applicability under 40 CFR 63.2435.

Abstract for [Z070002]

Q1: Is Anadarko's double-chamber cyclonator forced-air solid waste incinerator with a capacity of 2.4 tons per day, constructed after November 1999, that has been seasonally located and intermittently operated at remote oil and gas exploration sites on the North Slope of Alaska since January 2003, subject to 40 CFR part 60, subpart CCCC?

A1: Yes, EPA concludes that a waste incinerator with a capacity of 2.4 tons per day, constructed after November 1999, that has been seasonally located and intermittently operated at remote oil and gas exploration sites on the North Slope of Alaska is subject to NSPS subpart CCCC. EPA considers this incinerator to be located at an industrial facility, and regardless of the fact that the incinerator may be moved from one location to the next, it will be a distinct operating unit of an industrial facility.

Q2: Is 40 CFR part 61, subpart E, applicable to an incineration unit that incinerates untreated sanitary waste (solids) collected from Pacto toilets?

A2: No. EPA considers the Mercury NESHAP to apply to ''those stationary sources which * * * incinerate or dry wastewater treatment plant sludge.'' Under 40 CFR 61.51, sludge is defined as ''sludge produced by a treatment plant that processes municipal or industrial waste waters.'' The practice of incinerating sanitary waste composed of untreated solids from Pacto toilets does not meet the description of incinerating sludge under the Mercury NESHAP. Thus, the Mercury NESHAP would not apply.

Abstract for [Z080001]

Q: Does EPA consider the gas processing system which includes reciprocating internal combustion (IC) engines at the Austin Community Landfill in Austin, Texas, to be treatment under 40 CFR part 60, subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C)?

A: Yes. EPA considers the specified compression, filtration, and moisture removal from the landfill gas for use in an energy recovery device to be treatment under NSPS subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C). Because the engines will be exempt from monitoring, they do not have to be included in the Startup, Shutdown, and Malfunction (SSM) Plan required by 40 CFR part 63, subpart AAAA. However, the treatment system supplying gas to the IC engines will have to be included in the SSM Plan.

Abstract for [Z080002]

Q: Does EPA consider the gas processing system which includes two turbines at the DFW Recycling and Disposal Facility in Lewisville, Texas, to be treatment under 40 CFR part 60, subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C)?

A: Yes. EPA considers the specified compression, filtration, and moisture removal from the landfill gas for use in an energy recovery device to be treatment under NSPS subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C). Because the turbines will be exempt from monitoring, they do not have to be included in the Startup, Shutdown, and Malfunction (SSM) Plan required by 40 CFR part 63, subpart AAAA. However, the treatment system supplying gas to the turbines will have to be included in the SSM Plan.

Lisa C. Lund,

Director, Office of Compliance.

[FR Doc. E8–17489 Filed 7–30–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 25, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, 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 of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information 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 PRA comments should be submitted on or before September 29, 2008. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov* and/or to *Cathy.Williams@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0010.

Title: Ownership Report for Commercial Broadcast Station.

Form Number: FCC Form 323.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,000 respondents; 2,000 responses.

Estimated Time per Response: 0.5–1.5 hours.

Frequency of Response: On occasion reporting requirement; Biennial reporting requirement; On renewal requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 154(i), 303, 310 and 533 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,750.

Total Annual Cost: $2,166,800.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Each permittee of a commercial AM, FM, TV and

international broadcast station shall file an Ownership Report, FCC Form 323 within 30 days of the date of grant by the FCC of an application for an original construction permit or the consummation, pursuant to Commission consent, of a transfer of control or an assignment of a construction permit. A permittee is also required to update that report or to certify the accuracy and completeness of that report when the permittee applies for a station license.

Each licensee of a commercial AM, FM and TV broadcast station shall file an Ownership Report, FCC Form 323 within 30 days of the consummation, pursuant to Commission consent, of a transfer of control or an assignment of a license, when it files its station's license renewal application, and every two years thereafter. Each licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate and complete.

OMB Control Number: 3060–0178.

Title: Section 73.1560, Operating Power and Mode Tolerances.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 80 respondents; 80 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority of this collection of information is contained in 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 80 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: 47 CFR Section 73.1560(d) requires that licensees of AM, FM or TV stations file a notification with the FCC when operation at reduced power will exceed ten consecutive days and upon restoration of normal operations. If causes beyond the control of the licensee prevent restoration of authorized power within a 30-day period, an informal written request must be made for any additional time as may be necessary to restore normal operations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–17575 Filed 7–30–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

July 23, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Pursuant to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information 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 PRA comments should be submitted on or before *September 29, 2008.* If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0761.

Title: Section 79.1 Closed Captioning of Video Programming, CG Docket No. 05–231.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; and Not-for-profit entities.

Number of Respondents and Responses: 12,500 respondents; 50,950 responses.

Estimated Time per Response: 30 minutes (0.50 hours) to 10 hours.

Frequency of Response: Annual and on occasion reporting requirements; Third party disclosure requirement; Recordkeeping requirement.

Total Annual Burden: 202,215 hours.

Total Annual Cost: $500,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this obligation is found at section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, and implemented at 47 CFR 79.1.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice, FCC/CGB–1, ''Informal Complaints and Inquiries.''

Privacy Impact Assessment: The Privacy Impact Assessment for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

Needs and Uses: On July 21, 2005, the Commission released *Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking,* Notice of Proposed Rulemaking (*Closed Captioning Notice of Proposed Rulemaking*), CG Docket No. 05–231, FCC 05–142; published at 70 FR 56150, September 26, 2005, which sought comment on several issues pertaining to the Commission's closed captioning rules (47 CFR 79.1), which require that, with some exceptions, all new English and Spanish language video programming, and 75 percent of ''pre-rule'' English and Spanish language programming, eventually be closed captioned. The *Closed Captioning*

Notice of Proposed Rulemaking sought comment, *inter alia,* on measures to assist consumers by shortening the complaint process to allow consumers to file complaints directly with the Commission, rather than requiring that they first file their complaints with the video programming distributor. The *Closed Captioning Notice of Proposed Rulemaking* also sought comment on whether petitions for exemption from the closed captioning rules should be permitted (or required) to be filed electronically through the Commission's Electronic Comment Filing System, and whether video programming distributors should be required to submit compliance reports to the Commission in cases where the types of video programming that they air are still subject to a phase-in period, or where the final required amount of captioning post phase-in (*e.g.*, pre-rule programming) is not 100 percent. Furthermore, the *Closed Captioning Notice of Proposed* Rulemaking sought comment on whether video programming distributors should be required to distribute contact information to their subscribers (if the video programming provider is a subscription service) and to place such information on their Web site, as well as providing it to the Commission for placement on its Web site.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–17580 Filed 7–30–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting: FCC To Hold Open Commission Meeting Friday, August 1, 2008

July 25, 2008.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, August 1, 2008, which is scheduled to commence at 10 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireline Competition	*Title:* Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices (WC Docket No. 07–52). *Summary:* The Commission will consider a Memorandum Opinion and Order addressing a complaint and other filings concerning Comcast's network management practices.
2	Office of Managing Director	*Title:* Assessment and Collection of Regulatory Fees for Fiscal Year 2008 (MD Docket No. 08–65, RM–11312). *Summary:* The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking pursuant to section 9 of the Communications Act of 1934, as amended, to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities for Fiscal Year 2008 and to seek comment on changes, if any, to the regulatory fee assessment process in the future.
3	Wireless Tele-Communications	*Title:* Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases and Petitions for Declaratory Ruling (WT Docket No. 07–208). *Summary:* The Commission will consider a Memorandum Opinion and Order and Declaratory Ruling regarding the applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation ("RCC") for consent to the transfer of control of licenses, authorizations, and spectrum manager leasing arrangements held by RCC and its subsidiaries from RCC to Verizon Wireless and the petitions for declaratory ruling filed pursuant to section 310(b)(4) requesting that the Commission find that it is in the public interest to extend to RCC and its subsidiaries the foreign ownership ruling previously issued to Verizon Wireless for foreign ownership in excess of 25 percent.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need. Also include a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–17659 Filed 7–30–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—06/30/2008			
20081345	Finisar Corporation	Optium Corporation	Optium Corporation.
20081357	Great Hill Equity Partners III, L.P	CAM Commerce Solutions, Inc	CAM Commerce Solutions, Inc
20081359	Intercontinental Exchange, Inc	Creditex Group Inc	Creditex Group Inc.
20081360	DG FastChannel, Inc	Enliven Marketing Technologies Corporation.	Enliven Marketing Technologies Corporation.
20081364	OCMIGFI Power Opportunities Fund II, L.P.	John R Norton	Snelson Companies, Inc.
20081365	Belden, Inc	Trapeze Networks, Inc	Trapeze Networks, Inc.
20081367	Battery Ventures VI, L.P	Finisar Corporation	Finisar Corporation.
20081369	SAP AG	Visiprise, Inc	Visiprise, Inc.
20081373	Diamond Castle Wind Partners IV, L.P.	Point Partners VI, L.P	Labelcorp Holdings, Inc.
20081374	Sopra Group	Tumbleweed Communications Corp	Tumbleweed Communications Corp.
20081377	O. Bruton Smith	Kentucky Speedway, LLC	Kentucky Speedway, LLC.
20081383	The Procter & Gamble Company	MDVIP, Inc	MDVIP, Inc.
20081386	Oracle Corporation	Craig Hall	Skywire Software, LLC.
20081388	Richard T. Fields	Trump Entertainment Resorts, Inc	Trump Marina Associates, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—07/01/2008			
20080124	Carlyle Partners IV, L.P	James Ratcliffe	Newco LLC.
20080125	James Ratcliffe	Carlyle Partners IV, L.P	PQ Corporation.
20081371	Ares Corporate Opportunities Fund II, L.P.	Global BPO Services Corp	Global BPO Services Corp.
20081387	Willis Group Holdings Limited	Hilb Rogal & Hobbs Company	Hilb Rogal & Hobbs Company.
TRANSACTIONS GRANTED EARLY TERMINATION—07/02/2008			
20081136	BHP Billiton Limited	Rio Tinto plc	Rio Tinto plc.
20081137	BHP Billiton Limited	Rio Tinto Limited	Rio Tinto Limited.
20081302	GrainCorp Limited	Ridley Corporation Limited	Ridley Corporation Limited.
20081309	NBTY, Inc	LHP Holding Corp., Leiner Health Products LLC.	Leiner Health Products Inc., Leiner Health Service Corp.
20081331	Stanley, Inc	Oberon Associates, Inc	Oberon Associates, Inc.
20081385	William H. Gates, III	Patriot Coal Corporation	Patriot Coal Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—07/03/2008			
20081338	Obrem (QP), L.P	MDS Inc	MDS Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/07/2008			
20081337	Obrem Capital Offshore Master, L.P	MDS Inc	MDS Inc.
20081393	Providence Equity Partners VI L.P	HireRight, Inc	HireRight, Inc.
20081396	The Resolute Fund II, L.P	Robert J. Guidry Family Limited Partnership.	Harvey Explorer 242 LLC, Harvey Intruder LLC, Harvey Provider 240 LLC, Harvey Spirit LLC.
20081397	The Resolute Fund II, L.P	Dick J. Guidry	Harvey Explorer 242 LLC, Harvey Intruder LLC, Harvey Provider 240 LLC, Harvey Spirit LLC.
20081399	Farallon Capital Partners, L.P	CapitalSource Inc	CapitalSource Inc.
20081401	Farallon Capital Institutional Partners, L.P.	CapitalSource Inc	CapitalSource Inc.
20081402	Farallon Capital Offshore Investors, Inc.	CapitalSource Inc	CapitalSource Inc.
20081408	Penn Virginia Resource Partners, L.P.	LONESTAR Midstream Partners, L.P	Lone Star Gathering, L.P.
20081418	XTO Energy Inc	Estate of Haroldson L. Hunt, Jr., Deceased.	Hassie Hunt Exploration Company.

Trans #	Acquiring	Acquired	Entities
20081419	XTO Energy Inc	Margaret Hunt Trust Estate	HPC Holdco Corporation.
20081424	Targa Resources Investments, Inc	Chevron Corporation	Venice Energy Services Company, L.L.C.
20081425	Quandrangle Capital Partners II L.P	Greenfield Online, Inc	Greenfield Online, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/08/2008			
20081389	Trident IV, L.P	Insurance Solutions Holdings, Inc	Insurance Solutions Holdings, Inc.
20081394	Sageview Capital Master, L.P	Bristow Group Inc	Bristow Group Inc.
20081414	J.C. Flowers II Fund L.P	MF Global Ltd	MF Global Ltd.
20081417	Blackstone Capital Partners V, L.P	Apria Healthcare Group Inc	Apria Healthcare Group Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/09/2008			
20081429	Carlyle Europe Partners III, L.P	De La Rue plc	De La Rue U.S. Cash Systems Inc., De La Rue U.S. Inc.
20081435	Macquarie Advanced Investment Partners, L.P.	Macquarie Capital Alliance Trust	Macquarie Capital Alliance Trust.
TRANSACTIONS GRANTED EARLY TERMINATION—07/10/2008			
20080395	Flow International Corporation	OMAX Corporation	OMAX Corporation.
20081343	B/E Aerospace, Inc	Honeywell International Inc	Honeywell Consumables Solutions GmbH, Honeywell Consumables, Solutions S.A.S., Honeywell International Inc., Honeywell UK Limited.
20081441	Wistron Corporation	Lite-On Technology Corporation	Lite-On Computer Tech. (Donogguan) Ltd., Lite-On Digital Electronics (Donogguan) Co. Ltd., Lite-On S&D Inc., Lite-On Service USA, Inc., Life-On Trading USA, Inc., Titanic Capital Service Ltd., Wuxi China Bridge Express Trading Co., Ltd.
TRANSACTIONS GRANTED EARLY TERMINATION—07/14/2008			
20081400	Express Scripts, Inc	Monitor Clipper Equity Partners II, L.P.	MSC—Medical Services Company.
20081431	Marc A. Utay	Lance T. Funston	Admax Television, Inc., Cable Connect Incorporated, Newco LLC, TelAmerica LLC, TelAmerica Media Incorporated.
20081440	COFCO Limited	Smithfield Foods, Inc	Smithfield Foods, Inc.
20081442	RC2 Corporation	Louis Weber	PIL, L.L.C., Publications International Limited Partnership, Publications International Ltd., Publications International, Ltd, L.P., Publications International, Ltd. S de R.L. de C.V.
20081444	Bradco Acquisition Corp	Bradco Supply Corporation	Bradco Supply Corporation.
20081461	Sonic Healthcare Limited	Moon S. Park, M.D	Clinical Laboratories of Hawaii, LLP, Pan Pacific Pathologists, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—07/15/2008			
20081378	The J.M. Smucker Company	The Folgers Coffee Company	The Folgers Coffee Company.
20081395	The Resolute Fund II, L.P	Robert J. Guidry	Harvey Gulf International Marine, Incorporated.
20081460	Mr. G. Mallikarjuna Rao	InterGen N.V	InterGen N.V.
TRANSACTIONS GRANTED EARLY TERMINATION—07/16/2008			
20081191	Highmark Inc	Independence Blue Cross	Independence Blue Cross.
20081192	Independence Blue Cross	Highmark Inc	Highmark Inc.
20081358	Robert Bosch Industrietreuhand KG	The Stanley Works	The Stanley Works.
TRANSACTIONS GRANTED EARLY TERMINATION—07/18/2008			
20081462	CHS Private Equity V L.P	Richard E. Workman	Heartland Dental Care, Inc.
20081474	Pfingsten Executive QP Fund III, L.P	Holiday Properties Acquisition Corp	Holiday Properties Acquisition Corp.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–17416 Filed 7–30–08; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0146]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requirements for Collection of Data Relating to the Prevention of Medical Gas Mix-ups at Health Care Facilities-Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 2, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0548. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Requirements for Collection of Data Relating to the Prevention of Medical Gas Mix-ups at Health Care Facilities-Survey—(OMB Control Number 0910–0548)—Extension

On March 7, 2008 (73 FR 12452) and July 1, 2008 (73 FR 37465) respectively, FDA published a 60–day and 30–day notice stating that it had received 4 reports of medical gas mix-ups occurring during the past 9 years which involved 7 deaths and 15 injuries to patients who were thought to be receiving medical grade oxygen, but who were actually receiving a different gas (e.g., nitrogen, argon) that had been mistakenly connected to the facility's oxygen supply system. These reported incidents actually occurred between 1998 and 2000 which, at the time, prompted the FDA in 2001 to publish guidance making recommendations to help hospitals, nursing homes, and other health care facilities avoid the tragedies that result from medical gas mix-ups and alerting these facilities to the hazards. This survey is intended to assess the degree of facilities' compliance with safety measures to prevent mix-ups, to determine if further steps are warranted to ensure the safety of patients.

In the **Federal Register** of March 7, 2008 (73 FR 12452), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
210 and 211	285	1	285	.25	71.25
Total	285	1	285	.25	71.25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 25, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17566 Filed 7–30–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0094]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 2008 (73 FR 28484), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0562. The approval expires on July 31, 2011. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: July 25, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17576 Filed 7–30–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0047] (formerly Docket No. 2008N–0005)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 2, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0563. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice—(OMB Control Number 0910–0563)—Extension

The guidance is intended to provide information to manufacturers of veterinary and human drugs, including human biological drug products, on how to resolve disputes of scientific and technical issues relating to Current Good Manufacturing Practice (CGMP). Disputes related to scientific and technical issues may arise during FDA inspections of pharmaceutical manufacturers to determine compliance with CGMP requirements, or during FDA's assessment of corrective actions undertaken as a result of such inspections. The guidance provides procedures that encourage open and prompt discussion of disputes and lead to their resolution. The guidance describes procedures for raising such disputes to the Office of Regulatory Affairs (ORA) and center levels and for requesting review by the dispute resolution (DR) Panel (the DR Panel).

When a scientific or technical issue arises during an FDA inspection, the manufacturer should initially attempt to reach agreement on the issue informally with the investigator. Certain scientific or technical issues may be too complex or time-consuming to resolve during the inspection. If resolution of a scientific or technical issue is not accomplished through informal mechanisms prior to the issuance of Form FDA 483, the manufacturer can formally request DR and can use the formal two-tiered DR process described in the guidance.

Tier-one of the formal DR process involves scientific or technical issues raised by a manufacturer to the ORA and center levels. If a manufacturer disagrees with the tier-one decision, tier two of the formal DR process would then be available for appealing that decision to the DR Panel.

The written request for formal DR to the appropriate ORA unit should be made within 30 days of the completion of an inspection, and should include all supporting documentation and arguments for review, as described below. The written request for formal DR to the DR Panel should be made within 60 days of receipt of the tier-one decision, and should include all supporting documentation and arguments, as described in the following paragraphs.

All requests for formal DR should be in writing and include adequate information to explain the nature of the dispute and to allow FDA to act quickly and efficiently. Each request should be sent to the appropriate address listed in the guidance and include the following:

- Cover sheet that clearly identifies the submission as either a request for tier-one DR or a request for tier-two DR;
- Name and address of manufacturer inspected (from Form FDA 483);

• Date of inspection (from Form FDA 483);
• Date the Form FDA 483 issued (from Form FDA 483);
• FEI Number, if available (from Form FDA 483);
• FDA employee names and titles that conducted inspection (from Form FDA 483);
• Office responsible for the inspection, e.g., district office (from Form FDA 483);
• Application number if the inspection was a preapproval inspection;
• Comprehensive statement of each issue to be resolved;
• Identify the observation in dispute;
• Clearly present the manufacturer's scientific position or rationale concerning the issue under dispute with any supporting data;
• State the steps that have been taken to resolve the dispute, including any informal DR that may have occurred before the issuance of Form FDA 483;
• Identify possible solutions;
• State expected outcome;
• Name, title, telephone and fax number, and e-mail address (as available) of manufacturer contact.

The guidance was part of the FDA initiative ''Pharmaceutical cGMPs for the 21st Century: A Risk-Based Approach,'' which was announced in August 2002. The initiative focuses on FDA's current CGMP program and covers the manufacture of veterinary and human drugs, including human biological drug products. The agency formed the Dispute Resolution Working Group comprising representatives from ORA, the Center for Drug Evaluation and Research (CDER), the Center for Biologics Evaluation and Research (CBER), and the Center for Veterinary Medicine (CVM). The working group met weekly on issues related to the DR process and met with stakeholders in December 2002 to seek their input.

The guidance was initiated in response to industry's request for a formal DR process to resolve differences related to scientific and technical issues that arise between investigators and pharmaceutical manufacturers during FDA inspections of foreign and domestic manufacturers. In addition to encouraging manufacturers to use currently available DR processes, the guidance describes the formal two-tiered DR process explained previously in this document. The guidance also covers the following topics:

• The suitability of certain issues for the formal DR process, including examples of some issues with a discussion of their appropriateness for the DR process.
• Instructions on how to submit requests for formal DR and a list of the supporting information that should accompany these requests.
• Public availability of decisions reached during the dispute resolution process to promote consistent application and interpretation of drug quality-related regulations.

Description of Respondents: Pharmaceutical manufacturers of veterinary and human drug products and human biological drug products.

Burden Estimate: Based on the number of requests for tier-one and tier-two DR received by FDA since the guidance published in January 2006, FDA estimates that approximately two manufacturers will submit approximately two requests annually for a tier-one DR, and that there will be one appeal of these requests to the DR Panel (request for tier-two DR). FDA estimates that it will take manufacturers approximately 30 hours to prepare and submit each request for a tier-one DR, and approximately 8 hours to prepare and submit each request for a tier-two DR. Table 1 of this document provides an estimate of the annual reporting burden for requests for tier-one and tier-two DRs.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
Requests for Tier-One DR	2	1	2	30	60
Requests for Tier-Two DR	1	1	1	8	8
Total					68

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the **Federal Register** of January 22, 2008 (73 FR 3729), FDA published a 60-day notice requesting public comment on the information collection provisions. We received one comment in response to the January 22, 2008, **Federal Register** notice. The comment asked 3 questions about the DR process set forth in the guidance.

First, the comment asked how many working days are taken by the ORA and center levels to reach a decision after receipt of a request for tier-one DR.

FDA Response—As explained in Section III.A of the guidance, if the ORA unit agrees with the manufacturer, the ORA unit will issue a written response to the manufacturer within 30 days of receipt of the request, noting its agreement with the manufacturer and resolution of the dispute. If the ORA unit disagrees with the manufacturer, the ORA unit will issue a written response to the manufacturer generally within 30 days of receipt of the request, and if the ORA unit is unable to complete its review of the request and respond within 30 days, the ORA unit will notify the manufacturer, explain the reason for the delay (which may include the need for an additional 30 days for center review), and discuss the time frame for completing the review.

Second, the comment asked how many working days are taken by the DR Panel to reach a decision after receipt of a request for tier-two DR.

FDA Response—As explained in Section III.B of the guidance, if the DR Panel determines that the request is appropriate for review, it will schedule a meeting to discuss the issue within 90 days. If the DR Panel agrees with the manufacturer on the issue, the executive secretary of the DR Panel will issue a written response to the manufacturer within 30 days of the meeting, noting its agreement with the manufacturer and resolution of the dispute. If the DR Panel disagrees with the manufacturer on the issue, the executive secretary of the DR Panel will issue a written response to the manufacturer within 30 days of the meeting, noting its decision on the issue. If the DR Panel determines that the request does not qualify for review, the executive secretary of the DR Panel will notify the manufacturer in writing within 30 days of receipt of the appeal. If FDA is unable to complete its review of the request and respond within 30 days, the executive secretary of the DR Panel will notify the

manufacturer, explain the reasons for the delay, and discuss the time frame for completing the review.

Third, the comment asked whether ''the manufacturing facility is approvable or to be re-inspected'' if the dispute is not resolved at the end of the tier-two DR stage.

FDA Response—As described in the guidance, it is FDA's intention to resolve through the DR process all issues raised by the manufacturer. If FDA agrees with the manufacturer, the Form FDA 483 that prompted the request for formal dispute resolution would be revised or rescinded. If FDA disagrees with the manufacturer's request, the issues raised in the Form FDA 483 stand and FDA would expect compliance with the applicable CGMP requirements, which FDA may verify by re-inspection.

Dated: July 25, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17577 Filed 7–30–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; Public Health Service; The National Survey of Physician Attitudes Regarding the Care of Cancer Survivors (SPARCCS) (NCI)

SUMMARY: In compliance with the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comments on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The National Survey of Physician Attitudes Regarding the Care of Cancer Survivors (SPARCCS); *Type of Information Collection Request:* NEW; *Need and Use of Information Collection:* The purpose of SPARCCS is to identify the beliefs, knowledge, attitudes, and practices of primary care physicians and cancer specialists regarding the components described by the Institute of Medicine's (IOM) 2005 report that described the essential components of cancer survivorship care within a health care delivery system. These data will inform the process of standardization of survivorship care practices; augment the data collected in other cancer survivorship studies such as the Cancer Care Outcomes Research and Surveillance Consortium (CanCORS), and the Cancer Research Network; and monitor the progress made toward achieving NCI strategic goals of improving the quality of cancer care across the cancer control continuum. Two questionnaires, one sent to primary care physicians and one sent to medical oncologists, will be administered by mail to a randomly selected national sample of 2,200 physicians. Study participants will be 1,100 practicing physicians who are family practitioners, general internists, and obstetrician/gynecologists and 1,100 medical oncologists. *Frequency of Response:* Once. *Affected Public:* Individuals and Businesses. *Type of Respondents:* Primary care and medical oncology physicians practicing in a non-federal facility. The annual reporting burden is estimated at 903 hours as shown in Table 1. The total burden hours is estimated at 1,808 hours over the two year field period of the study. There are no capital, operating or maintenance costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Survey	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Receptionists	Screener	2,033	1	5/60	169
Family Practice	PCP Instrument	250	1	20/60	83
General Internists	PCP Instrument	250	1	20/60	83
OB/GYNs	PCP Instrument	50	1	20/60	17
Oncologists	Oncology Instrument	550	1	20/60	183
Receptionists & Administrators	Follow-Up Phone Calls	1,103	4	5/60	368
Total		4,236			903

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden 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.

FOR FURTHER INFORMATION CONTACT: Send comments to Arnold Potosky, PhD, Health Services and Economics, Branch Applied Research Program, Division of Cancer Control and Population Sciences, National Cancer Institute, 6130 Executive Blvd., EPN Room 4005, Bethesda, MD 20892–7344 Telephone: (301) 496–5662; *e-mail: potoskya@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: July 21, 2008.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison Office, National Institutes of Health.

[FR Doc. E8–17505 Filed 7–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request

Evaluation of Risk Factors Associated With Viral Infections in Chinese Donors:

a. Risk factors associated with HIV

b. Risk factors associated with Hepatitis B virus (HBV) and Hepatitis C virus (HCV)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Evaluation of Risk Factors Associated with Viral Infections in Chinese Donors: a. Risk factors associated with Human Immunodeficiency Virus (HIV), b. Risk factors associated with Hepatitis B virus (HBV) and Hepatitis C virus (HCV). This collection will cover two protocols as stated in the title. The first protocol will aim to study risk factors associated with HIV in Chinese donors and the second protocol will study risk factors related to HBV and HCV in Chinese donors. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* Understanding the risk factors associated with HIV, HBV and HCV infections in donors is essential for developing donor behavioral screening policies. Injection drug use, sexual transmissions, transfusion history, and medical injections are thought to be major routes of transmission in China but their relative importance in blood donors is unknown.

In the U.S., risk factors have been better characterized but, questions still remain. Risk factors cannot be identified in 33% and 40% of persons with acute hepatitis B and C respectively, and risk factors may differ between the U.S. and China. This study will improve our understanding of potential transfusion transmitted viral risk factors that cannot be optimally studied in the U.S. because of their low prevalence. For example, we may be able to assess whether treatments commonly used in China, such as acupuncture and medical injections, are important routes of HBV and HCV transmission.

The primary objectives of the proposed study are to assess:

- The primary risk factors associated with HIV, HBV and HCV.
- The relative importance of injection drug use, heterosexual transmission, family history, transfusion history, history of previous whole blood or plasma donation, male to male sex, medical injections, acupuncture, and tattoos as routes of transmission for HIV, HBV and HCV.
- Other important routes of transmission for these viruses such as sex with an injection drug user, snorting drugs, living with someone who has HBV and HCV, living with someone who injects drugs, sharing a toothbrush or a razor, having been in jail, occupational history, having surgery, etc.

It is proposed to conduct a large, multi blood center case-control study to meet the study objectives. Cases for the HIV protocol will be donors with confirmed anti-HIV antibody reactivity. Blood Centers will select a random group of donors with negative infectious disease test results as Controls for this study. Controls will be enrolled with a 2:1 ratio to Cases and will be matched to the Cases by blood center and donation month. Blood Centers will contact potential Controls by phone and/or mail, inviting them to come back to participate in this study. Cases and Controls will be consented and interviewed using the same Risk Factor Questionnaire (RFQ) by Chinese-CDC (C–CDC) or blood center staff, either at the local C–CDC or blood center.

The second protocol assessing risk factors related to HBV and HCV will have three groups of donors: ''HBV Group'': HBV (HBsAg) positive donors either from prescreening (rapid testing) or routine screening testing. Confirmatory testing for HBV will be done for these donors. ''HCV Group'': HCV (anti-HCV) positive donors from routine screening testing (blood centers do not do prescreening rapid testing for anti-HCV). Confirmatory testing for HCV will be done for these donors. The third group will be a ''Control Group'' including donors with negative results for all prescreening and routine screening tests. No additional testing is done for these donors. On a monthly basis, the blood centers will use the confirmatory testing results for HBV and HCV respectively, to generate a list of cases. For that same month, the blood center will generate a list of controls (randomly selected and matched by blood center and month of donation.) The same control group will be used for HBV and HCV cases. Donors in all three groups will be mailed a Risk Factor Survey study packet. The packet will include a study information sheet (discussing the purpose and nature of this study), an informed consent document explaining the voluntary nature, the benefits and risks of this study, a RFQ, a small monetary reward for taking the survey and an envelope with paid postage for the donor to mail their completed questionnaire back to the blood center.

Frequency of Response: Once. *Affected Public:* Individuals. *Type of Respondents:* Adult Blood Donors. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3,920; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* 0.33; and *Estimated Total Annual Burden Hours Requested:* 1,293.5. The annualized cost to respondents is estimated at: $1,940.25 (based on $1.50 per hour). According to China's National Bureau of Statistics in 2006, the average annual wage in China is 21,001 Chinese Yuan (or $ 2,958 U.S. dollars based on current exchange rate of 1 U.S. dollar = 7.1). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
HIV Risk factor:			
Case	350	0.33	115.5
Control	700	0.33	231
HBV and HCV Risk factor:			
Case	1,700	0.33	561
Control	1,170	0.33	386
Total	3,920	0.33	1,293.5

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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 the assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. George Nemo, Project Officer, NHLBI, Two Rockledge Center, Room 10142, 6701 Rockledge Drive, MSC 7950, Bethesda, MD 20892–7950, or call 301–435–0075, or e-mail your request to *nemog@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: July 23, 2008.

George Nemo,

Project Officer, NHLBI, National Institutes of Health.

[FR Doc. E8–17528 Filed 7–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Protein-tyrosine Phosphotase Inhibitors as Inhibitors of Human Tyrosyl-DNA Phosphodiesterase (Tdp1) and Methods of Treating Disorders

Description of Technology: Tyrosyl-DNA phosphodiesterase (Tdp1) is an enzyme that repairs topoisomerase I (Top1)-mediated DNA damage induced by chemotherapeutic agents (such as camptothecins) and ubiquitous DNA lesions that interfere with transcription and replication. Tdp1 is a relevant target for anticancer therapies due to its role in repairing Top1-mediated DNA damage and DNA damage associated with DNA strand breaks. Tdp1 inhibitors are expected to be effective in cancer treatment when used in combination with Top1 inhibitors.

The current invention is Me-3,4 dephostatin, and more generally protein-tyrosine phosphatase inhibitors, which is a Tdp1 inhibitor. Me-3,4 dephostatin could potentiate the pharmacological action of Top1 inhibitors.

Applications and Modality

- It is anticipated that Tdp1 inhibitors in association with Top1 inhibitors can have selective activity toward tumor tissues.
- Tdp1 inhibitors may exhibit antitumor activity by themselves because tumors have excess free radicals.

Market

- An estimated 1,444,920 new cancer diagnoses in the U.S. in 2007.
- 600,000 deaths caused by cancer in the U.S. in 2006.
- Cancer is the second leading cause of death in the U.S.
- Cancer drug market will likely double to $50 billion in 2010 from $25 billion in 2006.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Yves Pommier (NCI) *et al.*

Relevant Publication: S Antony *et al.* Novel high-throughput electrochemiluminescent assay for identification of human tyrosyl-DNA phosphodiesterase (Tdp1) inhibitors and characterization for furamidine (NSC 305831) as an inhibitor of Tdp1. Nucleic Acid Res. 2007;35(13):4474–4484.

Patent Status: U.S. Provisional Application No. 61/042,706 filed 04 Apr 2008 (HHS Ref. No. E–121–2008/0–US–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Adaku Nwachukwu, J.D.; 301–435–5560; *madua@mail.nih.gov.*

Steroid Derivatives as Inhibitors of Human Tyrosyl-DNA Phosphodiesterase (Tdp1)

Description of Technology: Tyrosyl-DNA phosphodiesterase (Tdp1) is an enzyme that repairs topoisomerase I (Top1)-mediated DNA damage induced by chemotherapeutic agents and ubiquitous DNA lesions that interfere with transcription. The current technology are steroid derivatives that human inhibit Tdp1.

Currently, there are various types of Top1 inhibitors used in chemotherapy, e.g., camptothecin. However, Tdp1 inhibitors are expected to be effective in combination therapy with Top1 inhibitors for the treatment of cancers. Combining Tdp1 inhibitors with Top1 inhibitors would allow Tdp1 to potentiate the antiproliferative activity of Top1 inhibitors. In addition to Tdp1's effect on Top1, Tdp1 inhibitors can also exhibit antitumor activity independently, as tumors are shown to have excess free radicals, and Tdp1 repairs DNA damage by oxygen radicals.

Applications and Modality: It is anticipated that Tdp1 inhibitors in association with Top1 inhibitors can have selective activity toward tumor tissues. Tdp1 inhibitors may exhibit antitumor activity by themselves because tumors have excess free radicals.

Market: 600,000 deaths from cancer related diseases were estimated in 2006. In 2006, cancer drug sales were estimated to be $25 billion.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Yves Pommier *et al.* (NCI).

Patent Status:

- U.S. Provisional Application No. 61/000,430 filed 24 Oct 2007 (HHS Reference No. E–130–2007/1–US–01).
- PCT Application No. PCT/US2008/004541 filed 05 Apr 2008, claiming priority to 05 Apr 2007 (HHS Reference No. E–130–2007/2–PCT–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Adaku Nwachukwu, J.D.; 301/435–5560; *madua@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research, Laboratory of Molecular Pharmacology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize inhibitors of Tyrosyl-DNA phosphodiesterase (Tdp1). Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: July 22, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–17506 Filed 7–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Promoting Stem Cell Proliferation and Survival

Description of Technology: Regenerative medicine has the potential to treat numerous human diseases and afflictions including neurodegenerative disorders and spinal cord injury that are typically insidious and worsen over time. This technology consists of a promising treatment method that coaxes stem cells into a state that promotes survival and proliferation. Two critical elements of this approach involve identifying the target niche and determining the pharmacological agents that can be used to promote stem cell regeneration.

Specifically, this technology consists of a method to activate the endogenous neural stem cells (NSCs) to promote their survival and yield using angiopoietin-2 and a cocktail of ligands and growth factors. This method has demonstrated that it can significantly improve the yield of stem cell cultures in vitro and stimulate behavioral recovery in a model of Parkinson's disease in vivo. This method is applicable to a variety of stem cell types including embryonic stem cells, adult spinal cord cells, and pericyctes from blood vessels.

Possible Applications:

- Method for culturing stem cells for optimal regeneration.
- Treatment of neurological diseases and disorders such as Parkinson's disease, stroke, diabetes-related neuropathies, and spinal cord.
- Diagnostic assays to determine proliferation or inhibition of stem cells.

Development Status: Pre-clinical.

Inventors: Andreas Androutsellis-Theotokis and Ronald D.G. McKay (NINDS).

Relevant Publication: A Androutsellis-Theotokis, RR Leker, F Soldner, DJ Hoeppner, R Ravin, SW Poser, MA Rueger, SK Bae, R Kittappa, RD McKay. Notch signaling regulates stem cell numbers in vitro and in vivo. Nature. 2006 Aug 17;442(7104):823–826.

Patent Status: U.S. Provisional Application No. 60/965,094 filed 16 Aug 2007 (HHS Reference No. E–182–2007/0–US–01)

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov*

Collaborative Research Opportunity: The National Institute of Neurological Disorders and Stroke is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize agents with activity on proliferation and/or differentiation of stem cells. Please contact Laurie Arrants at 301–435–3112 or *ArrantsL@ninds.nih.gov* or Martha Lubet at 301–435–3120 or *lubetm@mail.nih.gov* for more information.

Treatment of Alcoholism by Inhibition of the Neuropeptide Y Receptor

Description of Technology: Aversive or anticraving medications are currently used to supplement behavioral treatment of alcohol dependence. However, there is a need for developing more effective medications than those available. Neuropeptide Y (NPY) is a neurotransmitter known for increasing appetite and possibly having a role in alcohol preference and dependence. This is likely to be mediated by activation of the post-synaptic NPY–Y1 receptor, but developing molecules suitable for human therapeutics that activate that receptor represents a major challenge. Researchers at the NIH have now shown that administering antagonists of the presynaptic Y2 receptor of NPY decreases alcohol consumption and may be a valuable new treatment for alcoholism.

Applications: Treatment of alcohol dependence.

Market: In the United States, 17.6 million people—about l in every 12 adults—abuse alcohol or are alcohol dependent. It is estimated that on any given day, more than 700,000 people in the United States receive alcoholism treatment. Consequently, billions of dollars are spent in the treatment, prevention, and support of persons suffering from alcoholism. Moreover, the economic loss attributed to alcohol abuse and alcoholism is in the trillions.

Development Status: Early stage.

Inventors: Markus Heilig (NIAAA) *et al.*

Publications:

1. R Rimondini et al. Suppression of ethanol self-administration by the neuropeptide Y (NPY) Y2 receptor antagonist BIIE0246: Evidence for sensitization in rats with a history of dependence. Neurosci Lett. 2005 Feb 28;375(2):129–133.
2. A Thorsell et al. Blockade of central neuropeptide Y (NPY) Y2 receptors reduces ethanol self-administration in rats. Neurosci Lett. 2002 Oct 25;332(1):1–4.

Patent Status: U.S. Patent Application 10/492,785 filed 17 May 2004 (HHS Reference No. E–101–2004/0–US–03); Swedish Patent Application 0103476–8 filed 18 Oct 2001 (HHS Reference No. E–101–2004/0–SE–01)

Licensing Status: Available for licensing.

Licensing Contact: Norbert Pontzer, JD, PhD; 301–435–5502; pontzern@mail.nih.gov.

Collaborative Research Opportunity: The National Institute on Alcohol Abuse and Alcoholism, Laboratory of Clinical and Translational Studies is seeking

statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize antagonism of presynaptic NPY Y2 receptors for treatment of alcohol dependence. Please contact Peter B. Silverman at *psilverm@mail.nih.gov* for more information.

Dated: July 22, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–17508 Filed 7–30–08; 8:45 am]

BILLING CODE 4140–01–P

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 23, 2008, 8 a.m. to July 24, 2008, 6 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on July 1, 2008, 78 FR 37469.

The meeting will be held August 14, 2008 to August 15, 2008. The meeting time and location remains the same.

The meeting is closed to the public.

Dated: July 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17518 Filed 7–30–08; 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; Mosquito Vectors.

Date: August 19, 2008.

Time: 1 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: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Musculoskeletal Tissue/Cell Biology.

Date: August 20, 2008.

Time: 1:15 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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nursing Science.

Date: August 29, 2008.

Time: 2 p.m. to 4 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: Ann Hardy, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Multiscale Models of the Physiome.

Date: September 17, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: September 23–24, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Washington, DC City Center, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, 301–451–1327, *tthyagar@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.

Date: September 24, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: September 24–25, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Lynn E. Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *luethkel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pathophysiological Basis of Mental Disorders and Addictions.

Date: September 25, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Boris P. Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–435–1197, *bsokolov@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Cognitive Neuroscience Study Section.

Date: September 25, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

Contact Person: Judith A. Finkelstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249, *finkelsj@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: September 25–26, 2008.

Time: 8:30 a.m. to 5 a.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

Date: September 25–26, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Alexander Yakovlev, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Biochemistry and Biophysics of Membranes Study Section.

Date: September 25–26, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Nuria E. Assa-Munt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.

Date: September 29–30, 2008.

Time: 8 a.m. to 6 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: Martha Faraday, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17523 Filed 7–30–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Workgroup Meeting

Notice is hereby given of a meeting of the Strategic Planning Implementation Workgroup organized by the Interagency Autism Coordinating Committee (IACC).

The workgroup meeting will be closed to the public with attendance limited to invited participants. The purpose of the workgroup meeting is to discuss future granting opportunities and budgetary requirements for the IACC Strategic Plan for Autism Spectrum Disorder (ASD) Research. The workgroup recommendations will be forwarded to the IACC for consideration and discussion at its next meeting on November 21, 2008.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Strategic Planning Implementation Workgroup.

Date: August 8, 2008.

Time: 11 a.m. to 3 p.m. EDT.

Agenda: Review of budgetary requirements and funding opportunities for the IACC Strategic Plan for ASD Research.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Room 8233, Bethesda, MD.

Contact Person: Azik Schwechter, PhD., Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8203a, Bethesda, MD 20892–9669, 301–443–7163, *schwechtera@mail.nih.gov.*

Information about the IACC is available on the Web site: *http://www.nimh.nih.gov/research-funding/scientific-meetings/recurring-meetings/iacc/index.shtml.*

Dated: July 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17513 Filed 7–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; Model Resources.

Date: September 18, 2008.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Guo Zhang, MD, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Rm. 1064, Bethesda, MD 20892–4874, 301–435–0812, *zhanggu@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: July 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17524 Filed 7–30–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities; STRB 08.

Date: September 24–25, 2008.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Barbara J. Nelson, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1080, MSC 4874, Bethesda, MD 20892–4874, 301–435–0806.

Name of Committee: National Center for Research Resources Initial Review Group, Clinical Research Review Committee, CTSA.

Date: September 24, 2008.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mohan Viswanathan, PhD, Deputy Director, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1084, MSC 4874, Bethesda, MD 20892–4874, 301–435–0829, *mv10f@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: July 23, 2003.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17525 Filed 7–30–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

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 Heart, Lung, and Blood Advisory Council.

Date: September 9, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda MD 20892, (Telephone Conference Call).

Contact Person: Stephen Mockrin, PhD, Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260, *mockrins@nhlbi.nih.gov.*

Information is also available on the Institutes/Centers home page: *http://www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17517 Filed 7–30–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed 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 Inherited Disease Research Access Committee.

Date: September 5, 2008.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camilla E. Day, PhD, Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, (301) 402–0838, *cd19s@nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; CEGS Review.

Date: November 6–7, 2008.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Hotel, (Formerly the Ramada Inn Rockville), 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17521 Filed 7–30–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of 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) and552b(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 Mental Health Special Emphasis Panel, Creating a Developmental Gene Expression Atlas for Rhesus Macaque Brain.

Date: August 18, 2008.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892, 301–443–1513, *psherida@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH Toxicological Evaluation of Novel Ligands Program.

Date: August 26, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17510 Filed 7–30–08; 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; Electrical Stimulation for Hemiplegic Shoulder Pain.

Date: August 20, 2008.

Time: 2 p.m. to 5 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: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg. Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@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 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17568 Filed 7–30–08; 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; Therapeutic Strategies To Augment Muscle Rehabilitation.

Date: August 11, 2008.

Time: 1 p.m. to 3 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: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg. Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@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.

(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 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17569 Filed 7–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Drug Testing Advisory Board (DTAB) will meet on August 19 and 20, 2008.

The meeting is open and will include discussion of DTAB's ''Exploring the Science and Experience of Testing for Prescription Drugs in the Non-Regulated Workplace.''

Attendance by the public will be limited to space available. To make arrangements to attend or to request special accommodations for persons with disabilities, please communicate with DTAB's Program Assistant, Ms. Giselle Hersh (see contact information below).

SAMHSA would like to ensure that advisory committee meetings proceed in an orderly fashion, are conducted in a

safe and secure environment, that the right of free speech is protected, and that the ability of SAMHSA Advisory Committees to accomplish their objectives is not disrupted. Therefore, the following procedures will be followed by DTAB:

- Attendees may be subject to security screening, such as presenting identification, passing through metal detectors, and inspection of briefcases, packages, etc.
- Any interested person who wishes to be assured of the right to make an oral presentation during the Open Public Hearing portion of the DTAB meeting must register with Ms. Hersh before the meeting. Those who have not registered before the meeting will only be invited to speak at the discretion of the Chair and should submit their request to the Designated Federal Official on the day of the meeting.
- Open Public Hearing participants who are designated to speak may be questioned only by the Chair or other DTAB members.
- Audience members may not present comments or questions to the Committee unless recognized by the Chair.
- Attendees at the meeting are asked to maintain order and not display behavior that is disruptive to the meeting (*i.e.*, shouting from the audience, loud outbursts).
- We ask that attendees not approach the DTAB table area during the meeting without permission from the Chair or the Designated Federal Official.
- The DTAB Chair or Designated Federal Official will note on the record any disruptive behavior and will ask the person to cease the behavior or else leave the meeting room.

Substantive program information, a summary of the meeting, and a roster of committee members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site, *https://www.nac.samhsa.gov/DTAB/index.aspx,* or by contacting Ms. Hersh. The transcript of the meeting will also be available on the SAMHSA Committee's Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration, Drug Testing Advisory Board.

Date/Time/Type: August 19–20, 2008, from 8:30 a.m. to 5 p.m.: Open.

Place: 1 Choke Cherry Road, Sugarloaf Conference Room, Rockville, Maryland 20857.

Contact: Ms. Giselle Hersh, Program Assistant, SAMHSA Drug Testing Advisory Board, 1 Choke Cherry Road, Room 2–1042, Rockville, Maryland 20857, *Telephone:* 240–276–2605, *Fax:* 240–276–2610, *E-mail: Giselle.Hersh@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E8–17564 Filed 7–30–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

[CA–169–1220–AL]

Carrizo Plain National Monument Advisory Committee—Notice of Renewal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Renewal of the Carrizo Plain National Monument Advisory Committee.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's Carrizo Plain National Monument Advisory Committee.

The purpose of the Committee is to advise the Secretary with respect to the preparation and implementation of the Carrizo Plain National Monument Management Plan.

FOR FURTHER INFORMATION CONTACT: Douglas Herrema, National Landscape Conservation System and Community Partnerships (WO–170), Bureau of Land Management, 1849 C Street, NW., Room 5618, Washington, DC 20240, telephone (202) 208–3516.

Certification Statement

I hereby certify that the renewal of the Carrizo Plain National Monument Advisory Committee is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: July 14, 2008.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. E8–17473 Filed 7–30–08; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Addition of a New System of Records.

AGENCY: Office of Historical Trust Accounting (OHTA).

ACTION: Proposed addition of a new Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Historical Trust Accounting of the Department of the Interior is issuing public notice of its intent to add a new Privacy Act system of records: Interior, OS–11, ''Accounting Reconciliation Tool (ART).''

DATES: Comments must be received by September 9, 2008.

ADDRESSES: Any persons interested in commenting on this proposed addition of a new system of records may do so by submitting comments in writing to the Office of the Secretary Acting Privacy Act Officer, Linda S. Thomas, U.S. Department of the Interior, MS–116 SIB, 1951 Constitution Avenue, NW., Washington, DC 20240, or by e-mail to *Linda_Thomas@nbc.gov*.

FOR FURTHER INFORMATION CONTACT: Chief Information Officer, Office of Historical Trust Accounting, 1801 Pennsylvania Ave., NW., Suite 500, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: This Office of Historical Trust Accounting (OHTA) is proposing to add a new Privacy Act system of records notice, OS–11, ''Accounting Reconciliation Tool'' (ART). ART supports the work of OHTA to analyze the historical collection, distribution, and disbursement of income from Indian trust land and other revenue sources, and to provide historical statements of account to the account holders of the Individual Indian Money (IIM) Trust Fund. This work is necessary to carry out the Secretary's fiduciary responsibilities under the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103–412, 108 Stat. 4239. Towards that end, ART will be effective as proposed at the end of the comment period unless comments are received that require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

Dated: July 25, 2008.

Bert T. Edwards,

Executive Director, Office of Historical Trust Accounting.

SYSTEM NAME:

Interior, OS–11, ''Account Reconciliation Tool (ART).''

SYSTEM LOCATION:

(1) U.S. Department of the Interior, Office of Historical Trust Accounting, 1801 Pennsylvania Ave., NW., Suite 500, Washington, DC 20006.

(2) U.S. Department of the Interior, Office of Historical Trust Accounting, American Indian Records Repository, 17501 West 98th Street, Lenexa, KS 66219.

(3) Office of contractors analyzing IIM Trust Fund accounts under contract to OHTA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual Indians who receive Historical Statements of Account prepared by the DOI's Office of Historical Trust Accounting (OHTA) for account holders of the Individual Indian Money (IIM) Trust Fund.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include an individual's name, aliases, gender, birth date, address, Social Security Number, IIM Trust Fund account number, tribal membership/enrollment number, and blood quantum.

Categories of records in the system include:

(1) Financial data pertaining to IIM Trust Fund accounts from the Trust Fund Accounting System (TFAS), the Trust Asset and Accounting Management System (TAAMS), the Integrated Records Management System (IRMS), the Land Record Information System (LRIS), the Payments, Claims and Enhanced Reconciliation (PACER) system, the Finance system, and the OMNI system.

(2) Data related to IIM Trust Fund account holder information.

(3) Imaged/paper records related to IIM Trust Fund accounts, including jacket folders, and financial documents such as accounting, reconciliation, and transaction data related to receipts, disbursements, investments, bonds, and transfers.

(4) Historical Statements of Account for account holders of the IIM Trust Fund.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

25 U.S.C. 116, 117(a)(b)(c), 118, 119, 120, 121, 151, 159, 161(a), 162(a), 4011, 4043(b)(2)(B).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary use of the records in the system is to enable the OHTA to analyze the historical collection, distribution, and disbursement of income from Indian trust land and other revenue sources, and to provide historical statements of account to the account holders of the IIM Trust Fund.

Disclosure outside of DOI may be made to:

(1)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ).

(ii) A court or an adjudicative or other administrative body.

(iii) A party in litigation before a court or an adjudicative or other administrative body. or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee.

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI.

(B) Any other Federal agency appearing before the DOI Office of Hearing and Appeals.

(C) Any DOI employee acting in his or her official capacity.

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee.

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding. and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding, and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office, when there has been a written request from an individual who is the beneficiary of an IIM Trust Fund account for information from that account.

(3) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal, or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(4) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(5) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(6) To state and local governments and tribal organizations to provide information needed in response to a court order and/or discovery related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(7) To an expert, consultant, or contractor (including employees of the contractor) of DOI, requiring access to these records on DOI's behalf to carry out the purposes of the system.

(8) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in ART has been compromised; and

(b) DOI has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of ART or other systems or programs (whether maintained by DOI or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with DOI's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(9) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(10) To the Department of the Treasury to recover debts owed to the United States.

(11) To the lineal descendant, heir, or devisee of a deceased individual covered by the system or to any other person entitled to the deceased's trust assets.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

POLICIES:

Records are stored, retrieved, accessed, retained and disposed of in accordance with DOI Departmental Manual, Part 383, Chapters 1–13, DOI Privacy Act regulations at 43 CFR 2.45–2.79, the Indian Affairs Records Manual,

and the Indian Affairs Records Schedule (IARS).

STORAGE:

Records are stored on paper and electronic storage media.

RETRIEVABILITY:

Records are retrieved using either:

(1) Identifiers linked to IIM Trust Fund account holders, such as name, Social Security Numbers, tribe, tribal enrollment, or census numbers, or

(2) Organizational links and identifiers such as account numbers, tribal codes, and IIM Trust Fund account codes.

SAFEGUARDS:

ART is maintained with controls meeting safeguard requirements identified in Departmental Privacy Act Regulations (43 CFR 2.51) for manual and automated records. Access to records in the system is limited to authorized personnel whose official duties require such access.

(1) Physical Security: Paper records are maintained in locked file cabinets and/or in secured rooms.

(2) Technical Security: Electronic records are maintained in conformity with Office of Management and Budget and Departmental guidelines reflecting the implementation of the Federal Information Security Management Act. Electronic data are protected through user identification, passwords, database permissions and software controls. These security measures establish different degrees of access for different types of users.

(3) Administrative Security: All DOI and contractor employees involved in any and all trust activities are required to complete Privacy Act, Records Management and Security Awareness trainings. The trainings are completed before an employee is permitted access to any trust data. Trainings are implemented on an annual basis.

RETENTION AND DISPOSITION:

ART is scheduled for permanent retention.

SYSTEM MANAGER AND ADDRESS:

Information Technology Program Manager, Office of Historical Trust Accounting, 1801 Pennsylvania Ave., NW., Suite 500, Washington, DC 20006.

NOTIFICATION PROCEDURES:

To determine whether your records are in this Privacy Act system of records, write to the Information Technology Program Manager at the address listed above. Provide the following information with your request:

(1) Proof of your identity.

(2) List of all of the names by which you have been known, such as maiden name or alias(es).

(3) Mailing address.

(4) Tribe, IIM Trust Fund account number, tribal enrollment or census number.

(5) Time period(s) during which the records may have been created or maintained, to the extent known by you (See 43 CFR 2.60).

RECORDS ACCESS PROCEDURES:

To request access to your records, write to the Information Technology Program Manager at the address listed above. Provide the following information with your request:

(1) Proof of your identity.

(2) List of all of the names by which you have been known, such as maiden name or alias(es).

(3) Mailing address.

(4) Tribe, IIM Trust Fund account number, tribal enrollment or census number.

(5) Time period(s) during which records may have been created or maintained, to the extent known by you.

(6) Description or identification of the records you are requesting (including whether you are asking for a copy of all of your records or only a specific part of them) and the maximum amount of money that you are willing to pay for their copying. (See 43 CFR 2.63.)

CONTESTING RECORDS PROCEDURES:

To request an amendment of a record, write to the Information Technology Program Manager at the address listed above (See 43 CFR 2.71). Provide the following information with your request:

(1) Proof of your identity.

(2) List of all of the names by which you have been known, such as maiden name or alias(es).

(3) Mailing address.

(4) Tribe, IIM Trust Fund account number, tribal enrollment or census number.

(5) Time period(s) during which the records may have been created or maintained, to the extent known by you.

(6) Specific description or identification of the record(s) you are contesting and the reason(s) why you believe the record(s) are not accurate, relevant, timely, or complete.

(7) Copy of documents or evidence in support of (6) above.

RECORD SOURCE CATEGORIES:

(1) The following DOI components: Bureau of Indian Affairs, Office of Trust Funds Management, Office of the Special Trustee, Minerals Management Service, Bureau of Land Management, Office of Hearings and Appeals.

(2) Federal and state agencies.

(3) IIM Trust Fund account holders or their heirs. Depositors to and claimants against the accounts.

(4) Tribal offices, if the IIM function is contracted or compacted under the Indian Self-Determination and Education Assistance Act, Public Law 93–638, 88 Stat. 2203, as amended.

(5) Courts of competent jurisdiction, including tribal courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–17582 Filed 7–30–08; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–ES–2008-N00166; 92220–1112–0000–FY08–EA]

Endangered and Threatened Wildlife and Plants; Recovery Crediting Guidance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of guidance to promote implementation of the Endangered Species Act. The guidance describes a crediting framework for Federal agencies in carrying out recovery measures for threatened and endangered species. The text of the guidance is included in this notice. Under the guidance, Federal agencies may show how adverse effects of agency activities to a listed species are offset by beneficial effects of actions taken elsewhere for that species. The combined effects of the adverse and beneficial actions must provide a net benefit to the recovery of the species.

ADDRESSES: The guidance may be downloaded from our Web site at *http://www.fws.gov/endangered/policy/june.2008.html.* To request a copy of the guidance, write to U.S. Fish and Wildlife Service, 420 ARLSQ, Washington, DC 20240, Attention: Recovery Crediting; or call 703–358–2171. You may also send an e-mail request to *recovery_crediting@fws.gov*. Specify whether you wish to receive a hard copy by U.S. mail or an electronic copy by e-mail.

FOR FURTHER INFORMATION CONTACT: Direct all questions or requests for additional information about the guidance to Dr. Richard Sayers, Division

of Consultation, Habitat Conservation Planning, Recovery, and State Grants, U.S. Fish and Wildlife Service, 420 ARLSQ, Washington, DC 20240 (703–358–2171). Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

The ultimate goal of the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), is the recovery of endangered and threatened species and the ecosystems on which they depend. In administering the recovery provisions of the Act, the Service collaborates with many partners, including Federal, State, and local agencies, Tribal governments, conservation organizations, the business community, and private landowners.

Effective recovery planning and implementation depend in part on creative processes and agreements with Federal partners as well as other non-Federal partners in community-based recovery efforts. Examples of innovative conservation tools under the ESA include safe harbor agreements, habitat conservation plans, recovery permits, and conservation banks. The ultimate success of conservation and recovery of endangered and threatened species depends on a variety of innovations, such as these, that may be used in concert with one another or alone. We expect recovery credit systems (RCS) to complement them further. Additional information concerning these tools is available through the sources listed above under **ADDRESSES**.

The recovery credit approach provides Federal agencies with an additional recovery tool developed using existing authorities. As described below, this tool was initially established in Texas to allow Fort Hood Military Reservation to accrue credits for recovery measures that it arranged by contract with neighboring landowners. The type of arrangement we developed with Fort Hood can be applied by other Federal agencies that may obtain credit for advancing the recovery of a listed species, and this credit may be expended, or debited, to offset potential adverse effects of future actions. A recovery crediting system can allow a Federal agency to accrue credit for recovery actions in advance of effects resulting from any specific action that causes adverse effects. We expect this process to increase incentives for Federal agencies to use their authorities to further the purposes of the ESA.

Under section 7 of the ESA, the Fish and Wildlife Service conducts consultations with Federal agencies to advise them whether their actions are likely to jeopardize listed species or adversely modify critical habitat. Each Federal agency has a duty under section 7(a)(1) to use its authorities to further the purposes of the ESA by carrying out programs for the conservation of listed species. The Service and cooperating agencies can employ the consultation process to review agency programs and verify that they promote the recovery of one or more listed species. These consultations may establish a basis for adoption of RCS. In the discussion of procedures for consultation on an RCS, additional language has been inserted to note that action agencies should expressly state what the net benefit to recovery will be for the relevant species and how the proposed RCS will satisfy that standard (see section III.C.).

The Service recognizes that recovery crediting is a particular mechanism within the broad concept of habitat credit trading. The Service may expand other types of crediting to entities other than Federal agencies or employ additional methods for Federal agencies. That is, we may be able to use credits as a measure of the benefit of recovery actions taken on Federal lands, and we may consider other credit trading systems, including conservation banks, for landowners who take recovery actions on their own land or other private lands. However, the guidance being adopted herein applies only for Federal agencies to accrue credits on non-Federal lands.

Viewing Documents

On November 2, 2007, we published in the **Federal Register** (72 FR 62258) a notice of availability and the complete text of draft guidance on RCS. An initial 30-day public comment period was opened at that time and subsequently re-opened for an additional 60 days, until February 25, 2008 (72 FR 73351, December 27, 2007).

The complete file for the recovery crediting guidance as well as the comments and materials we received are available for inspection, by appointment, during normal business hours at the Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203–1601.

Summary of Comments and Recommendations

State and Federal government agencies, nongovernmental organizations, and private individuals responded to our notice. In all, we received comments from more than 60 respondents. Some simply expressed support for or opposition to the concept of recovery crediting; others made more specific observations and recommendations. The latter were grouped thematically and are organized by category below with our responses.

Category 1—Level of Specificity

Issue 1. While some respondents supported the avoidance of specificity in the guidance, others recommended providing greater detail, particularly with respect to determining net conservation benefit, the valuation of credits, eligibility of species, and crediting and debiting standards and procedures. One respondent recommending greater detail in the guidance also recommended that we undertake a series of pilot projects to test the RCS concept and consider carrying out the guidance through adoption of a regulation. Some pointed to climate change as a specific widespread threat to species that should be accounted for in developing RCS.

Response 1. Our responses to suggestions for greater specificity on particular issues are presented under the discussion of those issues. Generally, we believe that it is necessary, particularly at this stage in the development of RCS, to strike a balance between clearly expressing the principles governing the mechanism and allowing individual RCS to adapt to local conditions and needs. A series of carefully monitored pilot projects may provide a basis for incorporating greater detail in a future iteration of this guidance or replacing it with a regulation.

With respect to the valuation of credits, we anticipate that a variety of quantitative measures may be employed under the guidance in different situations, such as number of individuals of a species, density of individuals over some measurable area, quantity of habitat displaying given characteristics, volume of flow in a given aquatic system, etc. In some cases it may also be possible to establish equivalencies between different measures. For example, habitat that is relatively abundant could be debited against scarce habitat of different character that requires restoration to promote recovery.

Climate change is one of the widespread effects (such as invasive species) that may be appropriate to consider on a case by case basis.

Category 2—Adequacy of/ Appropriateness of the Net-Benefit Standard vs. Contribution To Recovery

Issue 2a. Many respondents were concerned about the application of the net-benefit standard. Following is a summary of those concerns and our responses:

''Net conservation benefit'' should be clearly and consistently defined in the guidance. This terminology should be consistently used throughout the guidance to avoid confusion and misapplication.

Response 2a. We agree and have revised our terminology. Because ''net conservation benefit'' has been applied with respect to other policies, such as the Safe Harbor policy, and the RCS process applies a different standard to Federal agencies through the ESA section 7 process, we have revised our language to refer consistently to the term ''net benefit to recovery,'' which is now defined in section I. C. of the final guidance.

Issue 2b. Some respondents contended that the draft guidance fails to set firm guidelines for ensuring a net conservation benefit; that the standard is too weak, and should be replaced by a stronger recovery standard; that the focus of the document is enabling Federal agencies to find new ways to mitigate the habitat destruction resulting from their activities; or that the practice of merely agreeing to avoid destruction of existing habitat should be discouraged as there would be no net gain.

Response 2b. Our intent for this guidance is that its implementation will provide greater flexibility and increased opportunities for Federal agencies to implement their responsibilities under section 7(a)(1) of the ESA, to enhance the recovery of listed species. We have attempted to clarify this intent by revising our terminology in the guidance by defining ''net benefit to recovery'' and consistently refer to a ''net benefit to recovery'' rather than a ''net conservation benefit''.

Issue 2c. An RCS should generally be available over the full range of the species to provide maximum flexibility—differences in habitat quality should be reflected in the definition of the credit for that species.

Response 2c. We agree that in most cases where it is appropriate to develop an RCS, credits should be available throughout the species' range, and habitat credits valued appropriate to the relative importance of the habitat to recovery. It is important to note that recovery credits may be accrued for recovery actions other than habitat protection—they could be applied to needed research, management, or outreach actions, for example.

Issue 2d. Placement of an RCS should be focused on the benefit to species recovery and not proximity to public land. Listed species are more prevalent on private land.

Response 2d. The focus of recovery credits is on benefits to the species. In terms of habitat credits, proximity to public lands may well be important for some species because public lands often take the form of large tracts of land that will be protected from fragmentation and development in perpetuity. Because habitat connectivity is often of critical importance, private lands near large tracts of public lands may contribute more to connectivity than isolated tracts of private lands. This does not in any way discount the importance of private lands to the conservation and recovery of endangered species.

Issue 2e. Actions qualifying for a recovery credit should be measurable and outcome-based. A demonstrated positive response by the population of the target species in the area affected by the action should be the litmus test for evaluating the effectiveness or assigning a value to a recovery credit.

Response 2e. We agree. The standard of using current recovery plans or an equivalent, Service-approved document, which must tie the recovery criteria and recovery actions directly to addressing the threats to the species, should assure that recovery credits are based upon measurable, outcome-based actions.

Category 3—Expanding Scope

Issue 3a. Who can participate in Recovery Crediting Systems?

Response 3a. Under this guidance, recovery credits can only be established through an ESA section 7 consultation. The use of recovery credits is therefore limited to Federal action agencies, and only Federal action agencies may accrue, hold (bank), and use (debit) recovery credits. That does not mean that non-Federal entities cannot participate in the RCS process where appropriate. It is also important to note that other entities may be involved in consultation or acting on behalf of a Federal action agency and they may engage and participate in the recovery credit process and the consultation process as appropriate. Consultation is a responsibility of all Federal agencies, and the Federal action agency (a single Federal entity) is ultimately responsible for the accrual, use (debiting), and accounting of recovery credits. Other entities, Federal or non-Federal, may participate in RCS as appropriate, but a non-Federal entity cannot accrue, hold (bank), or use (debit) recovery credits.

Issue 3b. Is the recovery credit process limited to federally listed species only?

Response 3b. Yes, RCS are limited to federally listed species because the authority for establishing and using an RCS is the ESA's section 4(f) and section 7(a)(1), both of which apply only for listed species. The draft guidance clearly stated that recovery crediting is an optional process for a Federal agency to use its authorities to promote the conservation of listed species.

Category 4—Comments on the Use of Federal Lands

Issue 4a. Are recovery credits limited to actions on non-Federal lands or can credits be accrued from recovery activities on Federal lands? Several respondents noted that RCS should place a priority to carry out recovery actions and thus accrue recovery credits on Federal lands and, since the impacts are occurring on Federal lands, the impacts must be mitigated on Federal lands. One commenter noted that State or private lands should be used only as a last resort to mitigate for impacts on Federal lands.

Response 4a. The draft guidance stated that ''a recovery credit system is a specific program established to provide recovery actions on non-Federal lands for specific species while creating a bank of credits that a Federal agency may use to offset the effects of its actions.'' Only conservation that occurs on non-Federal lands can be counted as recovery credits.

The Service supports the mitigation of impacts using either Federal or non-Federal lands. As noted above, recovery credits were intended to promote the recovery of listed species on non-Federal land and to offset adverse effects to listed species from proposed Federal actions.

Issue 4b. There was concern that the program could ultimately lead to the long-term degradation of Federal lands and a transfer of valuable fish and wildlife resources from lands held in public trust to private reserves. Respondents also recommended that Federal agencies strive to seek additional incentives to minimize loss of threatened and endangered species and their habitats on Federal lands. It was also noted that the full force of the Endangered Species Act does not apply on private lands, and that Federal activities on public lands should rarely, if ever, result in the net loss of habitat for listed species.

Response 4b. Federal agencies are mandated under section 7(a)(1) of the ESA to use their authorities to further

the conservation of listed species. Recovery crediting is simply one tool that agencies may use in order to do so, and will not be appropriate in all situations. Because public lands often provide extremely valuable large tracts of protected habitat, it will be incumbent upon the Service and an action agency to assure in each RCS established that any debiting action on Federal lands does not lead to long-term degradation of habitat for listed species, but in fact enhances the recovery of the species through additional private partnerships and other recovery actions. Credits could potentially be applied to actions on other public lands, as well as State or private lands. Recovery debits on Federal lands must be valued against a net benefit to recovery standard for any credit on private lands. This must include assurance of equivalent protections for the species on private lands *and* a net benefit, not an even trade of debits for credits. Issues of habitat size, quality, and connectivity must be considered, and Federal lands will continue to play a major role for most species.

Category 5—Temporary vs. Permanent Credits

Issue 5. Several respondents expressed concern over the concept of temporary credits, while others supported the exchange of temporary credits for temporary impacts. Some respondents did not believe the guidance provided enough information concerning the use and/or determination of temporary versus permanent credits. Concerns included the inadequacy of achieving species needs in the short term, lack of specific standards for in-perpetuity protection, and the use of temporary credits for outreach and research that could be traded for habitat impacts. A few comments recommended that only permanent credits be allowed, much like the situation in conservation banking, with even temporary impacts offset through a permanent credit system. One respondent questioned the manner in which temporary effects were quantified for the Fort Hood pilot project and how it could be applied to a national model.

Response 5. The Service has not attempted to outline specific details on what may constitute a ''temporary'' or ''permanent'' impact because of the multitude and range of direct and indirect effects that may occur from a variety of Federal actions. Such an attempt would ultimately fall short of capturing the concept of temporary or permanent credits. Instead, we believe the nature of effects are best described during formal consultation, which requires a detailed effects analysis of the specific Federal action on listed species. We agree that, in most cases, the impact must be commensurate with the credit (while providing a net benefit to recovery), which is how the pilot project at Fort Hood is modeled. However, we do not want to preclude the inclusion of any recovery tasks (e.g., research, public outreach) that are necessary for delisting or downlisting of the target species in the development of RCS. The decision on the appropriate credit exchange, as well as the value of credits, would be made through the development of specific RCS. Thus, the guidance is intentionally general in outlining the concept of recovery crediting and does not rely on specific aspects from the pilot project at Fort Hood, which is still in the development phase.

Both temporary and permanent credits may be necessary components of an RCS. Using permanent credits to offset both temporary and permanent impacts is not precluded under this guidance, but developing appropriate temporary credits adds incentives for furthering the recovery of listed species. Because of the net benefit to recovery standard for crediting, temporary credits must provide a measurable contribution to the recovery of the target species.

Category 6—Role of the States

Issue 6. The Service received several comments from State natural resources agencies and other interested parties on the importance of and status of the States in working with the Service on recovery of listed species under the ESA. In addition, the comments stressed three elements in creating a functional RCS. First, that States, given their status under section 6 of the ESA, have a direct need to work in a collaborative partnership with the Service to develop an RCS and share the responsibility to ensure that an RCS works in partnership with Federal agencies, States, private landowners, Tribes, land trust organizations and other partners and stakeholders. Second, several State interest comments advocated that the Service create a science team to further develop this guidance, review other recovery or conservation tools, such as conservation banking, and then develop more detailed guidance for the Service to review in public comment. Third, several respondents recommended that the Service, in partnership with the States and other national partners, monitor a few pilot recovery credit projects first, review these with a national team, and then develop more credible RCS guidance.

Response 6. The Service agrees that the States play an important role as our conservation partners under section 6 of the ESA and other Federal fish and wildlife conservation laws. Each State was required to develop a State Wildlife Action Plan by October 2005 and implement its plan, with Service approval, by January 2007. These plans are now in place. Several Memoranda of Understanding (MOU) between the Service and the States and other partners reflect the importance of the States' role in conservation of listed species and other species at risk.

The Service expects that appropriate scientific advisory groups will be formed to assist in the development of individual RCS, and will be capable of evaluating these systems as they are carried out. We decline to establish a national science team at this time, but may do so in the future if we determine that it is warranted, and may provide more informed detailed guidance at that time.

Category 7—Scope and Transfer or Interstate Trading

Issue 7a. One respondent asked whether recovery credits be accrued in one portion of a species' range and used in another portion of a species' range that may be some distance away.

Response 7a. Appropriate credits may be accrued and used anywhere within a species' range. However, as discussed in the draft guidance, recovery plans, State plans and other guiding documents or groups, such as a recovery team, science or biology workgroup, etc., may prioritize particular areas for credit accrual and/or use based on the needs of the species.

Issue 7b. One respondent inquired whether credits should be transferable or traded among entities.

Response 7b. The draft guidance clearly stated, ''Circumstances may arise in which a Federal agency may opt to sell or transfer banked credits to another agency.'' Federal agencies may trade, transfer, or sell recovery credits to another Federal agency in accordance to the agencies' scopes of authority. The Service does not usually participate in how a Federal action agency implements aspects of a consultation, such as carrying out activities described in a biological assessment or a biological opinion. If a Federal action agency contracts with a non-Federal entity or with another Federal entity to accomplish conservation actions for listed species, the Service may not be aware of or involved in that process. The Service's role is work with the action agency and the action as it is presented to us in the consultation

process. The Service will examine credits and their availability for use during the consultation process and issue a biological opinion. The origin of the credits is not a concern for the Service. Put simply, the transfer or trading of credits among Federal agencies is acceptable, however, the Service will not engage in negotiation or trading activities among Federal agencies or their surrogates. The Federal action agency must accurately account for all credits and debits it offers to use during the consultation process, and the Federal action agency is ultimately responsible for all subsequent accounting and tracking of recovery credits.

Since State agencies and private entities do not have a consultation responsibility, there is no basis for them to design or implement an RCS without the involvement of a Federal action agency. Under this guidance, only RCS involving Federal agencies will be recognized by the Service during the consultation process.

Category 8—RCS and Other Recovery Mechanisms (e.g., Conservation Banks)

Issue 8. Several respondents noted similarities or differences between this guidance and the Service's conservation banking guidance issued in 2003 (68 FR 24753, May 8, 2003). Some considered conservation banking to be a superior method of protecting habitat with an established record of success, and recommended that RCS be abandoned in favor of conservation banking. Others recommended that a clear distinction be drawn between the two mechanisms, or that RCS be held to the same standards that apply for conservation banking, such as in-perpetuity protection, legally binding commitments, non-wasting endowments, and conservation easements. One respondent characterized RCS as potentially providing the functional equivalent of conservation banking. One respondent recommended that the Service examine the economic effects that establishment of RCS would have on the conservation banking industry. One submittal included a cost-benefit analysis supporting lower costs associated with recovery crediting in the Fort Hood area as compared to habitat protection through easement or acquisition.

Response 8. We appreciate the conservation value provided by existing conservation banking arrangements, and in fact described RCS as a complement to conservation banking in our November 2, 2007, notice. We do not intend to establish recovery crediting as an alternative to other conservation measures that are already playing a role in conserving species, but rather to serve in situations that lend themselves to the particular features of recovery crediting. The most apparent distinguishing characteristics of recovery crediting are the possibility of encumbering property on a less than permanent basis and of protecting habitat in a dispersed array over a landscape. Some landowners may find non-permanent arrangements more attractive than conventional banks, and thus be induced to participate where they might not otherwise. The potentially dispersed nature of habitat covered by an RCS will demand vigilance on the part of the Service and its cooperators to avoid excessive habitat fragmentation. We do not plan to examine the economic effects of recovery crediting on conventional conservation banks, as we believe that doing so at this time would be excessively speculative. In a similar vein, it may not be valid to compare conservation measures through cost-benefit analyses because of the differing nature of the benefits provided by the various measures. In this context, we note that the Army has contracted for a study examining return on investment for the Fort Hood crediting system.

Category 9—Adequacy of RCS Based on Documents Other Than Recovery Plans

Several respondents were concerned about whether documents other than recovery plans should be used as the basis for an RCS. Following is a summary of those concerns and our responses:

Issue 9a. Acceptable documents should be more completely described.

Response 9a. We agree that what constitutes an acceptable document should be well defined. We have added language under section III.B., ''planning and development phase'' that more clearly defines acceptable documents.

Issue 9b. Documents should not be limited to those that are approved by the Service, even when recovery plans are available.

Response 9b. Section 4(f) of the ESA requires the Service to develop and implement recovery plans for listed species. Because an RCS must be based upon clearly identified actions that will address threats to the species, and that will contribute to its recovery, these actions should be part of a Service-approved document. However, that Service-approved document may be a conservation plan or framework, or include recommendations within a 5-year review that meet the standard of addressing threats and contributing to recovery of the species. Actions so identified in an RCS would be treated on the same basis as those in a current recovery plan.

Issue 9c. Recovery credits should be based only upon approved and current recovery plans, and the Service should prioritize developing or updating plans before implementing an RCS. Documents other than recovery plans referenced in the draft guidance may be insufficient to provide the necessary recovery tasks and measures to ensure a net benefit to recovery, or may be inadequate in their public participation. The guidance should include language that requires the recovery plan or equivalent conservation plan for a target species to be up-to-date and contain the best scientific data available.

Response 9c. We agree that a current recovery plan would generally be the best source for developing an RCS, and that it should be the generally applicable standard. The Service is working to streamline its processes for revising and updating recovery plans, and will consider the need for prioritizing those species for which an RCS might be beneficial. However, in some instances, it may be appropriate to utilize information from a Service-approved conservation plan or a recent 5-year review to develop an RCS with the best available scientific information on the needs of the species. We have added language under section III.B., ''planning and development phase'', that more clearly defines acceptable documents and how they should be used.

Issue 9d. Recovery plans are flawed and will not likely lead to recovery, so recovery credits should not be based upon them.

Response 9d. Recovery plans are developed with the participation of our partners in the scientific community as well as our partners in implementation and represent the best available science as applied to addressing the threats to species and their ultimate recovery. Recovery plans are one of the most important tools we have to ensure sound decisionmaking in the implementation and tracking of species recovery.

Category 10—The Role of Monitoring

Issue 10. We received numerous comments concerning responsibility and accountability for monitoring of RCS. Some believed the Service should oversee all monitoring plans and accounting of credits and debits. Some suggested that monitoring data should be equally shared among all stakeholders, while others recommended that an independent third party conduct monitoring to provide confidentiality assurances to private

entities participating in the system. Other comments suggested the Service's 5-year review process was inadequate to monitor the contribution of RCS to the status of target species. One respondent believed Federal agencies should not monitor their own systems due to the potential overlap of credits between two or more agencies. Several expressed concerns about funding shortfalls, including the ability for the Service to allocate funding and the costs to private entities for monitoring. Two comments believed the guidance should outline a remedial process for problems identified through monitoring (e.g., failure of credit to produce benefits).

Response 10. The Service intends to play an active role in all aspects of RCS development and implementation. The draft guidance may not have stated the Service's role as plainly as possible, but it was our intent that an oversight function would occur under credit accrual through ''sanctioning'' the credit, and under the debit process through a biological opinion. We have revised those sections to clarify the Service's role. We also believe that monitoring should be coordinated among our Federal and non-Federal partners in order to ensure a rigorous and transparent monitoring and reporting process. We agree that all stakeholders committed to participation under an RCS should be full partners and share equally in the information generated from monitoring. We also agree that an independent third party is acceptable for implementation of a monitoring plan. However, the prospect of granting assurances for some participants to remain anonymous is not within the Service's authority. Further, the Service believes that a monitoring plan that conceals certain information from certain participants would not adequately provide checks and balances in the system and would undermine the concept of Cooperative Conservation. The Service has experienced this situation through the pilot project at Fort Hood. Certain confidentiality assurances developed in the pilot have created challenges to the effectiveness monitoring process, which resulted in an individual funded project failing to produce credits.

The Service agrees that funding for monitoring and reporting is an important issue for a properly functioning RCS. In the guidance, we acknowledge the lack of resources within our agency to implement many recovery actions for listed species. For these reasons, the guidance invites participation from all potential stakeholders—Federal, State, private and nongovernmental—to produce a more effective system and pool resources to ensure success. In this way monitoring plans can be developed and collaborated among participants, as expertise and resources allow, to meet the goals and objectives of each particular system.

The Service agrees that a process for corrective action or remediation based on feedback from monitoring should be developed within an RCS. However, it would be ineffective to generalize such a process in the guidance. Rather, those processes are best developed on a system-specific basis.

Category 11—Military Related Comments

Issue 11. The Service received a few comments from within the Department of Defense (DoD) and from other respondents on the role of the military working in partnership with the Service, States, private landowners, and other partners in developing potential RCS. Comments stressed four elements in creating a functional RCS:

First, that any credit-debit system must support a military installation in protecting its military mission and must allow flexibility for the target species' conservation with partners.

Second, the guidance should refer to Integrated Natural Resources Management Plans (INRMPs) as examples of Service-approved documents that could serve as the basis for developing an RCS on a military installation.

Third, given the unique nature of the DoD and challenges it engages in carrying out its core military missions and in meeting its obligations under the ESA, that there are unique opportunities to conduct initial pilot projects combined with the DoD's Range and Environmental Protection Initiative (REPI).

Fourth, DoD manages some 25 million acres of land on military installations that support multiple training needs across a wide geographical area, while maintaining a diversity of ecosystems and endangered species, creating a need for further collaborative conflict resolution over land use and endangered species conservation and recovery across those landscapes with private landowners, and other Federal, State, Tribal, and local government and other nongovernmental partners.

Response 11. Some of the best examples today of endangered species conservation partnerships involve military installations around the nation. The Fort Hood pilot project is an example of two themes expressed in many of the comments. First, that the Service, the States, and other conservation partners should focus on the lessons learned from this pilot in applying it elsewhere and that it is only one example of a system we expect to help shape the guidance in the future. Second, that there are other potential pilot projects that may involve military installations, depending on the endangered species and potential applicability of an RCS that benefits the species, the military, and other partners.

The Service agrees that there is potential that some INRMPs being implemented at military installations can serve as recovery tools for certain endangered species, in tandem with recovery plans, State Wildlife Action Plans, and other conservation plans that target the species. The Sikes Act mandates that each military installation develop, implement, and revise an INRMP where significant natural resources occur on military lands with the mutual agreement by its two primary conservation partners, the Service and the appropriate State fish and wildlife agency. The Service acknowledges that the tri-partite MOU between DoD, the Service, and the Association of Fish and Wildlife Agencies (AFWA) for a Cooperative Integrated Natural Resources Management Program on Military Installations is a key agreement for cooperative conservation on military lands. INRMPs that include active conservation and management initiatives for endangered species can contribute to the recovery of a species. Supporting military installations' conservation efforts is a concerted effort by the DoD, the four Military Services, the DoD Legacy Management Program, the DoD REPI Program, the DoD Partners in Flight Program, the National Military Fish and Wildlife Association, and the Association of Fish and Wildlife Agencies. Other supporting MOUs are key to potential military installation—private landowner—State agency lands—other Federal lands conservation partnerships. These include the 2006 MOU between USDA, Natural Resources Conservation Service, the Service, and the AFWA to strengthen cooperation among the parties to proactively conserve plant and animal species-at-risk and their habitats, to foster the recovery of listed species, and address similar needs for State species of concern. A similar 2007 MOU exists between the DoD and the Service for bat conservation.

The Service agrees with the comment about the unique nature of DoD's military mission and the challenges it faces in carrying out its core mission while meeting its obligations under the ESA, and that there are various

opportunities to conduct initial pilot projects elsewhere in the nation combined with certain DoD conservation programs. As noted above, military installations, the Service, and the States work as collaborative partners under the Sikes Act and the tri-partite MOU at several installations and are promoting further collaborative partnerships with private landowners, State lands, other Federal agencies, Tribes, nongovernmental organizations, and other partners in the recovery of endangered species found on military lands and adjacent lands. The DoD conservation programs such as the DoD Legacy Program, the DoD REPI, and the DoD Partners in Flight Program are conservation tools that DoD uses effectively with conservation partners on endangered species, fish and wildlife, and other natural resources. As noted in the Service's response to comments under the Role of States, carrying out an effective RCS may lead to establishment of national and project-level science teams that can guide and target endangered species recovery actions. The Service recognizes a need to invite the DoD and military services to be represented on any future national science team. In any case where the military installation may be part of a potential pilot RCS, it is key that the military installation natural resources staff represent the military on a local science team to steer a pilot project with the Service, State, and other partners.

The Service also acknowledges that DoD and the four military services have balanced sustaining the military readiness mission with stewardship of natural resources including endangered species over a diverse range of ecosystems in the nation. DoD, the Service, and the States work on several conservation partnership teams to bring conservation resolution out of potential conflicts

Category 12—Critical Habitat

Issue 12. A variety of opinions were offered in response to our solicitation of comment on the relationship of RCS to critical habitat. One respondent recommended that there be no specific link between the two. Others suggested that areas covered by an RCS should not be designated as critical habitat, that existing designations be removed for areas covered by an RCS, that existing critical habitat be accorded high value for RCS coverage, or that RCS coverage be given explicit preference over critical habitat designation as a means of promoting conservation.

Response 12. We have declined to attempt articulating any explicit relationship between RCS and critical habitat at this time. Given the wide range of opinion expressed and the relatively broad discretion we are afforded by the ESA in designating critical habitat, we believe that a relation between the two, if any, is most likely to arise in the context of future RCS applications and specific designations.

Category 13—Legal Issues

Issue 13a. Several respondents asserted that RCS would allow agencies to exceed their existing Congressional mandates under the ESA and other statutes.

Response 13a. RCS do not expand the authorities of the Service or the cooperating agencies.

Issue 13b. One respondent asserted that the Service is ''literally authorizing increased endangered and threatened species take and habitat destruction/degradation'' with RCS.

Response 13b. This guidance does not authorize any take or habitat destruction. As plainly set out in the guidance, any actions taken under the guidance would be subject to section 7 consultation. It is the issuance of a future biological opinion with an incidental take statement that authorizes any take. Further, any action that may affect critical habitat would be subject to consultation as well.

Issue 13c. One respondent ''reject[ed]'' the authority of the Service to ''weaken the section 7'' consultation process by creating RCS that promote the take of species or the degradation of their habitat.

Response 13c. The respondent misunderstands the premise of section 7(a)(2). The ESA allows action agencies to take species and impact critical habitat if, after consultation with the Service, it is determined that those actions are not likely to jeopardize listed species or adversely modify or destroy critical habitat. Actions taken under an RCS will be subject to section 7 consultation. Further, because RCS require a net benefit to the recovery of the species concerned, there is no weakening of their section 7(a)(1) responsibilities.

Issue 13d. One respondent questioned what would happen if a landowner were not in compliance with an agreement.

Response 13d. As with any Federal agency action subject to consultation under section 7, an action taken under an RCS would be governed by the reinitiation clause of the section 7 regulations (50 CFR 402.16). That is, the Federal action agency would be required to reinitiate consultation if the action being implemented causes effects to the species that were not considered during the consultation.

Issue 13e. One respondent asserted that Federal agencies cannot take actions that are likely to jeopardize listed species even if they have taken ''previous actions that have been demonstrably effective in promoting that species' recovery.''

Response 13e. We agree that action agencies cannot lawfully take actions that are likely to jeopardize listed species. Under an RCS, however, an action could not lead to jeopardy because the RCS must demonstrate a net benefit to recovery. Furthermore, the regulations implementing section 7 specifically speak to this point (see 50 CFR 402.14(g)(8)).

Guidance

The text of the guidance follows:

Guidance on Recovery Crediting for the Conservation of Threatened and Endangered Species

I. Introduction

A. Purpose and Scope of Guidance

This document is intended to provide guidance on the development, management, and use of recovery credits as a measure for mitigating adverse effects to and contributing to the recovery of species listed as threatened or endangered under the Endangered Species Act of 1973, as amended (ESA). The guidance should assist Service personnel in determining the applicability of recovery credits for the recovery needs of a species, fulfill the purposes of the ESA, and provide consistency in the establishment, management, and use of recovery credits. For more detailed guidance and information on various other recovery programs, we include a list of helpful documents in section VI of this guidance. These documents will help the reader have a more complete understanding of recovery programs as a whole.

Recovery crediting is an optional process for Federal agencies to use their authorities to further the conservation of listed species. Recovery credits can provide an additional means of implementing ''conservation measures,'' commonly offered by Federal agencies to offset effects to listed species resulting from Federal actions. As noted in the Service's Consultation Handbook, ''When used in the context of the Act, 'conservation measures' represent actions pledged in the project description that the action agency or applicant will implement to further the recovery of the species under review.'' For further discussion of conservation

measures, see *Endangered Species Consultation Handbook*, pp. 4–8. In a recovery crediting system (RCS), the action agency would present credits as part of its project description. A pledge represented by a credit must be a legally binding commitment such as a contract with a private landowner.

Some potential benefits of an RCS include (1) better and more cost-effective contributions to recovery through agency activities; (2) more exact analysis; and (3) increased predictability for all parties. The Service and its cooperators should closely evaluate the use of recovery credits as a conservation tool for each species or group of species; recovery credits may not be appropriate in some situations. In other cases, recovery credits may be a valuable tool in advancing the recovery of a species.

This guidance is general in nature, as each process developed for using recovery credits will differ based on a variety of circumstances. An RCS should be tailored to the specific circumstances under which it would be applied; ideally it should be based on the relevant recovery plans and, when recovery plans are lacking or inadequate for the design of an RCS, should rely on other Service-approved documents (see ''III. B. Planning and Development Phase'' below for examples). RCS may complement mitigation tools and conservation programs currently available, such as conservation banking. This guidance also does not attempt to closely define or assign roles to the agencies and other participants in an RCS; we anticipate that these roles will vary to some degree in response to the circumstances surrounding particular systems.

B. Background

We have long recognized that effective recovery planning and implementation for listed species require cooperative processes, including recovery actions by Federal land managing agencies with adjacent landowners, local communities, Tribes, States, and other Federal agencies.

The concept of recovery credits was developed in Texas to allow the Department of Defense (DoD) to receive credit for recovery measures being implemented by Fort Hood Military Reservation. Fort Hood, which is home to the largest known population of the endangered golden-cheeked warbler within its breeding range, carries out recovery measures with neighboring landowners in an effort to offset adverse effects that may result from future on-base military readiness activities. In exchange for implementing recovery actions, DoD requested that these actions be considered for ''banking'' to offset effects attributable to training activities.

Although the Fort Hood example is very specific and limited in scope, the general concept can be applied more broadly. Federal agencies may obtain credit for actions undertaken on non-Federal lands to advance the recovery of listed species, and this credit may be expended, or debited, to offset potential adverse effects of future actions. In other words, Federal agencies may ''bank'' recovery credits in advance in a particular RCS, and apply those credits at a later time to the analysis of an agency action. This process can add an incentive for Federal agencies to use their authorities to further the purposes of the ESA.

C. What Is a Recovery Credit?

A recovery credit is a quantifiable unit of measure recognized by the Service representing a contribution to the recovery of a species listed under the ESA. For example, in its simplest form, one credit could equal a specified number of acres of habitat, the acreage necessary to support one nest of the target species, or a specified number of acre-feet of water secured. Recovery credits should be based on a commitment to implement recovery actions outlined in a particular species' recovery plan or alternative Service-approved document. Each recovery credit, therefore, may be considered to be part of recovery implementation leading towards the downlisting or delisting goals of a threatened or endangered species, taking into account the debits that have occurred.

An RCS is a specific program established to implement recovery actions on non-Federal lands for specific species while creating a ''bank'' of credits that a Federal agency may use to offset the effects of its actions. That is, the Federal agency may develop and store credits to be used at a later time to offset particular adverse effects of its actions. The overall system must provide a net benefit to recovery for covered species. ''Net benefit to recovery'' is defined as follows: Enhancement of a species' current status by addressing the threats identified at the time of listing or in a current status review. Net benefit to recovery represents the cumulative benefits of the recovery actions for a species identified in an RCS that contribute to the goal of downlisting or delisting the species, as specified in a current recovery plan or equivalent Service-approved document, after consideration of the debits applied to any adverse effects of a Federal agency action. A net benefit to recovery will generally be found when an action directly or indirectly provides a material increase in a species' population and/or a material enhancement, restoration, or protection of that species' habitat.

Under this policy, only Federal agencies may apply recovery credits to the effects of their proposed actions, but the system is similar in principle to conservation banking and habitat conservation plans. Recovery credits must be realized to create a ''bank'' of credits before they can be used to compensate for adverse effects to listed species. Unlike the situation with conservation banks, the RCS may be used for either permanent or temporary effects. However, the positive effects of the credits may be temporary (e.g., secured by a term contract) only if the negative effects to be offset are also temporary and, further, if the accounting function of the recovery credit system ensures that benefits of the credits are achieved in a way so that there is a net benefit to recovery. The recovery actions represented by credits must take place within a geographic area that is biologically appropriate to offset the adverse effects, such as a recovery unit.

II. Guidance Considerations

A. Authorities

The ESA provides the basis and framework for this guidance. The ESA's stated purposes include providing ''a means whereby the ecosystems upon which [listed] species depend may be conserved'' and ''a program for the conservation of such [listed] species.'' Under section 3 of the ESA, conservation is defined as ''using all methods and procedures which are necessary to bring any [listed] species to the point at which the measures provided pursuant to [the ESA] are no longer necessary.'' Within the context of this guidance, these definitions help determine and evaluate appropriate conservation measures and benefits. Further, recovery planning is addressed under section 4(f) of the ESA, where provisions for the development of recovery plans for the ''conservation and survival of [listed] species'' are provided. A recovery plan is one of the most important tools to ensure sound decisionmaking throughout the recovery process.

Section 7(a)(1) of the ESA requires that all Federal agencies ''in consultation with and with the assistance of the [Service], utilize their authorities in furtherance of the purposes of [the ESA] by carrying out programs for the conservation of [listed species].'' The ESA gives broad

discretion to Federal agencies to determine the appropriate methods for implementation of section 7(a)(1). One possible method for agencies to utilize their authorities for the conservation of the species is through an RCS.

Establishing an RCS should result in a net benefit to the recovery of a listed species. That is, the status of the target species will improve because, overall, the crediting system must contribute to the recovery of that species. Of course, each Federal agency will have to balance its authorities, statutory obligations, and missions to determine if this policy is appropriate or viable for the agency's purposes. For example, a Federal agency will have to determine if it has authority to acquire interests in non-Federal lands.

B. Goals and Objectives

The goal of an RCS is to enhance the ability of Federal agencies to promote the recovery of listed species on non-Federal land and offset adverse effects to listed species from proposed actions. Objectives are (1) to produce a net benefit to recovery of the target species, (2) to increase the flexibility of Federal agencies to accomplish their missions while meeting their requirements under the ESA, and (3) to promote effective Federal/non-Federal partnerships for species recovery.

In order to meet the first objective, the standard for establishing recovery credits should be implementing actions within an approved recovery plan that has been identified as current by the Service office with lead for the species. The Service should prioritize updating or supplementing recovery plans that are not current for species for which an RCS is being considered, so that any new actions being considered are integrated with the recovery criteria and plan for the species. In some instances, a recovery plan may not be available for a species being considered for an RCS. If so, an alternative document such as a Service-approved conservation plan, strategy, or framework that has identified specific actions to address the threats to the species may be used. Examples of documents that can contribute to establishing an RCS include military Integrated Natural Resource Management Plans, State Wildlife Action Plans, 5-year status reviews, and biological opinions. However, those can be utilized in tandem with a recovery plan and any specific actions within alternative documents must be consistent with the goals, objectives, and recovery strategy identified in the species' recovery plan to address threats and promote recovery of the species. Providing credits for recovery tasks allows Federal agencies to work together with other entities to more effectively use measures in achieving net benefits that contribute to recovery, rather than simply addressing on-site effects of particular projects. When it is possible to foresee the utility of an RCS during the preparation of a recovery plan, authors of a plan may incorporate elements of the system explicitly in the plan.

C. Principles of Recovery Crediting

Simply put, the recovery credit system is: (1) The development and accrual of credits, which would accomplish recovery tasks and have a net benefit to recovery for the target species; and (2) a subsequent Federal action, which uses (debits) some portion of the credits, as part of the Federal action to offset adverse effects.

Federal agencies can employ an RCS to accomplish recovery tasks as well as offset the adverse effects of their actions. Although Federal agencies with appropriate authorities may also purchase credits in a conservation bank or employ other mitigation or recovery measures, a Federal agency may want to establish a system specific to its needs. Recovery crediting works within the existing framework of the ESA and its implementing regulations. This guidance is intended to assist in the early stages of planning and development of a proposed RCS. While no two crediting systems are likely to be identical, this guidance addresses fundamental principles that would apply to all situations.

The general principles of establishing an RCS include—

The Recovery Crediting Process

- Information gathering and analysis;
- Planning and credit development phase; and
- Consultation on the credit accrual process (ordinarily combined with the consultation on the debiting process)

The Recovery Debiting Process

- Debit development phase;
- Programmatic debiting consultation; and

Project-Specific Application

- Project-specific consultation under programmatic consultation; and
- Actual debits of the credits.

While these principles are based on our experiences from multiple consultations, the Service believes that consultation can be achieved in many cases through a two-step consultation process: (1) A programmatic consultation to establish the recovery credit and debiting process and (2) a project-specific consultation.

D. Coordination Process

The Service lacks the resources to implement many, if not most, recovery actions. Collaboration with a wide variety of potential stakeholders is essential for the implementation of recovery plans. An appropriate RCS can assist the Service, other Federal agencies, and their partners to achieve more effective implementation of recovery plans.

The Service and the Federal action agency will coordinate to ensure that the crediting system complies with all applicable laws. In particular, action agencies and the Service may need to review laws relating to privacy such as the Freedom of Information Act (FOIA) and the Privacy Act. Further, depending on the system used to create the recovery credits, action agencies and the Service may need to review the Federal Advisory Committee Act (FACA). The National Environmental Policy Act (NEPA) may be a relevant consideration as well. Service employees should consult with their appropriate solicitor's office for more specific advice with regard to these laws.

The Service will coordinate with appropriate Federal and State partners, and we will encourage State and local entities, both governmental and nongovernmental, to participate on the various workgroups and committees formed under the RCS that will be central to each process involved. For example, a local scientific committee may be established to assist the Service in defining recovery credits. While accrued recovery credits are used only by the Federal agency, the accrual process (as described below) is the key to success and should include participation by whatever non-Federal entities are appropriate.

III. Recovery Crediting Process

A. Information Gathering and Analysis Phase

This phase involves the identification of threats and the actions needed to address those threats. Generally, the species' recovery plan, or other Service-approved document, will provide a framework for analysis. This analysis also establishes the means by which a credit in a recovery crediting system will be measured and accounted for. Information gathering and analysis involves the compiling of available information sources, identifying data gaps, and evaluation of target species. As stated above, a central element to defining an RCS is coordination with

appropriate Federal and State partners, as well as interested local and nongovernmental entities.

Within this phase, two important issues should be addressed: (1) Evaluation of the recovery needs of the target species, and (2) determination whether an RCS is feasible based on the recovery needs of the listed species. Critical to both issues is the ability to evaluate measurable recovery benefits to the target species. RCS will vary in details, and some listed species may not be appropriate for inclusion in a credit system based on their recovery needs. Examples may include—

- Species with poorly understood threats,
- Species for which even minimal incidental take is likely to result in a jeopardy determination,
- Species with recovery plans that provide only interim objectives due to a lack of information necessary for recovery such that a net benefit to recovery cannot be determined, or
- Species for which credits cannot easily be valued due to the nature of threats (e.g., a local endemic threatened by impoundment of a river).

B. Planning and Development Phase

This phase uses the results of the information gathering and analysis to establish in detail what constitutes a credit. As in other recovery programs, the planning and development phase is likely to be the most important and time-consuming part of the process. Although debiting of credits will not come into play until after the credits are established (e.g., after restoration or management actions have achieved their goals), the debiting must be considered in the credit development phase in order to meet the standard of a net benefit to recovery of the species. As part of the planning process, Federal agencies may identify future needs, locations of future projects, types of future projects, and associated project activities. Values may be assigned to different tasks within a recovery plan or alternative Service-approved planning document based on priority, and the use of debits may be limited depending on the needs of the species' recovery. In addition, the RCS must integrate monitoring and reporting of both accrual and debiting of credits.

Any RCS should address the threats that caused the species to be listed, advance the recovery goals of the species, and must be based on sound scientific principles. That is, the system must demonstrate the relationship between the conservation value of the recovery measure as it applies to the credit.

As stated above, in instances where a recovery plan is not specific, is not available, or is outdated, the Service may consider other documents to establish recovery crediting. We will use information that we determine represents the best available scientific information on the needs of the species. The Service should prioritize updating or supplementing recovery plans that are not current for species for which an RCS is being considered, so that any new actions being considered are integrated with the recovery criteria and plan for the species. An alternative document such as a Service-approved conservation plan, strategy, or framework that has identified specific actions to address the threats to the species may be appropriate in some instances. Examples of documents that can contribute to establishing an RCS include military Integrated Natural Resource Management Plans, State Wildlife Action Plans, 5-year status reviews, and biological opinions. However, these can be utilized in tandem with a recovery plan, and any specific actions within alternative documents must be consistent with the goals, objectives, and recovery strategy identified in the species' recovery plan to address threats and promote recovery of the species.

Credits should be valued based on recovery tasks, or analogous measures, available to a Federal agency. This phase will develop values to be assigned to recovery tasks, ensuring that a net benefit to recovery is realized for the target species. Credit values are based upon achieving measurable objectives, and higher priority recovery tasks would generally receive more credit than lower priority ones. Ranking threats may be accomplished among or within tasks in a recovery plan. For example, various Federal conservation programs use a project selection process based on several considerations. Higher value (i.e., more credit) is typically placed on potential projects that—

- Preserve long-term habitat.
- Address high-priority recovery needs.
- Are larger in size (i.e., habitat size or quality).
- Are adjacent or in proximity to public lands or other permanently protected areas.
- Target a specific geographic focus area (e.g., recovery unit).
- Benefit multiple species.
- Establish corridors to accommodate migration or connect fragmented habitat.

In this phase, the temporal nature of potential effects on or needs of the species would be analyzed. Many species require active management (e.g., invasive species control, prescribed fire, etc.) or public outreach to contribute to recovery or research to support recovery. Thus, some credits may be temporary in nature, provided the action meets the recovery needs of the species. Temporary credits could be used to offset temporary adverse effects in appropriate situations that still allow a net benefit to recovery. For example, many transportation and linear utility projects require temporary workspace for construction, which is later returned to pre-construction conditions. An agency could accrue credits for the restoration and temporary protection of degraded habitat to mitigate for habitat that has temporary adverse effect, with the duration of credit based on benefits achieved at the restored site and eventual restoration of the affected site.

In its simplest form, a single Federal agency would identify a recovery action(s) for establishment of an RCS. For example, a recovery plan may call for the permanent preservation of a viable population in a particular recovery unit. A Federal agency may identify that need, and develop a process for accruing credits through conservation easements that would meet that objective of the recovery plan (preserving the viable population). Credits reflecting habitat protection or restoration would be considered to be banked when conditions on the ground indicate completion of the recovery task. More complex crediting systems may involve multiple Federal agencies and may assign credits to several or all tasks within a recovery plan. In either case, a single Federal agency would be the holder of credits. Whenever possible, other partners should be included in the development process (e.g., State agencies, nongovernmental organizations, etc.), and they may play a major role in implementing the credit accrual process.

Finally, in the development phase, it is important to address the transferability of accrued credits. Circumstances may arise in which a Federal agency may opt to sell or transfer banked credits to another agency. These situations should be considered early and be included in the crediting process, but may be defined in greater detail within the debiting process.

C. Consultation on Credit Accrual Phase

Upon completing the development of a proposed crediting process the Federal action agency will consult on the process under section 7 of the ESA. Ordinarily, a programmatic consultation will address both the crediting and

debiting processes; in rare cases separate consultations may address the two processes. The use of a proposed crediting system is a discretionary Federal action that ''may affect'' a listed species, and therefore requires section 7 consultation. This consultation determines whether a proposed agency action is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat. For the process developed to accrue credits, the net effect on the target species should be beneficial. In some instances, temporary adverse effects may be necessary to achieve the maximum recovery benefit to the target species. For example, a survey may involve some level of taking of a listed species. In these cases, it may be necessary to consult formally on the credit accrual process, if it is anticipated that incidental take may occur as a result of credit acquisition. An agency requesting initiation of consultation on an RCS must include in its initiation package an adequate explanation of the net benefit to recovery that the RCS will provide to the relevant species and the specific means by which it will be provided.

As discussed above, although a Federal agency needs to consider how credits will be debited while determining how they will be accrued, once it establishes an RCS through the section 7 consultation process, a Federal agency may begin accruing credits through the procedures outlined in the plan.

IV. Recovery Debiting Process

A. Debit Development Phase

This phase establishes the standards according to which credits will be used. This phase may be conducted separately or concurrently with the credit accrual planning and development. An advantage of considering crediting and debiting at the same time is that a better match may be achieved between the credits accrued and the debiting needs. Establishing the guidelines for debit use and other factors, limitations, accounting, and monitoring and reporting may be created as a stand-alone document, but will eventually become the ''Project Description'' within a biological assessment or evaluation, and subsequent biological opinion. In addition, the debit process could consider the possibility of Federal agencies other than the Federal agency that established the RCS being able to use credits.

Consideration of debits includes ensuring that agencies maintain a net benefit to recovery gained by credit accrual. In general, credits that accomplish tasks in a species' recovery plan would normally meet a net benefit to recovery standard. However, because credits would be used for mitigation, it is important to ensure the debit process does not limit, counter, or preclude necessary recovery objectives and is developed in reliance on a recovery plan or analogous document. Examples of using a debiting process to ensure a benefit to recovery include—

- Using biologically appropriate mitigation ratios in habitat-based crediting (e.g., more than one credit for each debit necessary to fully offset adverse effects).
- Maintaining a credit balance that ensures an incremental increase in the species' recovery status.
- Restricting use of debits to areas not deemed essential in recovery plans or a Service approved conservation plan, strategy, or framework that has identified specific actions to address the threats to the species.
- Limiting the types of activities available for debiting.

Similar to planning the crediting phase, it is essential that an activity or action's potential effects to the target species be sufficiently understood in order for it to be included in the debiting process. In some instances, the effects of even well-understood actions may possess some level of uncertainty. The debiting process should be designed to accommodate uncertainty that is evaluated based on a clearly stated and explained set of assumptions.

B. Programmatic Debiting Consultation

The debiting process as part of an RCS is subject to consultation under section 7(a)(2) of the ESA. Programmatic consultation addresses programs or groups of similar actions implemented by a Federal agency. A non-jeopardy biological opinion also determines the amount or extent of anticipated incidental take, if any.

In implementing an RCS, the programmatic approach will be necessary due to the nature of credit and debit concepts, and to ensure a net benefit to recovery of the species. The Federal action subject to consultation is the establishment of the debiting process and actions included therein. Under programmatic consultation, much of the effects analysis is completed upfront, rather than repeatedly for each individual action. By completing this analysis beforehand in a programmatic biological opinion, the anticipated effects of the action agency's future projects can be added into the environmental baseline prior to their actual completion. When both accrual and debiting processes are considered together in consultation, a more accurate analysis of the benefits of the RCS is possible than would be the case were they to be addressed separately. The appended and tiered methods of programmatic consultation involve a two-stage consultation process that would be appropriate here. The first stage is programmatic and analyzes the potential landscape-level effects that may result from the debiting process. The second stage addresses project-specific effects of each individual project under the action agency's program and previously included in the programmatic biological opinion. The prior consultation at a programmatic level is intended to expedite this second stage; to the extent that it is possible to anticipate project-specific effects at a programmatic level, they need not be revisited in any detail later on.

A Federal agency may include recovery measures in a proposed action as mandatory, non-discretionary actions or activities that will minimize adverse effects to listed species. An RCS would formalize that process and mitigate adverse effects to listed species by taking measures (accruing recovery credits) that may be included as conservation measures for a specific project in a specific geographic location. The Service would consider the use of recovery credits when it analyzes potential jeopardy to the species and destruction or adverse modification of any critical habitat in a biological opinion. The ESA requires the Service to specify any necessary or appropriate minimization of the effects of incidental take exempted in a biological opinion. Because recovery credits would be acquired in advance of a specific Federal action and may not be associated with incidental take resulting from the proposed action itself, they would normally offset the effects of incidental take with respect to the RCS standard of net benefit to recovery, but would not necessarily minimize the effects on individuals affected by the proposed action *as required by section 7(b)(4)(C) of the ESA.* Therefore, the biological opinion may still require reasonable and prudent measures and terms and conditions that address the incidental take resulting at the project-specific level. These must fit within the context of ''minor changes'' as described at 50 CFR 402.14(i)(2).

The end product of programmatic consultation will be a comprehensive biological opinion issued to the Federal action agency that describes in detail or incorporates by reference the crediting and debiting processes and all actions and activities involved. It will evaluate

all potential effects of the actions (debits) as well as the credits accrued and used to offset the effects and provide a jeopardy analysis for listed species and destruction/adverse modification analysis for designated critical habitat if applicable. The consultation would consider all listed species that may be affected, not just the target species, and any designated critical habitat occurring in the action area for the jeopardy/adverse modification analysis.

The programmatic biological opinion may not be able to describe take at the programmatic level. In this case, the specific take authorization and associated reasonable and prudent measures and terms and conditions would be described in site-specific biological opinions. If the overarching biological opinion can describe, with appropriate documentation from the action agency, the project-specific actions, then a list of reasonable and prudent measures and terms and conditions can be included, and no additional opinion is needed for those actions. The Service must develop reasonable and prudent measures and terms and conditions in close coordination with the action agency. This coordination may identify specific measures the action agency will incorporate at the project-specific level.

C. Project-Specific Consultation

As individual projects are proposed, the action agency provides project-specific information as described in the programmatic biological opinion. This information should include, but not be limited to, the specific areas to be affected, the species and critical habitat that may be affected, a description of anticipated effects (in reference to those already analyzed in the programmatic biological opinion), a description of any additional effects not considered in the programmatic consultation, appropriate reasonable and prudent measures and terms and conditions, the resulting debits as ranked in the programmatic opinion, and the credit balance resulting from the action. The project-level consultation should be an expedited process because most of the needed analysis will have occurred at the programmatic level. This is an added incentive for Federal agencies to use programmatic consultation and recovery crediting.

V. Monitoring

A monitoring program is essential to the success and the credibility of an RCS, both for the crediting and debiting aspects of the process. The scope of the monitoring plan should be commensurate with the crediting system's recovery framework, based on the goals and objectives of the species' recovery plan; the monitoring should measure the objectives as implemented by the crediting system. Ultimately, the Federal action agency is responsible for accounting for credits and compliance with the debiting process as determined through the programmatic biological opinion. However, the Service will provide technical assistance in the monitoring plan and contribute to the monitoring process through the development of terms and conditions within biological opinions, as well as reviewing and providing concurrence, if warranted, under project-specific consultations. Additionally, the Service will be responsible for periodic review of the species' environmental status, either through an established protocol or more conventional methods (e.g., 5-year review, programmatic biological opinions, etc.).

In general, monitoring may comprise two elements: effectiveness monitoring and compliance monitoring. Effectiveness monitoring will evaluate the credit valuation and accrual process in achieving the goals and objectives of recovery actions. This monitoring focuses on the crediting process, involves principles of adaptive management, and includes all implementation partners. The responsibility of effectiveness monitoring belongs to the Federal agency that accrues and holds credits, although other entities would be involved. When the credit accrual process results in a biological opinion from the Service, effectiveness monitoring provisions are part of the project description. Any coverage under the incidental take statement, therefore, is dependent on the action agency carrying out the action as described in the project description.

Compliance monitoring audits and accounts for credits and debits and ensures proper implementation of the agency action. Any monitoring and reporting must be incorporated into the project description as an integral part of implementing the RCS.

Although an RCS is a focused tool for Federal agencies to make a positive contribution towards the recovery of listed species while creating flexibility for offsetting effects of their other actions, the Service encourages the development and use of other types of crediting systems to meet other needs and circumstances. In addition, this guidance by no means restricts Federal agencies from developing or using other crediting systems such as conservation banks. An RCS is one method by which a Federal agency may contribute towards its section 7(a)(1) responsibilities. The Service encourages Federal agencies to develop other programs that would also contribute to the recovery of listed species on Federal and non-Federal lands.

VI. References

The following is a list of documents that would be useful for establishing an RCS. Some are in draft form, but are readily available to Service personnel through Regional Offices or the Washington Office.

U.S. Fish and Wildlife Service. 1990. Policies and guidelines for planning and coordinating recovery of endangered and threatened species. Washington, DC. 14pp. + appendices.

U.S. Fish and Wildlife Service. 1999. Final Safe Harbor Policy. 64 FR 32717, June 17, 1999.

U.S. Fish and Wildlife Service. 2003. Guidance for the Establishment, Use, and Operation of Conservation Banks.

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. Endangered Species Act Consultation Handbook: Procedures for Conducting Section 7 Consultations and Conferences. Washington, DC.

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 2004 (updated 2006). Draft Endangered and Threatened Species Recovery Planning Guidance.

Williams, B.K., R.C. Szaro, and C.D. Shapiro. 2007. Adaptive Management: The U.S. Department of the Interior Technical Guide. Adaptive Management Working Group, U.S. Department of the Interior, Washington, DC.

Authority The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 25, 2008.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. E8–17579 Filed 7–30–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Intersocietal Accreditation Commission

Notice is hereby given that, on June 25, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Intersocietal Accreditation Commission (''IAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and

principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Intersocietal Accreditation Commission, Columbia, MD. The nature and scope of IAC's standards development activities are: the development of consensus standards for quality assurance in diagnostic imaging facilities, thus improving the quality of patient care provided in private offices clinics and hospitals where such medical tests are provided. The IAC develops consensus standards in the following categories: (a) Accreditation of vascular laboratories (extracranial cerebrovascular, intracranial cerebrovascular, peripheral arterial, peripheral venous, visceral vascular, screening), (b) accreditation of echocardiography laboratories (adult transthoracic, adult transesophageal, adult stress, pediatric transthoracic, pediatric transesophageal, fetal), (c) accreditation of nuclear medicine laboratories (nuclear cardiology, general nuclear medicine, PET), (d) accreditation of magnetic resonance laboratories (body [pelvis, abdomen, chest, and/or breast], cardiovascular, musculoskeletal, neurological), and (e) accreditation of computed tomography laboratories (cardiovascular, whole body, neurological, sinus and temporal bone).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–17509 Filed 7–30–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Advanced Media Workflow Association, Inc.

Notice is hereby given that, on June 27, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Media Workflow Association, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Integrated Media Technologies, North Hollywood, CA; and Nielsen, Westport, CT, have been added as parties to this venture. Also, Convergent Media Labs, Marina del Rey, CA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc., intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc., filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 21, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 23, 2008 (73 FR 21984).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–17507 Filed 7–30–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on July 7, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 33 new standards have been initiated and 13 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/16-05-08.html* and *http://standards.ieee.org/standardswire/sba/06-12-08.html.* In addition, an update to the registration activities associated with 21 existing standards is being submitted. More detail regarding this update can be found at *http://standards.ieee.org/regauth/registrystandards.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on May 9, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 17, 2008 (73 FR 34327).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–17511 Filed 7–30–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Petroleum Environmental Research Forum

Notice is hereby given that, on July 9, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Questor Centre, Belfast, Northern Ireland, UNITED KINGDOM has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on November 15, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 11, 2008 (73 FR 7762).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–17512 Filed 7–30–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0015]

Cotton Dust Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified by the Cotton Dust Standard (29 CFR 1910.1043).

DATES: Comments must be submitted (postmarked, sent, or received) by September 29, 2008.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0015, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2008–0015). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Cotton Dust Standard protect employees from the adverse health effects that may result from their exposure to cotton dust. The major information collection requirements of the Cotton Dust Standard include: performing exposure monitoring, including initial, periodic, and additional monitoring; notifying each employee of their exposure monitoring results either in writing or by posting; implementing a written compliance program; and establishing a respiratory protection program in accordance with OSHA's Respiratory Protection Standard (29 CFR 1910.134).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of these collection of information (paperwork) requirements specified in the Cotton Dust Standard (29 CFR 1910.1043). The Agency is requesting to decrease its current burden hour total from 70,340 hours to 35,742 for a total decrease of 34,598 hours. The adjustment is primarily the result of the Agency decreasing the number of establishments from 535 to 384. As a result of the number of establishments decreasing, there was also a significant reduction in the number of exposed employees from 49,628 to 25,457. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Standard.

Type of Review: Extension of a currently approved collection.

Title: Cotton Dust Standard (29 CFR 1910.1043).

OMB Number: 1218–0061.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes (.08 hour) for a secretary to maintain a record to 4 hours to complete a medical examination.

Estimated Total Burden Hours: 35,742.

Estimated Cost (Operation and Maintenance): $3,519,531.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0015). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on July 25, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–17536 Filed 7–30–08; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0024]

Shipyard Employment Standards; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Shipyard Employment Standards (29 CFR 1915.113(b)(1) and 29 CFR 1915.172(d)). The purpose of the collections of information (paperwork) provisions of the Standards is to reduce employees' risk of death or serious injury by ensuring that equipment has been tested and is in safe operating condition.

DATES: Comments must be submitted (postmarked, sent, or received) by September 29, 2008.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0024, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2008–0024). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information

collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Test Records for Hooks (paragraph 1915.113(b)(1)). This paragraph requires that the manufacturer's recommendations be followed in determining the safe working loads of the various sizes and types of hooks. If the manufacturer's recommendations are not available, the hook must be tested to twice the intended safe working load before it is initially put into use. The employer must maintain and keep readily available a certification record which includes the date of such test, the signature of the person who performed the test, and the identifier for the hook which was tested.

The records are used to assure that equipment has been properly tested. The records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

Examination and Test Records for Unfired Pressure Vessels (paragraph 1915.172(d)). This paragraph requires that portable, unfired pressure vessels not built to the requirements of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Unfired Pressure Vessels, 1963 be examined quarterly by a competent person and subjected to a yearly hydrostatic pressure test. A certification record of such examinations and tests shall be maintained.

The records are used to assure that equipment has been properly tested. The records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard. OSHA does not believe that there are any unfired pressure vessels not built to the requirements of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Unfired Pressure Vessels, 1963 currently in use. However, for purposes of completing this ICR, the Agency is calculating burden and cost for this provision.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Shipyard Employment Standards (29 CFR 1915.113(b)(1) and 29 CFR 1915.172(d)). OSHA is proposing to decrease the existing burden hour estimate for the collection of information requirements specified by the Standards from 3,520 hours to 2,137 hours, a total decrease of 383 hours. This proposed adjustment decrease is a result of a decline in the number of establishments from 717 to 639 based on updated data. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Shipyard Employment Standards (29 CFR 1915.113(b)(1) and 29 CFR 1915.172(d)).

OMB Number: 1218–0220.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 639.

Frequency of Response: Annually, Quarterly, On occasion.

Average Time per Response: Varies from 2 minutes (.03 hour) to maintain a certification record to 35 minutes (.58 hour) to obtain certain information from a manufacturer.

Estimated Total Burden Hours: 3,137.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0024). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, this 28th day of July 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–17565 Filed 7–30–08; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain*. This is the second notice; the first notice was published at 73 FR 30421 and no comments were received. 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; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. 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 703–292–7556.

NSF 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.

SUPPLEMENTARY INFORMATION:

Title of Collection: Fellowship Applications and Award Forms.

OMB Approval Number: 3145–0023.

Type of Request: Intent to seek approval to extend without revision an information collection for three years.

Abstract

Section 10 of the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*), as amended, states that ''The Foundation is authorized to award, within the limits of funds made available * * * scholarships and graduate fellowships for scientific study or scientific work in the mathematical physical, medical, biological, engineering, social, and other sciences at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time.''

The Foundation Fellowship Programs are designed to meet the following objectives:

- To assure that some of the Nation's most talented students in the sciences obtain the education necessary to become creative and productive scientific researchers.
- To train or upgrade advanced scientific personnel to enhance their abilities as teachers and researchers.
- To promote graduate education in the sciences, mathematics, and engineering at institutions that have traditionally served ethnic minorities.
- To encourage pursuit of advanced science degrees by students who are members of ethnic groups traditionally under-represented in the Nation's advanced science personnel pool.

The list of fellowship award programs sponsored by the Foundation may be found via FastLane through the NSF Web site: *http://www.fastlane.nsf.gov*.

Estimate of Burden: These are annual award programs with application deadlines varying according to the fellowship program. Public burden may also vary according to program, however it is estimated that each submission is averaged to be 12 hours per respondent.

Respondents: Individuals.

Estimated Number of Responses: 8,500.

Estimated Total Annual Burden on Respondents: 102,000 hours.

Frequency of Responses: Annually.

Dated: July 28, 2008.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E8–17553 Filed 7–30–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on May 8, 2008.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 31, General Domestic Licenses for Byproduct Material.

3. *Current OMB approval number:* 3150–0016.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Reports are submitted as events occur. General license registration requests may be submitted at any time. Changes to the information on the registration may be submitted as they occur.

6. *Who will be required or asked to report:* Persons receiving, possessing, using, or transferring devices containing byproduct material.

7. *An estimate of the number of annual responses:* 35,663 (1,073 NRC responses + 3,900 NRC recordkeepers + 11,290 Agreement State responses + 19,400 Agreement State recordkeepers).

8. *The estimated number of annual respondents:* Approximately 3,900 NRC general licensees and 19,400 Agreement State general licensees.

9. *An estimate of the total number of hours needed annually to complete the*

requirement or request: 10,868 hours (1,460 hours for NRC licensees [485 hours reporting and 975 hours recordkeeping] and 9,408 hours for Agreement State licensees [4,558 hours reporting and 4,850 hours recordkeeping]).

10. *Abstract:* 10 CFR Part 31 establishes general licenses for the possession and use of byproduct material in certain devices. General licensees are required to keep testing records and submit event reports identified in Part 31, which assist NRC in determining with reasonable assurance that devices are operated safely and without radiological hazard to users or the public.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 2, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150–0016), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Russell Nichols, (301) 415–6874.

Dated at Rockville, Maryland, this 24th day of July, 2008.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–17541 Filed 7–30–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0332]

Notice of Availability and Solicitation of Public Comments on Documents Under Consideration To Establish the Technical Basis for New Performance-Based Emergency Core Cooling System Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of Research Information Letter (RIL) 0801, ''Technical Basis for Revision of Embrittlement Criteria in 10 CFR 50.46'' and NUREG/CR–6967, ''Cladding Embrittlement During Postulated Loss-of-Coolant Accidents,'' and is seeking public comment on these documents. The NRC is soliciting comment on the subject documents to confirm that a sufficient technical basis exists to proceed with new performance-based regulations on emergency core cooling system (ECCS) acceptance criteria, and to identify issues that may arise with respect to experimental data development or regulatory costs or impacts of new requirements.

DATES: Comments on these documents should be submitted by September 5, 2008. Comments received after this date will be considered to the extent practical, but assurance of consideration cannot be given to comments received after this date.

ADDRESSES: Members of the public are invited and encouraged to submit comments by mail to Michael Lesar, Chief, Rulemaking, Directives and Editing Branch, Office of Administration, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also submit comments electronically at the federal rulemaking portal, *http://www.regulations.gov;* search on rulemaking docket ID: NRC–2008–0332.

To ensure efficient and complete comment resolution, comments should include references to the section and page numbers of the document to which the comment applies, if possible. Comments will be discussed during a 10 CFR 50.46(b) public workshop tentatively scheduled for September 2008 (specific date and location to be noticed separately).

You can access publicly available documents related to this notice using the following methods: *Federal e-Rulemaking Portal:* Documents related to this action, including public comments, are accessible at the federal rulemaking portal, *http://www.regulations.gov,* by searching on rulemaking docket ID: NRC–2008–0332. The NRC also tracks all rulemaking actions in the ''NRC Regulatory Agenda: Semiannual Report (NUREG–0936).''

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS): RIL 0801, Technical Basis for Revision of Embrittlement Criteria in 10 CFR 50.46'' (ADAMS ML081350225) and NUREG/CR–6967, ''Cladding Embrittlement During Postulated Loss-of-Coolant Accidents'' (ADAMS ML081780360) are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Paul M. Clifford, Division of Safety Systems, Office of Nuclear Reactor Regulation, telephone: (301) 415–4043, e-mail: *Paul.Clifford@nrc.gov.*

SUPPLEMENTARY INFORMATION: In early 2003, the Commission directed the NRC staff to complete the technical basis and move forward with rulemaking to establish improved, performance-based ECCS acceptance criteria in 10 CFR 50.46(b), ''Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors.'' The NRC sponsored an extensive research and testing program at Argonne National Laboratory (ANL) to develop the body of technical information needed to support the new regulations. This information has been summarized in RIL 0801 and the detailed experimental results are contained in NUREG/CR–6967. Because of the importance of this regulation, the staff has decided to release the technical documentation for domestic and international public comment. With this approach, the NRC can address stakeholder questions and respond to comments early in the process. The

public is invited to comment on the adequacy of this technical information, including the following:

I. Technical Basis

1. RIL 0801 Figure 1 provides the measured embrittlement threshold for all fresh and irradiated cladding specimens investigated during the ANL research program. Hydrogen dependent post-quench ductility regulatory criteria, similar to the lines on this figure, may be established from these experimental results.

a. Is the technical information presented within NUREG/CR–6967 sufficient in scope and depth to justify specific regulatory criteria applicable to all current zirconium cladding alloys?

b. Is the technical information presented within NUREG/CR–6967 sufficient in scope and depth to justify periodic testing on as-fabricated cladding material?

c. Is the technical information presented within NUREG/CR–6967 sufficient in scope and depth to address sensitivities to alloy composition, trace elements, manufacturing practices, fuel rod burnup, and transient temperature profile?

2. Section 2 of NUREG/CR–6967 details the experimental techniques and procedures employed at ANL to assess cladding properties.

a. Were the experimental techniques and procedures adequate for their intended purpose of defining acceptable fuel criteria (e.g., specimen preparation, specimen size, heating/cooling rates, ring-compression techniques, test temperature, acceptance criteria for post-quench ductility and breakaway oxidation, etc.)?

b. Is the technical information presented within NUREG/CR–6967 sufficient in scope and depth to address uncertainties related to and repeatability of measured results?

II. Performance-Based Testing Requirements

1. Due to potential sensitivities to manufacturing processes, performance based testing may be required to characterize the loss-of-coolant accident (LOCA) performance of new cladding alloys.

a. Section 2.1 of NUREG/CR–6967 details all of the fresh and irradiated cladding specimens investigated during the ANL research program. Is the extent of the ANL material database sufficient to justify the applicability of experimental results to future cladding alloys?

b. Conducting testing on irradiated specimens is more difficult and expensive than similar tests performed on unirradiated specimens. Does a sufficient technical basis exist to justify testing on hydrogen charged, unirradiated cladding specimens as a surrogate for irradiated fuel cladding?

2. Due to potential sensitivities to manufacturing processes, routine testing may be required to verify material performance. Are there difficulties or limitations with periodic testing that would make such a requirement impractical?

III. Implementation

1. Implementing new regulatory criteria for 10 CFR 50.46(b) may necessitate further testing and new licensing activities (e.g., revised methods, updated safety analyses, etc.). What is the cost-benefit for implementing new regulatory requirements similar to those discussed in RIL 0801?

2. Implementing hydrogen-based regulatory criteria may require the development of high confidence corrosion and hydrogen pickup models.

a. What type of information is needed to develop such models and is such information readily available?

b. What performance indicators (e.g., pool-side measurements, hot cell examinations, etc.) could be used to validate models?

c. What additional regulatory requirements would be necessary to assure that the fuel is performing in accordance with the approved models? How will compliance with the rule be demonstrated on a cycle by cycle basis?

3. Crud deposits on the fuel cladding surface may affect fuel stored energy, fuel rod heat transfer, and cladding corrosion.

a. What role does plant chemistry and crud deposits play on these items?

b. How should normal and abnormal levels of crud deposits be addressed from a regulatory perspective?

The NRC is seeking public comment to receive feedback from the widest range of interested parties and to ensure that all information relevant to revision of the embrittlement criteria in 10 CFR 50.46 is available to the NRC staff. The NRC will review public comments received on this technical information and incorporate appropriate changes before starting to develop the proposed revisions to the regulations. Comments will be discussed during a 10 CFR 50.46(b) public workshop tentatively scheduled for September 2008 (specific date and location to be noticed separately).

Dated at Rockville, Maryland, this 21st day of July 2008.

For the U.S. Nuclear Regulatory Commission.

William H. Ruland,

Director, Division of Safety Systems, Office of Nuclear Reactor Regulation.

[FR Doc. E8–17543 Filed 7–30–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–3034.

FOR FURTHER INFORMATION CONTACT: Timothy Johnson, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 492–3121 or e-mail to *Timothy.Johnson@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft regulatory guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), titled, ''General Design Guide for Ventilation Systems of Plutonium Processing and Fuel Fabrication Plants,'' is temporarily identified by its task number, DG–3034, which should be mentioned in all related correspondence.

Proposed Revision 1 of Regulatory Guide 3.12 describes a method that the staff of the NRC considers acceptable for use in complying with 10 CFR 70.23(a)(3) and (a)(4) with respect to the design of ventilation systems for plutonium processing and fuel fabrication plants. At plutonium processing and fuel fabrication plants, a principal risk to health and safety is the release and dispersal of radioactive materials. The prevention of such release and dispersal is an important function of the ventilation systems. To meet these objectives, this guide provides recommendations for achieving defense in depth and for

minimizing the release of radioactive materials to the environment.

Each applicant for a license to possess and use special nuclear material in a plutonium processing and fuel fabrication plant as defined in 10 CFR 70.4, ''Special Nuclear Material,'' must satisfy the provisions of 10 CFR 70.23, ''Requirements for the approval of applications.'' Paragraphs (a)(3) and (a)(4) of 10 CFR 70.23 require that the applicant's proposed equipment, facility, and procedures be adequate to protect health and minimize danger to life or property.

II. Further Information

The NRC staff is soliciting comments on DG–3034. Comments may be accompanied by relevant information or supporting data, and should mention DG–3034 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *E-mail comments to: NRCREP@nrc.gov*.

3. *Hand-deliver comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

4. *Fax comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about DG–3034 may be directed to Timothy Johnson at (301) 492–3121 or e-mail to *Timothy.Johnson@nrc.gov*.

Comments would be most helpful if received by October 1, 2008. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–3034 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML081080479.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 25th day of July, 2008.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–17542 Filed 7–30–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0419]

Request for Comments on the Security and Continued Use of Cesium-137 Chloride Sources and Notice of Public Meeting

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of Public Meeting and a request for comment.

SUMMARY: The NRC is conducting a public meeting to solicit early public input on major issues associated with the use of certain forms of cesium chloride (CsCl) currently used by NRC- and Agreement State-licensees. To aid in that process, the NRC is requesting comments on the issues discussed in this notice. While the NRC has not initiated rulemaking on this subject, we are utilizing the conventionally established rulemaking comment channels. Additionally, the NRC is requesting names of individuals to participate at the public meeting in a roundtable discussion of the issues discussed in Sections II and III of this notice.

DATES: *Comment Dates:*

1. Comments on this notice should be submitted by September 30, 2008. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

2. Nominations for participation in the roundtable discussion should be submitted by September 1, 2008.

Public Meeting Dates: The NRC will also take public comments on the issues raised in this notice at a public meeting on September 29–30, 2008. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information.

ADDRESSES: Members of the public are invited and encouraged to submit comments by mail to Michael Lesar, Chief, Rulemaking, Directives, and Editing Branch, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also submit comments electronically at *http://www.regulations.gov*; search on docket ID: NRC–2008–0419.

To ensure efficient and complete comment resolution, comments should include references to the section and page numbers of the document to which the comment applies, if possible. When commenting on the CsCl issues presented in this notice, please exercise caution with regard to site-specific security-related information. Comments will be made available to the public in their entirety; personal information, such as your name, address, telephone number, e-mail address, etc. will not be removed from your submission.

You can access publicly available documents related to this notice using the following methods:

Regulations.gov: Documents related to this notice, including public comments, are accessible at *http://www.regulations.gov*, by searching on docket ID: NRC–2008–0419.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. John P. Jankovich, Office of Federal and State Materials and Environmental Management Programs, telephone (301) 415–7904, e-mail *john.jankovich@nrc.gov*, or Dr. Cynthia Jones, Office of Nuclear Security and Incident Response, telephone (301) 415–0298, e-mail *cynthia.jones@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Certain radioactive sources have been identified by the International Atomic Energy Agency (IAEA) *Code of Conduct on the Safety and Security of Radioactive Sources* (Code of Conduct) (see *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf*) as sources that may pose a significant risk to individuals, society and the environment if improperly handled or used in a malicious act. Federal agencies have performed recent risk and consequence studies that show it may be prudent to require additional security features for licensed facilities that use certain radioactive material, including CsCl sources. CsCl sealed sources are used in many applications, most commonly in irradiators, calibrators, and in devices for biological and medical research. A recent National Academy of Sciences study (NAS report) has recommended the replacement or elimination of CsCl sources (see *http://www.nap.edu/catalog.php?record_id=11976*).

The NRC is seeking early public input on the major issues associated with any potential regulatory actions involving CsCl that would reduce the risk to individuals, society, and the environment if such material were used in a malicious act. As a first step, the NRC has prepared an Issues Paper, contained in Section III of this notice, which describes issues and alternatives related to the overall concerns associated with IAEA Category 1 and 2 CsCl sources.[1] The intent of this paper is to foster discussion about these issues and alternatives before any regulatory actions by NRC or the Agreement States are initiated. The NRC will also utilize a public Web site, *http://www.nrc.gov/materials/miau/licensing.html* to make documents relevant to the Issues Paper available to the public. The content of the Issues Paper is contained in Section III of this notice.

[1]An IAEA Category 1 cesium-137 source contains a minimum of 3000 Ci (100 TBq) and a Category 2 source contains a minimum of 30 Ci (1 TBq). See *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf*.

II. Request for Written and Electronic Comments and Plans for a Public Meeting

The NRC is soliciting comments on the items presented in the Issues Paper. Comments may be submitted either in writing or electronically as indicated under the **ADDRESSES** heading. In addition, the NRC is holding a facilitated public meeting at the Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, Maryland on September 29–30, 2008, on the issues discussed in Section III of this notice. This Issues Paper provides background and topics of discussion on the major issues that will be the subject of the public meeting.

During the public meeting, NRC will conduct individual roundtable panel discussions, with opportunity for audience participation, on each issue contained in Section III of this notice. NRC is seeking the names of individuals interested in participating on these panels. Nominations by interested individuals or organizations should include the name of the proposed panel member, the issues they are interested in discussing, view point(s) on the issue(s), and affiliation (if any). Roundtable panel participants will be selected with the goal of providing balanced view points on each of the various issues. Please see the **ADDRESSES** section to submit nominations by September 1, 2008.

In addition to inviting public comments on the issues presented in Section III of this notice, the NRC is also soliciting specific comments related to: (1) Quantitative information on the costs and benefits resulting from consideration of the factors described in the Issues Paper; (2) operational data on radiation exposures (increased or reduced) that might result from implementing any of the options described in the Issues Paper; (3) whether the presented issues are addressed comprehensively; and (4) whether other options should be considered, including quantitative information on the costs and benefits for these other options. The Commission believes that stakeholder comments will help to quantify the potential impact of these proposed changes and will assist the NRC as potential regulatory action(s) are developed.

Based on the comments received in both written and electronic form, and at the public meeting, the Commission will then be in a better position to evaluate whether to proceed with the development of a proposed rulemaking or take some other regulatory action. If the Commission decides to proceed with a proposed rulemaking, additional information will be published in the **Federal Register** for public review and comment.

III. Issues Paper on the Use of CsCl Sources at NRC- and Agreement State-Licensed Facilities

Introduction

Section A of this Issues Paper describes some general considerations recently raised concerning the use of certain CsCl sources at NRC- and Agreement State-licensed facilities. Section B of the paper discusses the various alternatives and major issues that need to be addressed before commencing any regulatory activities related to the use of CsCl sources in the U.S.

A. Background

The Energy Policy Act of 2005 (EPAct) required the establishment of an interagency Radiation Source Protection and Security Task Force (Task Force) to be chaired by the NRC. The Task Force was charged with: (1) Evaluating and providing recommendations relating to the security of radiation sources in the United States from potential terrorist threats, including acts of sabotage, theft, or use of a radiological source in a radiological dispersal device; and (2) providing recommendations for appropriate regulatory and legislative changes to Congress and the President.

On August 15, 2006, the NRC provided the President and Congress with the first Report documenting the efforts of the Task Force. The report included 10 recommendations and 13 actions to improve source security in the U.S. (see *http://www.nrc.gov/reading-rm/doc-collections/congress-docs/correspondence/2006/president-08–15–2006.pdf*). Recommendation 12–2 from this report focused on the security of IAEA Category 1 and 2 radioactive sources containing CsCl. Specifically, this recommendation stated that:

> ''The Task Force recommends that high priority be given to conducting a study within 2 years to assess the feasibility of phasing out the use of CsCl in a highly dispersible form. This study should consider the availability of alternative technologies for the scope of current uses, safe and secure disposal of existing material, and international safety and security implications.''

Section 651 of the EPAct also required that the NRC enter into an arrangement with the National Academy of Sciences (NAS) through which NAS would review the civilian uses of radionuclide radiation sources and study potential

replacements for sources that pose a high risk to public health or safety in the event of an accident or attack. Considering technical and economic feasibility and risks to workers, the NAS was asked to report findings and recommendations on options for implementing the identified replacements. The NAS completed its review in February 2008 (see *http://www.nap.edu/catalog.php?record_id=11976*) and stated that cesium-137 in the form of CsCl is a greater concern than other radiation sources based on its dispersibility and its presence in populated areas across the country. In view of the overall liabilities associated with radioactive CsCl and the alternatives that are available now or possible in the future to replace these radiation sources, the NAS report concluded that high-activity CsCl sources should be replaced. The NAS also recommended that ''Replacement of some radionuclide radiation sources with alternatives should be implemented with caution, ensuring that the essential functions that the radionuclide radiation sources perform are preserved.'' The NAS also suggested options for implementing the replacement, including discontinuation of licensing of new CsCl irradiator sources and devices, prohibiting the export of CsCl to other countries and incentives to decommission existing sources and devices.

Accordingly, the NRC is providing the following key points for consideration and discussion in order to obtain stakeholder input before making any regulatory enhancements for the continued use of CsCl sources.

B. Issues for Discussion

The following format is used in the presentation of the issues that follow. Each issue is assigned a number, a short title, and a list of questions and factors for consideration. These issues, questions and factors are not meant to be a complete or final list, but are intended to initiate discussion. Interested stakeholders are welcome to recommend additions, deletions, or modifications to the key issues for consideration and propose implementation considerations. These issues and factors will serve as the basis for discussion at the public meeting. All public feedback will be used in developing implementation options for Commission consideration. Meeting participants and commenters are strongly encouraged to read the NAS report before the public meeting or providing comments.

Issue No. 1—Alternatives to the Use of Cesium Chloride (CsCl) Sources

The majority of self-shielded irradiators used in industrial operations, instrument calibration, and biological/medical research, are constructed with CsCl sources because of the suitable properties of cesium-137 such as long half-life, low cost, and moderate shielding requirements relative to other radionuclides. Currently, the physical form of CsCl in sources with activity levels under consideration (*i.e.,* IAEA Category 1 and 2) is compressed powder. The compressed powder form is used because of its high specific activity (high gamma emission per unit volume) making it feasible to manufacture high-activity sources in a relatively small volume.

In considering Issue No. 1, alternatives to the use of CsCl sources in compressed powder form, there are two main issues that should be considered and discussed. Issue 1.1: Feasibility of the use of other chemical or physical forms of cesium-137 (Cs-137) and Issue 1.2: Feasibility of the use of isotopes other than Cs-137. Each of these issues is presented below.

Issue No. 1.1: Feasibility of the Use of Other Forms of Cs-137

Q1.1–1. Are manufacturers currently considering the use of other forms of cesium (other than CsCl)? If yes, what are such considerations?

Q1.1–2. Is the use of other forms of cesium feasible? If so, please describe desired methods and discuss any benefits or obstacles (*e.g.*, intended function of source, costs, timeframe).

Q1.1–3. (a) Would the effect of density loading with different forms of cesium preclude their use in existing devices? (b) Would it require modification of existing devices?

Q1.1–4. Is it feasible that high-activity (*e.g.,* IAEA Category 1 and 2) cesium sources will be available in alternative material forms? If so, what is the estimated timeframe for manufacturing?

Q1.1–5. Since all the CsCl is manufactured in Mayak, Russia, is it known if the cesium source producer can modify its production process?

Q1.1–6. Would other entities (in the U.S. or worldwide) engage in manufacturing sources with alternative forms of Cs-137?

Issue No. 1.2: Feasibility of the Use of Isotopes Other Than Cs-137

Q1.2–1. (a) Can cobalt-60 (Co-60) be substituted for radioactive CsCl for any applications? (b) If so, what types of applications? (c) If not, why not?

Q1.2–2. Can the shielding challenges for Co-60 be addressed by switching from lead shields to more effective tungsten or depleted uranium shielding?

Note: Consider that tungsten shielding is more expensive than lead and manufacturing depleted uranium shielding is a very specialized, expensive operation that requires NRC or Agreement State licensing for its entire lifecycle.

Q1.2–3. What are the attendant risks associated with Co-60 source transportation?

Note: Consider the shorter half-life (5.27 y) of Co-60 radiation sources would require that they be replaced more frequently that Cs-137, which entails the transportation of both fresh and used sources.

Issue No. 2—Use of Alternatives Technologies

An alternative technology is defined in the context of this document as a technological process that provides the same societal benefits as the devices that utilize CsCl at the present time, but without the use of radionuclides. Some of the potentially feasible alternative technologies include such processes as x-ray irradiators or electron beam irradiators. Previous reports, such as those prepared by the Radiation Source Protection and Security Task Force and the NAS, referenced above, addressed the issue of alternative technologies to a limited extent. A more extensive examination of the feasibility of these and other alternative technologies is needed.

Therefore, in considering Issue No. 2, use of alternative technologies, there are four main issues that should be considered and discussed:

Q2–1. Are X-ray generators already commercially available as substitutes for applications that do not require the gamma rays with Cs-137 and Co-60?

Q2–2. Are X-ray tubes cost-effective considering the initial cost, operating costs, and requirements for more maintenance for periodic calibration and replacement than radioactive sources?

Q2–3. Is there any indication that the performance of the alternatives will change (improve or worsen) with respect to Cs-137?

Q2–4. Regarding the availability of alternative technologies, (a) what is the timeframe of future availability of each alternative, and (b) what is the cost for each of the alternative technologies (capital costs, operation costs, cost to users)?

Issue No. 3—Possible Phase-Out of CsCl Sources

Discontinuation of the further use of CsCl sources with activity levels in IAEA Category 1 and 2 was

recommended for consideration by the Radiation Source Protection and Security Task Force and by the NAS, referenced above.

Both reports recognize the important role that devices, containing such sources, fulfill in serving public health, research and instrument calibration at the present time. But the reports also considered the potential risks associated with these sources and, consequently, recommended phasing out their future use. NRC has not made any decision in this regard, but as a follow-up to the recommendations, NRC is seeking additional information that would provided relevant information for its decisionmaking process.

In considering Issue No. 3, possible phase-out of CsCl sources, there are four main issues that should be considered and discussed: Issue 3.1: Potential rulemaking issues and justification for regulatory change; Issue 3.2: Transportation and storage issues associated with removal of CsCl sources from licensee facilities; Issue 3.3: Consideration of government incentives and voluntary actions by industry and manufacturers; and Issue 3.4: Impact of U.S. changes to regulating CsCl on the international community. Each of these issues are presented below.

Issue No. 3.1: Potential Rulemaking Issues and Justification for Regulatory Change

Q3.1–1. (a) What would be the medical consequences if CsCl was to be banned for medical (*e.g.,* blood) irradiators? (b) What would be the impact to existing and future biomedical research using these devices? (c) Can alternative technologies be used for medical applications and/or biomedical research (research on animals and tissue?)

Q3.1–2. (a) What would be the consequences if CsCl was to be banned for irradiators that are used for industrial and calibration purposes? (b) What is the impact on existing American National Standards Institute (ANSI) standards and licensee conditions that require the use of Cs-137 for calibration purposes?

Q3.1–3. What would be the economic consequences to users if CsCl was to be banned?

Q3.1–4. What would be the economic consequences to vendors if CsCl was to be banned?

Q3.1–5. (a) Should the NRC discontinue all new licensing and importation of these sources and devices? (b) What is the regulatory basis? (c) Who (NRC, DHS, or jointly) should conduct the risk analysis?

Issue No. 3.2: Transportation and Storage Issues Associated With Removal of CsCl Sources From Licensee Facilities

Q3.2–1. (a) Are there transportation packages available for transportation? (a) Who should bear the transportation costs?

Q3.2–2. (a) How could the current CsCl sources be disposed given that CsCl is defined as a ''Greater Than Class C'' source and currently has no disposal mechanism in the U.S.? (b) If disposal was made available by DOE, what would be the cost of disposal?

Q3.2–3. (a) Where could the decommissioned sources be stored? (b) What disposition options are needed in the United States?

Issue No. 3.3: Consideration of Government Incentives and Voluntary Actions by Industry and Manufacturers

Q3.3–1. Should the Federal government issue incentives to implement replacements?

Q3.3–2. (a) Are there feasible incentives to shift users away from radioactive CsCl for users? (b) Manufacturers?

Q3.3–3. (a) What incentives should the Federal government provide to licensees to decommission their existing sources or devices because the devices still have use value? (b) For licensees that are defined as ''not-for-profit'' (*e.g.,* hospitals), what type of incentives could be made available to change technologies?

Q3.3–4. How can the Federal government compensate licensees when they are forced to decommission these sources? Should compensation include the cost of the replacement technology? Decommissioning?

Issue No. 3.4: Impact of Potential U.S. Changes to Regulating CsCl on the International Community

Q3.4–1. How can the U.S. prevent recovered sources from decommissioned devices (or the devices themselves) from being sold outside the U.S.?

Q3.4–2. (a) If the U.S. decides to ban the use of CsCl sources, should the U.S. have a position in denying or eliminating after-market sales of CsCl irradiators outside the U.S.? (b) Would this be potentially denying medical care to developing countries?

Q3.4–3. What should the role of the International Atomic Energy Agency (IAEA) be in assisting the U.S. in ensuring the safe and secure use of CsCl sources and devices?

Issue No. 4—Additional Requirements for Enhanced Security of CsCl Sources

In considering Issue No. 4, additional requirements for enhanced security of CsCl sources, there are three main issues that should be considered and discussed:

Q4.1. Should the NRC and Agreement States require more stringent security measures than those currently mandated (*e.g.*, should additional requirements be implemented for IAEA Category 1 and 2 sources)?

Note: The current requirements for increased security of certain high-risk radioactive sources in the U.S. are: (a) Compensatory Measures for panoramic irradiators; (b) Additional Security Measures for manufacturers and distributors; (c) Increased Controls for licensees with Category 1 and 2 devices and sources; (d) Fingerprinting for access to radioactive material (see *http://www.nrc.gov/security/byproduct/orders.html*).

Q4.2. Should the NRC and Agreement States require more stringent security measures for lower than Category 2 CsCl sources and devices (*e.g.*, Category 3 sources)?

Q4.3. Would additional security requirements for CsCl create a disincentive for owning them?

Issue No. 5—Role of Risk Analysis in Potential Future CsCl Requirements

In considering Issue No. 5, the role of risk analysis in NRC and Agreement State requirements for CsCl, the main issues that should be considered and discussed:

Q5.1. (a) How should the NRC determine the economic and social disruptions/impacts to the public, licensees, and the environment? (b) How should these factors be measured in decision making?

Dated at Rockville, Maryland, this 24th day of July 2008.

For the Nuclear Regulatory Commission,

John P. Jankovich,

Team Leader, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E8–17545 Filed 7–30–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning

China's compliance with its WTO commitments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to the Congress on China's compliance with the commitments made in connection with its accession to the World Trade Organization (WTO).

DATES: Persons wishing to testify at the hearing must provide written notification of their intention, as well as a copy of their testimony, by noon, Thursday, September 18, 2008. Written comments are due by noon, Monday, September 22, 2008. A hearing will be held in Washington, DC, on Thursday, October 2, 2008.

ADDRESSES: *Submissions by electronic mail: FR0810@ustr.eop.gov.*

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Deputy Assistant United States Trade Representative for China Enforcement, (202) 395–3900, or Claire E. Reade, Chief Counsel for China Trade Enforcement, (202) 395–9625.

SUPPLEMENTARY INFORMATION:

1. Background

China became a Member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106–286), USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing this year's report, the TPSC is hereby soliciting public comment. Last year's report is available on USTR's Internet Web site (at *http://www.ustr.gov/World_Regions/North_Asia/China/Section_Index.html*).

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO agreements. The Protocol and Working Party Report can be found on the Department of Commerce Web page, *http://www.mac.doc.gov/China/WTOAccessionPackage.htm*, or on the WTO Web site, *http://docsonline.wto.org* (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (e.g., tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (e.g., subsidies, standards and technical regulations, sanitary and phytosanitary measures, government procurement, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property rights enforcement); (f) services; (g) rule of law issues (e.g., transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. In addition, given the Administration's view that China should be held accountable as a full participant in, and beneficiary of, the international trading system (see ''U.S.-China Trade Relations: Entering a New Phase of Greater Accountability and Enforcement,'' issued by USTR in February 2006, *http://www.ustr.gov/World_Regions/North_Asia/China/2006_Top-to-Bottom_Review/Section_Index.html*), USTR requests that interested persons also specifically identify unresolved compliance issues that warrant review and evaluation by USTR's China Enforcement Task Force.

Written comments must be received no later than noon, Monday, September 22, 2008.

A hearing will be held on Thursday, October 2, 2008, in Room 1, 1724 F Street, NW., Washington, DC 20508. If necessary, the hearing will continue on the next day.

Persons wishing to testify orally at the hearing must provide written notification of their intention by noon, Thursday, September 18, 2008. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the commitments at issue and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''China WTO'' followed by (as appropriate) ''Written Comments,'' ''Notice of Testimony,'' or ''Testimony.'' Documents should be submitted as either Adobe PDF, WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except for confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public

inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

General information concerning USTR may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E8–17574 Filed 7–30–08; 8:45 am]

BILLING CODE 3190–W8–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment With Respect to the Annual National Trade Estimate Report on Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 303 of the Trade and Tariff Act of 1984, as amended, USTR is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested parties to assist it in identifying significant barriers to U.S. exports of goods, services and overseas direct investment for inclusion in the NTE. Particularly important are impediments materially affecting the actual and potential financial performance of an industry sector. The TPSC invites written comments that provide views relevant to the issues to be examined in preparing the NTE.

DATES: Public comments are due not later than Thursday, November 6, 2008.

ADDRESSES: *Submissions by electronic mail: FR0717@USTR.EOP.GOV.*

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative (202–395–6143). The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: Questions regarding the report, its subject matter or procedural questions concerning submissions should be directed to Ms. Gloria Blue, Office of Policy Coordination, Office of the United States Trade Representative (202–395–3475).

SUPPLEMENTARY INFORMATION: Last year's report may be found on USTR's Internet Home Page (*http://www.ustr.gov*) in the Document Library under the section on Reports. In order to ensure compliance with the statutory mandate for reporting foreign trade barriers that are significant, we will focus particularly on those restrictions where there has been active private sector interest.

The information submitted should relate to one or more of the following ten categories of foreign trade barriers:

(1) Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);

(2) Standards, testing, labeling, and certification (including unnecessarily restrictive application of phytosanitary standards, refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards, and environmental restrictions);

(3) Government procurement (*e.g.*, ''buy national'' policies and closed bidding);

(4) Export subsidies (*e.g.*, export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(5) Lack of intellectual property protection (*e.g.*, inadequate patent, copyright, and trademark regimes);

(6) Services barriers (*e.g.*, limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by professionals (*e.g.*, lawyers, doctors, accountants, engineers, nurses, etc.);

(7) Investment barriers (*e.g.*, limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);

(8) Anticompetitive practices with trade effects tolerated by foreign governments (including anticompetitive activities of both state-owned and private firms that apply to services or to goods and that restrict the sale of U.S. products to any firm, not just to foreign firms);

(9) Trade restrictions affecting electronic commerce (*e.g.*, tariff and non-tariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and

(10) Other barriers (*i.e.*, barriers that encompass more than one category, *e.g.*, bribery and corruption, or that affect a single sector).

As in the case of last year's NTE, we are asking that particular emphasis be placed on any practices that may violate U.S. trade agreements. We are also interested in receiving any new or updated information pertinent to the barriers covered in last year's report as well as new information. Please note that the information not used in the NTE will be maintained for use in future negotiations.

It is most important that your submission contain estimates of the potential increase in exports that would result from the removal of the barrier, as well as a clear discussion of the method(s) by which the estimates were computed. Estimates should fall within the following value ranges: Less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million. Such assessments enhance USTR's ability to conduct meaningful comparative analyses of a barrier's effect over a range of industries.

Please note that interested parties discussing barriers in more than one country should, whenever possible, provide a separate submission (*i.e.*, one that is self-contained) for each country with the country indicated in the subject line of each submission. If separate, country-specific submissions are not feasible, please identify all countries covered by a submission in the subject line of that submission.

Requirements for Submissions: In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event an e-mail submission is impossible, submissions should be made by facsimile. Facsimile submissions should not exceed a maximum of 20 pages.

E-mail submissions should be single copy transmissions in English. Submissions should use the following subject line: ''2009 National Trade Estimate Report—Submission by (sector, company, association). Documents must be submitted as either WordPerfect (''WPD''), MSWord (''DOC''), or text (''TXT'') file. Documents should not be submitted as electronic image files or contain imbedded images (for example, ''JPG'', ''BMP'', or ''GIF''), as these types of files are generally excessively large. Supporting Documentation submitted as spreadsheets is acceptable as Quattro Pro or Excel, pre-formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the

same file as the submission itself, and not as separate files.

Petitions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6. If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked ''BUSINESS CONFIDENTIAL'' in large, bold letters at the top and bottom of every page of the documents. The public version that does not contain business confidential information must be clearly marked either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL'' in large, bold letters at the top and bottom of every page. The file name of any documents containing business confidential information attached to an e-mail transmission should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the person or party submitting the petition. Submissions by e-mail should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the submission. The e-mail address for submissions is *FR0717@ustr.eop.gov*. Public versions of all documents relating to this review will be available for review shortly after the due date by appointment in the USTR Public Reading Room, 1724 F Street, NW., Washington, DC. Availability of documents may be ascertained and appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202–395–6186).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. E8–17573 Filed 7–30–08; 8:45 am]

BILLING CODE 3190–W8–P

OFFICE OF PERSONNEL MANAGEMENT

Personnel Demonstration Project; Pay Banding and Performance-Based Pay Adjustments in the National Nuclear Security Administration; Correction

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of approval of a demonstration project final plan; correction.

SUMMARY: The U.S. Office of Personnel Management published a document in the **Federal Register** on December 21, 2007, announcing the final approval of a demonstration project plan for the U.S. Department of Energy's National Nuclear Security Administration. The document contained three errors.

FOR FURTHER INFORMATION CONTACT: U.S. Office of Personnel Management: Patsy Stevens, Systems Innovation Group Manager, U.S. Office of Personnel Management, (202) 606–1574.

Correction

In FR Doc. 07–6144 published on December 21, 2007 (72 FR 72776), make the following corrections. On page 72792, in the second column, in the second paragraph under the heading ''Other Pay Administration Provisions,'' the parenthetical clause in the sixth and seventh line should read, ''(except as otherwise provided in this plan).''

On page 72800, in the third column, the second paragraph under the section ''X. Waiver of Laws and Regulations'' should read as follows:

Chapter 51: Classification (except that (1) section 5103 is retained and modified after ''finally'' to read ''the coverage of positions and employees under this modified classification system,'' (2) sections 5111 and 5112 are retained with ''grade'' replaced by ''pay bands,'' and (3) for the purpose of applying any other laws, regulations, or policies that refer to GS employees or to chapter 51 of title 5, United States Code, the modified classification system established under this plan must be considered to be a GS classification system under chapter 51; this includes, but is not limited to, the reference to the General Schedule in section 5545(d) (relating to hazard pay)).

On page 72801, in the second column, the third paragraph should read as follows:

Chapter 75, section 7512(3): Adverse actions (only to the extent necessary to replace ''grade'' with ''band'').

Linda M. Springer,

Director.

[FR Doc. E8–17581 Filed 7–30–08; 8:45 am]

BILLING CODE 6325–43–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28343]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 25, 2008.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July, 2008. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 2008, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Legg Mason Partners Investment Funds, Inc. [File No. 811–3275]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, each series of applicant transferred its assets to a corresponding series of either Legg Mason Partners Equity Trust or Legg Mason Partners Income Trust, based on net asset value. Expenses of approximately $1,016,235 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent of applicant's investment adviser.

Filing Date: The application was filed on July 16, 2008.

Applicant's Address: 55 Water St., New York, NY 10041.

Delaware Investments Municipal Trust [File No. 811–6411]

Summary: Applicant seeks an order declaring that it has ceased to be an

investment company. On July 13, 2007, applicant transferred its assets to Delaware Tax-Free USA Fund, a series of Delaware Group Tax Free Fund, based on net asset value. Expenses of approximately $77,088 incurred in connection with the reorganization were paid by applicant, the acquiring fund, and applicant's investment adviser, Delaware Management Company.

Filing Date: The application was filed on July 16, 2008.

Applicant's Address: 2005 Market St., Philadelphia, PA 19103–7094.

C Funds Group, Inc. [File No. 811–4246]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation. Applicant's custodian holds $55.39 in cash for the one remaining shareholder that applicant has been unable to locate. The custodian will hold the unclaimed assets for the period specified by Florida law, after which time any unclaimed assets will escheat to the state of Florida.

Filing Date: The application was filed on July 17, 2008.

Applicant's Address: 201 Center Rd., Suite Two, Venice, FL 34285.

SEI Insurance Products Trust [File No. 811–9183]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 29, 2003, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation. On April 11, 2008, in connection with the request for deregistration, Applicant filed its final Form 24F–2 Annual Notice of Securities Sold.

Filing Dates: The application was filed on March 18, 2004, and an amended application was filed on April 11, 2007.

Applicant's Address: SEI Investments Global Fund Services, 1 Freedom Valley Drive, Oaks, PA 19456.

Genworth Life of New York VL Separate Account 1 [File No. 811–9861]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. At the time of filing, sales of policies had been discontinued and there were less than 25 policy owners. Applicant will continue to operate as an unregistered separate account in reliance on section 3(c)(1) of the Investment Company Act of 1940.

Filing Dates: The application was filed on March 28, 2008, and amended on July 18, 2008 and July 23, 2008.

Applicant's Address: 6610 West Broad Street, Richmond, Virginia, 23230.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–17504 Filed 7–30–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28341; 812–13152]

Cohen & Steers Advantage Income Realty Fund, Inc., et al.; Notice of Application

July 24, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

APPLICANTS: Cohen & Steers Advantage Income Realty Fund, Inc., Cohen & Steers Closed-End Opportunity Fund, Inc., Cohen & Steers Dividend Majors Fund, Inc., Cohen & Steers Global Income Builder, Inc., Cohen & Steers Premium Income Realty Fund, Inc., Cohen & Steers Quality Income Realty Fund, Inc., Cohen & Steers REIT and Preferred Income Fund, Inc., Cohen & Steers REIT and Utility Income Fund, Inc., Cohen & Steers Select Utility Fund, Inc., Cohen & Steers Total Return Realty Fund, Inc. and Cohen & Steers Worldwide Realty Income Fund, Inc. (together, the ''Funds'') and Cohen & Steers Capital Management, Inc. (the ''Adviser'').

FILING DATES: January 3, 2005, April 5, 2007 and July 21, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 18, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; applicants, 280 Park Avenue, New York, NY 10017, Attention: Francis C. Poli, Esq.

FOR FURTHER INFORMATION CONTACT: Wendy Friedlander, Senior Counsel, at (202) 551–6837, or James M. Curtis, Branch Chief, at (202) 551–6825 (Division of Investment Management, Office of Chief Counsel).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. The Funds are registered closed-end investment companies.[1] The common stock issued by each Fund is listed on the New York Stock Exchange. Some of the Funds have issued preferred stock; such preferred stock is not listed on any exchange. Applicants believe that the stockholders of each Fund are generally conservative, dividend-sensitive investors who desire current income periodically and may favor a fixed distribution policy.

2. The Adviser is registered under the Investment Advisers Act of 1940 and is

[1] Applicants request that any order issued granting the relief requested in the application also apply to any closed-end investment company that in the future: (a) Is advised by the Adviser (including any successor in interest) or by any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser; and (b) complies with the terms and conditions of the requested order. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

responsible for the overall management of each Fund. The Adviser is a wholly-owned subsidiary of Cohen & Steers, Inc., a publicly traded company whose common stock is listed on the New York Stock Exchange under the symbol ''CNS.''

3. Applicants represent that in connection with a meeting on March 7, 2007, the Boards of Directors (the ''Boards'') of each Fund, including a majority of the members of each of the Boards who are not ''interested persons'' of each Fund as defined in section 2(a)(19) of the Act (the ''Independent Directors''), reviewed information regarding, among other things, the purpose and terms of a proposed distribution policy and the relationship between a Fund's distribution rate on its common stock under the policy and such Fund's total return on net asset value (''NAV'') per share. Applicants state that the Independent Directors of each Fund also considered what conflicts of interest the Adviser and the affiliated persons of the Adviser and each Fund might have with respect to the adoption or implementation of such policy. Applicants further state that after considering such information the Board, including the Independent Directors, of each Fund approved a distribution policy with respect to its common stock (the ''Plan'') and determined that such Plan is in the best interests of such Fund and its common stockholders.

4. Applicants state that the purpose of each Plan is to make fixed periodic distributions to provide steady cash flow to Fund common stockholders. Applicants represent that each Fund would distribute to its respective common stockholders periodic, level distributions as frequently as monthly, based on a fixed amount per share, a fixed percentage of market price or a fixed percentage of the Fund's NAV per common share, any of which may be adjusted from time to time. Applicants state that the minimum annual distribution rate with respect to a Fund's common stock under each Plan would be independent of the Fund's performance during any particular period but would be expected to correlate with the Fund's performance over time. Applicants explain that each distribution on the common stock would be at the stated rate then in effect, except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of the Fund's performance for the entire calendar year and to enable the Fund to comply with the distribution requirements of subchapter M of the Internal Revenue Code of 1986 (the ''Code'') for the calendar year.

5. Applicants state that prior to relying on the requested order each Fund's Board, including a majority of its Independent Directors, will adopt policies and procedures under rule 38a–1 under the Act that (a) are reasonably designed to ensure that all notices required to be sent to the Fund's stockholders pursuant to section 19(a) of the Act, rule 19a–1 thereunder and condition IV. below (''Notices'') include the disclosure required by rule 19a–1 and by condition II.A below, and that all other written communications by the Fund or its agents described in condition III.A below about the distributions under the Plan include the disclosure required by condition III.A below and (b) require each Fund to keep records that demonstrate its compliance with all of the conditions of the requested order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its Notices.[2]

Applicants' Legal Analysis

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once each year. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year.

2. Section 6(c) provides that the Commission may exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the common stock of closed-end funds that invest primarily in equity securities often trade in the market at a discount to their NAV. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent distributions on their common stock at a consistent rate, whether or not those distributions include an element of long-term capital gains.

4. Applicants state that the one of the concerns underlying section 19(b) and rule 19b–1 is that stockholders might be unable to distinguish between frequent distributions of capital gains and distributions from investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that a separate statement showing the sources of a distribution (*e.g.,* estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital) accompany any distributions (or the confirmation of the reinvestment of distributions) estimated to be sourced in part from capital gains or capital. Applicants state that the same information also is included in each Fund's annual reports to stockholders and on its IRS Form 1099–DIV, which is sent to each common and preferred stockholder who received distributions during the year.

5. Applicants further state that each of the Funds will make the additional disclosures required by the conditions set forth below and will adopt compliance policies and procedures in accordance with rule 38a–1 prior to relying on the requested order to ensure that all required Notices and disclosures are sent to stockholders. Applicants argue that rule 19a–1, the Plans and the compliance policies will ensure that each Fund's stockholders would be provided sufficient information to understand that their periodic distributions are not tied to the Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Accordingly, applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford stockholders no extra protection.

6. Applicants assert that the application of rule 19b–1 to a Plan actually could have an inappropriate influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the adoption of a Plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the Fund can pay all of its remaining distributions in accordance with rule 19b–1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available

[2] Applicants state that a future fund that relies on the requested order will satisfy each of the representations in the application except that such representations will be made in respect of actions by the board of directors of such future fund and will be made at a future time.

to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants thus assert that no purpose is served by the distortion in the normal operation of a periodic distribution plan required in order to comply with rule 19b–1, and that the order requested by the applicants would minimize the anomalous effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

7. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that this concern should not apply to closed-end investment companies, such as the Funds, which do not continuously distribute shares. According to applicants, if the underlying concern extends to secondary market purchases of stock of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a Plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end of the year distributions.

8. In addition, applicants assert that rule 19b–1 may force the fixed regular periodic distributions under a Plan to be funded with returns of capital [3] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise could be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b–1, a fund may be required to make total distributions in excess of the annual amount called for by its Plan, or to retain and pay taxes on the excess amount. Applicants believe that the application of rule 19b–1 to a fund's periodic distribution plan may create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

9. Applicants state that Revenue Ruling 89–81 under the Code requires that a fund that has both common stock and preferred stock outstanding designate the types of income, *e.g.,* investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with Revenue Ruling 89–81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89–81 determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, dividend rate, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their shares to change.

12. Applicants request an order under section 6(c) granting an exemption from section 19(b) and rule 19b–1 to permit each Fund's common stock to distribute periodic capital gains dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common stock and as often as specified by or determined in accordance with the terms thereof in respect of its preferred stock.

Applicants' Conditions

Applicants agree that, with respect to each Fund seeking to rely on the order, the order will be subject to the following conditions:

I. *Compliance Review and Reporting:* The Fund's chief compliance officer will: (a) Report to the Fund Board, no less frequently than once every three months or at the next regularly scheduled quarterly board meeting, whether (i) the Fund and the Adviser have complied with the conditions to the requested order, and (ii) a Material Compliance Matter, as defined in rule 38a–1(e)(2), has occurred with respect to compliance with such conditions; and (b) review the adequacy of the policies and procedures adopted by the Fund no less frequently than annually.

II. *Disclosures to Fund Stockholders:*

A. Each Notice to the holders of the Fund's common stock, in addition to the information required by section 19(a) and rule 19a–1:

1. Will provide, in a tabular or graphical format:

(a) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(b) The fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(c) The average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month prior to the most recent distribution declaration date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date; and

(d) The cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution declaration date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date.

Such disclosure shall be made in a type size at least as large and as

[3] Return of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

prominent as the estimate of the sources of the current distribution; and

2. Will include the following disclosure:

(a) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Plan'';

(b) ''The fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income' ''; and

(c) ''The amounts and sources of distributions reported in this Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for [accounting and] tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.''

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

B. On the inside front cover of each report to shareholders under rule 30e–1 under the Act, the Fund will:

1. Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

2. Include the disclosure required by condition II.A.2.a above;

3. State, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to Fund shareholders; and

4. Describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

C. Each report provided to stockholders under rule 30e–1 and in each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

III. *Disclosure to Stockholders, Prospective Stockholders and Third Parties:*

A. The Fund will include the information contained in the relevant Notice, including the disclosure required by condition II.A.2 above, in any written communication (other than a Form 1099) about the Plan or distributions under the Plan by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund common stockholder, prospective common stockholder or third-party information provider;

B. The Fund will issue, contemporaneously with the issuance of any Notice, a press release containing the information in the Notice and will file with the Commission the information contained in such Notice, including the disclosure required by condition II.A.2 above, as an exhibit to its next filed Form N–CSR; and

C. The Fund will post prominently a statement on its (or its adviser's) Web site containing the information in each Notice, including the disclosure required by condition II.A.2 above, and will maintain such information on such Web site for at least 24 months.

IV. *Delivery of 19(a) Notices to Beneficial Owners:* If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the Notice to all beneficial owners of the fund's stock held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the Notice to each beneficial owner of the fund's stock; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the Notice to such beneficial owners.

V. *Additional Board Determinations for Funds Whose Stock Trades at a Premium:* If:

A. The Fund's common stock has traded on the exchange that it primarily trades on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common stock as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

B. The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

1. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Directors:

(a) Will request and evaluate, and the Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(b) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and in the best interests of the Fund and its stockholders, after considering the information in condition V.B.1.a above; including, without limitation:

(1) Whether the Plan is accomplishing its purpose(s);

(2) The reasonably foreseeable effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common shares; and

(3) The Fund's current distribution rate, as described in condition V.B above, compared to with the Fund's average annual total return over the 2-year period, as described in condition V.B, or such longer period as the Board deems appropriate; and

(c) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

2. The Board will record the information considered by it and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

VI. *Public Offerings:* The Fund will not make a public offering of the Fund's common stock other than:

A. A rights offering below net asset value to holders of the Fund's common stock;

B. An offering in connection with a dividend reinvestment plan, merger,

consolidation, acquisition, spin-off or reorganization of the Fund; or

C. An offering other than an offering described in conditions VI.A and VI.B above, unless, with respect to such other offering:

1. The Fund's average annual distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution declaration date [4], expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date [5]; and

2. The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified in accordance with the terms of any outstanding preferred stock that such Fund may issue.

VII. *Amendments to Rule 19b–1:* The requested relief will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–17539 Filed 7–30–08; 8:45 am]

BILLING CODE 8010–01–P

[4] If the Fund has been in operation fewer than two years, the measured period will begin immediately following the Fund's first public offering.

[5] If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Roundtable on International Financial Reporting Standards on Monday, August 4, 2008 beginning at 1 p.m.

The Roundtable will take place in the Auditorium of the Commission's headquarters at 100 F Street, NE., Washington DC. The Roundtable will be open to the public with seating on a first-come, first-served basis. Doors will open at 12:30 p.m. Visitors will be subject to security checks.

The roundtable will consist of an open discussion on International Financial Reporting Standards (IFRS) and an update on IFRS developments, including the experience with use of IFRS during the recent period of market turmoil. The roundtable will be organized as two panels, each consisting of investors, issuers, auditors and other parties with experience in IFRS reporting.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: July 28, 2008.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E8–17600 Filed 7–30–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58226; File No. SR–FINRA–2008–037]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to NASD Rule 11890 (Clearly Erroneous Transactions)

July 25, 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, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) 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 FINRA. FINRA designated the proposed rule change 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 proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 5 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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend NASD Rule 11890 (Clearly Erroneous Transactions) to: (1) Extend the time limit that FINRA has to take action on a transaction under the rule; and (2) clarify the circumstances under which FINRA initiates a review of a transaction. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

NASD Rule 11890 provides that, in the event of a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by FINRA, or under extraordinary market conditions, officers of FINRA can review an over-the-counter (''OTC'') transaction arising out of or reported through any such quotation, communication, or trade reporting system, and may declare the transaction null and void or modify the terms if any such officer determines that the transaction is clearly erroneous or such action is necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Rule 11890 requires a FINRA officer acting pursuant to the rule to cancel or adjust an erroneous transaction to do so ''within thirty (30) minutes of detection of the transaction,'' except in the case of extraordinary circumstances, in which case the FINRA officer has until 3 p.m., Eastern Time (ET), on the next trading day after the date of the transaction at issue.

FINRA is proposing to amend Rule 11890 to replace the language that FINRA must, except in extraordinary circumstances, take action under the subsection within thirty (30) minutes of detection of an erroneous transaction, with language that FINRA shall act as soon as possible after becoming aware of the transaction, but in all cases by 3 p.m., Eastern Time (ET) on the next trading day after the date of the transaction at issue. Although FINRA believes that determinations under the rule should always be made in a timely manner, FINRA has found that most transactions reviewed under Rule 11890 involve coordination between multiple market centers and the time required to gather and evaluate the information necessary to make an informed determination is often in excess of 30 minutes. Accordingly, FINRA does not believe that the rule's strict 30-minute time limit is in the best interests of the marketplace or investors.[5]

Also as a practical matter, because FINRA, as the regulator of the OTC market, does not operate a listed market, it generally does not ''detect'' erroneous transactions, particularly those involving listed securities executed OTC. Rather, in most cases, other market centers notify FINRA staff of the potential for such transactions, and FINRA staff coordinates its review with such market center(s). Similarly, for potentially erroneous transactions involving only OTC trades, the information typically comes from other sources, such as market participants, and FINRA does not ''detect'' potentially erroneous transactions. Accordingly, FINRA proposes to amend Rule 11890 to more accurately reflect the operation of the rule by deleting the ''detection'' language from the text of the rule.

Lastly, FINRA is proposing certain technical, non-substantive changes to the text of Rule 11890. Given that many clearly erroneous transactions are caused by trader errors and not disruptions or malfunctions of FINRA systems, the proposed rule change amends the rule text to reflect the manner in which FINRA applies it to a clearly erroneous authority. Additionally, FINRA is proposing to amend the text of Rule 11890(a) to replace the word ''approved'' with the word ''authorized'' to reflect that, technically, not all FINRA system rules are ''approved'' by the Commission, but, for example, a system's rules may take effect upon filing with the Commission (*e.g.,* for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act).

As noted above, FINRA has filed the proposed rule change for immediate effectiveness. FINRA proposes to make the rule change operative on the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change better reflects the application of Rule 11890 and provides additional time to resolve clearly erroneous transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] As required under Rule 19b–4(f)(6)(iii),[9] FINRA provided 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, prior to the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to the 30th day after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA requested that the Commission waive the 30-day operative delay and make the proposed rule change effective and operative upon filing because the proposed rule change clarifies the current application of Rule 11890 and better reflects the time necessary to address potentially clearly erroneous transactions. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the Commission does not believe that the rule change presents any novel issues and notes that it recently approved revisions to Nasdaq's clearly erroneous transactions rule that, among other things, revised the time frame for a Nasdaq officer to make a determination regarding whether a transaction is ''clearly erroneous'' under the Nasdaq rule.[12] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or

[5] The Commission recently approved amendments to the clearly erroneous rule of The NASDAQ Stock Market LLC (''Nasdaq'') (Nasdaq Rule 11890). As part of those amendments, Nasdaq deleted the requirement that a Nasdaq officer must make a determination regarding whether a transaction was ''clearly erroneous'' under the rule within 30 minutes of detection. See Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (''Release 34–57826'') (SR–NASDAQ–2007–001).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *See id.*

[11] *Id.*

[12] *See* Release 34–57826, *supra* note 5.

[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).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2008–037 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–FINRA–2008–037. 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 FINRA. 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–FINRA–2008–037 and should be submitted on or before August 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–17501 Filed 7–30–08; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58227; File No. SR–FINRA–2008–033]

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, To Adopt FINRA Rule 4560 (Short-Interest Reporting) in the Consolidated FINRA Rulebook

July 25, 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 23, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. On July 16, 2008, FINRA submitted Amendment No. 1 to the proposed rule change. 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

FINRA is proposing to adopt the short interest reporting requirements (NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10) as FINRA Rule 4560 in the consolidated FINRA rulebook.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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 is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org/RulesRegulation/RuleFilings/2008RuleFilings/P038813.* FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing the new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt the short interest reporting requirements in NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10 as FINRA Rule 4560 in the Consolidated FINRA Rulebook.

NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10 set forth FINRA's short interest reporting requirements.[4] NASD Rule 3360 requires members to report short positions[5] in OTC Equity Securities[6] and exchange-listed securities not otherwise reported to another self-regulatory organization (''SRO''),[7] and Incorporated NYSE Rules 421(1) and 421.10 require members to report short positions in NYSE-listed securities. Members must report total short positions in all customer and proprietary accounts as of the designated settlement dates and in the manner so prescribed.[8] Currently, the rules require such information to be reported twice a month, which in turn, is then made publicly available on an aggregate basis twice a month.[9]

[3] The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together referred to as the ''Transitional Rulebook''). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

[4] Incorporated NYSE Rules 421(2) and 421.40 require members carrying margin accounts for customers to report certain aggregate debit and free credit balances. Those provisions will be addressed in a separate filing and therefore are not being addressed here.

[5] Short positions required to be reported under the rules are those resulting from ''short sales'' as the term is defined in Rule 200(a) of Regulation SHO, subject to certain limited exceptions. *See* NASD Rule 3360(b)(1).

[6] The term ''OTC Equity Securities'' refers to any equity security that is not listed on a national securities exchange. *See* NASD Rule 3360(b)(3).

[7] It is the responsibility of each member firm to ensure that it is reporting accurate short interest data, including confirming that issue symbols are active and valid as of the designated settlement date. *See Notice to Members* 06–20 (April 2006).

[8] Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. *See Notice to Members* 03–08 (February 2003).

[9] A schedule of FINRA's designated settlement dates can be found on its Web site at *http://www.finra.org. See also Notice to Members* 07–24 (May 2007).

Currently, firms report short interest positions in NYSE-listed securities through the NYSE's Electronic Filing Platform (''EFP'') and all other securities through FINRA's Regulation Filing Applications (''RFA'') system or the Securities Industry Automation Corporation (''SIAC''). As of June 30, 2008, FINRA will consolidate the collection of short interest data, and firms will be required to report short interest positions in all securities to FINRA using the RFA system; consequently, firms will no longer be able to report any of their short interest positions using EFP or SIAC.[10]

Given that the short interest requirements in each of the rules are substantially similar, FINRA is proposing to adopt these requirements as part of the Consolidated FINRA Rulebook, subject only to certain non-substantive changes. Most notably, because FINRA will now be the primary collector of consolidated short interest data for its members in all securities (rather than only if such positions in exchange-listed securities are not reported to another SRO), FINRA is not retaining the text in NASD Rule 3360 that limits short interest reportable to FINRA to those positions in exchange-listed securities ''not otherwise reported to another self-regulatory organization.''

As noted above, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The short interest reporting requirements, which are proposed to be transferred to the Consolidated FINRA Rulebook, previously have been found to meet the statutory requirements, and FINRA believes such requirements have since proven effective in achieving the statutory mandates.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which 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 Number SR–FINRA–2008–033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–033. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

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–FINRA–2008–033 and should be submitted on or before August 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

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[10] *See Regulatory Notice* 08–13 (March 2008).

[11] 15 U.S.C. 78o–3(b)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58228; File No. SR–NASDAQ–2008–013]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Additional Initial Listing Standards To List Securities of Special Purpose Acquisition Companies

July 25, 2008.

I. Introduction

On March 14, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt additional initial listing standards to list securities of special purpose acquisition companies (''SPACs''). The proposed rule change was published in the **Federal Register** on April 24, 2008.[3] The Commission received two comment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57685 (April 18, 2008), 73 FR 22191.

letters on the proposal.[4] On June 16, 2008, the Exchange responded to the comment letters.[5] On July 10, 2008, the Exchange filed Amendment No. 1. In Amendment No. 1, the Exchange proposed to: (1) Amend the amount of gross proceeds that must be deposited from 100% to 90%; (2) clarify the period in which the SPAC must complete one or more business combinations; and (3) require that all listed SPACs contain provisions allowing public shareholders to convert their shares into cash if they vote against a business combination.

The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposal

The Exchange proposes to adopt a new interpretative material to Nasdaq Rule 4300 to permit the initial listing of securities of SPACs.[6] In the past, the Exchange has denied initial listings of securities of companies without a specific business plan or that have indicated that their plan is to engage in a merger or acquisition with unidentified companies.

Proposed IM–4300–2 would permit the Exchange to list securities of SPACs under the Exchange's existing initial listing standards, provided certain conditions are satisfied. First, at least 90% of the gross proceeds from the IPO and any concurrent sale by the SPAC of equity securities must be deposited in a deposit account.[7] Second, within 36 months of the effectiveness of the IPO registration statement or such shorter period that the SPAC specifies in the registration statement, the SPAC must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account[8] at the time of the agreement to enter into the initial business combination. Third, each business combination must be approved by a majority of the SPAC's independent directors and approved by a majority of the shares of common stock, until the SPAC has completed business combinations of at least 80% of the fair market value of the deposit account at the time of the initial business combination. Finally, until the SPAC has completed business combinations of at least 80% of the fair market value of the deposit account at the time of the initial business combination, each public shareholder voting against a business combination must have the right to convert his or her shares into a pro rata share of the aggregate amount then in the deposit account[9] if the business combination is approved and consummated.[10] In addition, until the SPAC has completed business combinations of at least 80% of the fair market value of the deposit account at the time of the initial business combination, it must notify the Exchange of each proposed business combination. Following each business combination, the resulting entity must meet the Exchange's initial listing standards to remain listed on the Exchange.

III. Summary of Comments and Nasdaq Response

The Cadwalader Letter supports the proposal and suggested that Nasdaq require SPACs to notify the public at least ten days in advance of a record date. The Cadwalader Letter noted that certain listed SPACs have not publicly announced the record date for shareholders to vote on the business combination until after passage of the record date. The Cadwalader Letter noted that the right to vote to approve a business combination is central to ownership of SPAC securities, due to the SPAC's structure.

In its response, the Exchange noted that other listing markets do not require issuers to notify the public of the record date of a shareholder meeting in advance, either for SPACs or any other listed companies. Nasdaq further notes that the rules of other markets only require disclosure of the record date for a meeting of shareholders to the exchange, not the public. The Exchange believes that any public notification requirement should be adopted across all listing markets.

The NASAA Letter opposes the proposal. The NASAA Letter notes that historically, the structure of blank check companies makes the offerings risky for investors.[11] The NASAA Letter notes that while disclosure for blank check companies has improved under Rule 419 under the Securities Act of 1933 (''Securities Act''),[12] concerns remain because investors have to make their purchase decision prior to knowledge of the make-up of the post-business combination company. The NASAA Letter further notes that SPAC securities have been highly promoted at the IPO stage and in aftermarket trading. The NASAA Letter concludes that listing these securities on the major trading markets is inappropriate.

The Exchange responds that it is mindful of the historical concerns regarding blank check companies and notes that while SPAC securities currently could qualify for listing under Nasdaq's listing standards, the Exchange has in the past determined not to list them due to such concerns. The Exchange further notes that the proposal would impose additional criteria intended to protect investors and that it would review each SPAC that applies to list and evaluate the reputation of the SPAC's sponsors and underwriters. With respect to the NASAA Letter's statement that SPAC securities are subject to highly promotional marketing, the Exchange responds that the offer and sale of SPAC securities are subject to Federal securities laws, and that broker-dealers who recommend these securities are subject to investor suitability and ''know your customer''

[4] *See* Letters from Messrs. Steven Lofchie and Tim Geller, Cadwalader, Wickersham & Taft LLP, dated May 14, 2008 (''Cadwalader Letter'') and Mark Connolly, Chair, NASAA Corporate Finance Section Committee, North American Securities Administrator Association, dated May 15, 2008 (''NASAA Letter'').

[5] *See* Letter from Arnold P. Golub, Associate General Counsel, The Nasdaq Stock Market LLC, dated June 16, 2008 (''Nasdaq Response'').

[6] SPACs raise capital in an IPO to enter into future undetermined business combinations through mergers, capital stock exchanges, asset acquisitions, stock purchases, reorganizations or other similar business combinations with one or more operating businesses or assets. In the IPO, SPACs typically sell units consisting of one share of common stock and one or more warrants (or fraction of a warrant) to purchase common stock. The units are separable at some point after the IPO. Management of the SPAC typically receives a percentage of the equity at the outset and may be required to purchase additional shares in a private placement at the time of the IPO. Due to their unique structure, SPACs do not have any prior financial history like operating companies.

[7] Proposed IM–4300–2(a) defines deposit account as: (1) A trust account maintained by an independent trustee; (2) an escrow account maintained by an ''insured depository institution'' as such term is defined in section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2); or (3) a separate bank account established by a registered broker or dealer.

[8] Proposed IM–4300–2(b) would exclude any deferred underwriters fee and taxes payable on the income earned on the deposit account from the 80% of the value of the deposit account.

[9] Proposed IM–4300–2(e) would exclude taxes payable and amounts distributed to management for working capital purposes from the aggregate amount in the deposit account.

[10] Proposed IM–4300–2(e) would allow a SPAC to establish a limit (no lower than 10% of the shares sold in the IPO) as to the maximum number of shares with respect to which any shareholder, together with any affiliate or any person with whom such shareholder is acting as a group may exercise this conversion right. Proposed IM–4300–2(e) would exclude officers, directors, the SPAC's sponsor, the founding shareholders, and any Family Member (defined in Nasdaq Rule 4200(a)(14)) or affiliate of such persons as public shareholder.

[11] A blank check company is a development stage company that has no specific business plan or purpose or has indicated its business plan is to engage in a merger or acquisition with an unidentified company or companies, other entity, or person.

[12] *See* 17 CFR 230.419.

requirements of the self-regulatory organizations.[13]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[14] which requires that an exchange have rules designed, among other things, 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, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers.[15]

The development and enforcement of adequate standards governing the initial listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have or, in the case of an IPO, will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market.

SPACs are companies that raise capital in IPOs, with the purpose of purchasing operating companies or assets within a certain time frame. The proceeds of the IPOs are placed in an escrow account during this period. SPACs usually require a majority of shareholders to approve any business combination. If shareholders do not approve a deal within the relevant time frame, shareholders generally have the option to demand their investment be returned from the escrow account. Management of the SPAC typically invests its own money in the SPAC—typically 2% to 4%—which generally is forfeited if a business combination is not consummated. If a business combination is consummated, management typically receives up to a 20% interest in the resulting company. The securities sold in the IPO generally consist of a unit made up of one share of common stock and a warrant (or fraction of a warrant) to purchase common stock. The common stock and warrants may be traded separately after the IPO.

The proposal would permit Nasdaq to reverse its historical practice of not listing securities of SPACs; as proposed, Nasdaq would list securities of SPACs that meet Nasdaq's initial listing standards and the proposed additional initial listing criteria. The Commission believes that the Exchange's proposed initial listing standards to list SPAC securities are consistent with the requirements of the Act, including the protection of investors and the promotion of fair and orderly markets. SPACs that list securities on Nasdaq would have to meet Nasdaq's current initial listing standards.[16] In addition, SPACs that list securities on Nasdaq would need to comply with the proposed additional conditions.[17]

First, the SPAC must deposit at least 90% of the IPO proceeds and any concurrent sale in a deposit account. Second, the SPAC must complete, within 36 months of the effectiveness of the IPO registration statement or such shorter period as specified in the registration statement, one or more business combinations that have a fair market value equal to at least 80% of the deposit account at the time of the initial business combination.[18] Third, until the SPAC has completed one or more business combinations that have a fair market value of at least 80% of the deposit account at the time of the initial business combination, each business combination must be approved by a majority of the SPAC's independent directors and a majority of the shares of the common stock. Finally, until the SPAC has completed one or more business combinations that have a fair market value of at least 80% of the deposit account at the time of the initial business combination, public shareholders who vote against a business combination have the right to convert their shares to cash if the business combination is approved and consummated. Moreover, following each business combination, the combined entity must meet Nasdaq's initial listing standards to remain listed.

The Commission notes that some of the proposed requirements, such as the deposit account requirement and the public shareholder conversion rights, are similar in some respects to the investor protection measures contained in Rule 419 under the Securities Act.[19] The Commission believes that these proposed investor protection requirements would provide additional safeguard for investors who invest in SPAC securities. The proposed initial listing standards would require that SPACs allow public shareholders to convert their shares to cash if they vote against a business combination. The Commission believes that the conversion rights will help to ensure that public shareholders who disagree with management's decision with respect to a business combination have adequate remedies. Moreover, the Commission believes that the proposal to require that a majority of the independent directors approve a business combination should help to ensure that a business combination is entered into by the SPAC after a fair and impartial decision. Finally, the Commission believes that requiring satisfaction of Nasdaq's initial listing quantitative standards following each business combination would help to ensure that trading in the securities of the combined entity is consistent with the maintenance of fair and orderly markets and investor expectations.

The Commission believes that these safeguards should help to ensure that SPACs that list securities on Nasdaq will have taken certain additional steps to address investor protection and other matters. The Commission expects Nasdaq to thoroughly review potential listings of SPAC securities to ensure that its initial listing standards have been met.[20]

[13] In the Nasdaq Response, the Exchange notes that, among other things, SPACs typically allow investors that vote against the business acquisition to convert their shares into a pro rata share of the trust or escrow account. As discussed below, Nasdaq subsequently amended the proposal to require SPACs to provide public shareholders these conversion rights.

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] *See* proposed Nasdaq IM–4300–2. SPAC securities could qualify for initial listing under the Nasdaq Global Select Market, Nasdaq Global Market, or the Nasdaq Capital Market.

[17] The Commission notes that depending on which Nasdaq listing market the SPAC securities are initially listed, the securities would need to comply with the applicable continued listing standards.

[18] This amount excludes the amount of any deferred underwriting fee and taxes payable on the income earned on the deposit account.

[19] *See* 17 CFR 230.419. Rule 419 applies to blank check companies issuing penny stock as defined under Rule 3a51–1(a)(2) of the Act. *See* 17 CFR 240.3a51–1(a)(2). Rule 419 is not applicable to SPAC securities. *See* Securities Act Release No. 7024 (October 25, 1993), 58 FR 58099 (October 29, 1993).

[20] *See* Nasdaq Rule 4300. In the Nasdaq Response, the Exchange states that it will evaluate the reputation of the SPAC's sponsors and underwriters under Nasdaq Rule 4300 to determine whether initial listing is appropriate.

As discussed above, the Commission received two comment letters on the proposal, one in favor and one in opposition. The Cadwalader Letter, while supporting the proposal, urges the Exchange to require SPACs to publicly disclose the record date for shareholders to vote on the business combination ten days prior to such date. The Commission notes that while exchanges have rules requiring listed issuers to notify the exchanges of their record date for shareholder meetings, there are no similar rules requiring listed issuers to notify the public of such record date in advance.[21] Further, the Commission notes that Rule 419 under the Securities Act does not require blank check companies to publicly notify their shareholders of the record date for a shareholders vote. The Commission believes that any consideration of a public notice requirement of record dates should be conducted outside the context of a particular SRO rule filing.

The NASAA Letter, as summarized above, opposes the proposal due to the historical abuses of blank check companies. The Exchange states that it would conduct a regulatory review of each SPAC that applies to list securities on the Exchange. Further, the Exchange states that it would evaluate the reputation of the SPAC's sponsors and underwriters to determine whether initial listing is appropriate. Moreover, the Exchange amended the proposal to include conversion rights for public shareholders, should they vote against a business combination. The Commission believes that the additional investor protection standards, in addition to Nasdaq's initial listing standards, should help to ensure that investors are adequately protected.

V. Accelerated Approval

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1 the Exchange proposed to: (1) Amend the amount of gross proceeds that must be deposited from 100% to 90%; (2) clarify the period in which the SPAC must complete one or more business combinations; and (3) require that all listed SPACs contain provisions allowing public shareholders to convert their shares into cash if they vote against a business combination. The Commission believes that Amendment No. 1 raises no new or novel regulatory issues. The Commission notes that the amendment to the amount of the deposit account is consistent with Rule 419 under the Securities Act and NYSE initial listing standards for SPAC securities.[22] The Exchange also clarified the time period in which SPACs must complete business combinations. Finally, the Commission notes that the public shareholder conversion right is consistent with the NYSE initial listing standards for SPAC securities and provides further investor protections for investors in SPAC securities.[23] The Commission finds that the filing, as modified by Amendment No. 1, is consistent with the protection of investors and the public interest. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[24] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the filing, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2008–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–013. 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–NASDAQ–2008–013 and should be submitted on or before August 21, 2008.

VII. Conclusion

Based on the foregoing, the Commission finds the proposal is consistent with the requirements of the Act and should provide for the initial listing of securities of SPACs with baseline investor protection and other standards.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change, as modified by Amendment No. 1 (SR–NASDAQ–2008–013) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–17502 Filed 7–30–08; 8:45 am]

BILLING CODE 8010–01–P

[21] *See* Amex Company Guide Sections 502 and 703 and NYSE Listed Company Manual Section 401.02.

[22] *See* NYSE Listed Company Manual Section 102.06.

[23] *See id.*

[24] 15 U.S.C. 78s(b)(2).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11308]

Illinois Disaster Number IL–00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Illinois (FEMA–1771–DR), dated 06/24/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/01/2008 and continuing.

Effective Date: 07/16/2008.

Physical Loan Application Deadline Date: 08/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Illinois, dated 06/24/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Lake, Madison, Monroe, Randolph, Saint Clair.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–17547 Filed 7–30–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11310]

Minnesota Disaster Number MN–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1772–DR), dated 06/25/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/07/2008 through 06/12/2008.

Effective Date: 07/16/2008.

Physical Loan Application Deadline Date: 08/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Minnesota, dated 06/25/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Nobles.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–17546 Filed 7–30–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11311 and #11312]

Missouri Disaster Number MO–00030

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1773–DR), dated 06/28/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/01/2008 and continuing through 07/18/2008.

Effective Date: 07/18/2008.

Physical Loan Application Deadline Date: 08/27/2008.

EIDL Loan Application Deadline Date: 03/30/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Missouri, dated 06/28/2008 is hereby amended to establish the incident period for this disaster as beginning 06/01/2008 and continuing through 07/18/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–17538 Filed 7–30–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11309]

Missouri Disaster Number MO–00029.

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1773–DR), dated 06/25/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/01/2008 through 07/18/2008.

Effective Date: 07/18/2008.

Physical Loan Application Deadline Date: 08/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of MISSOURI, dated 06/25/2008, is hereby amended to establish the incident period for this disaster as beginning 06/01/2008 and continuing through 07/18/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–17548 Filed 7–30–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6305]

Determination and Certification Related to Colombian Armed Forces Under Section 556 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109–102) as Carried Forward in the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5) and Section 649 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161).

Pursuant to the authority vested in the Secretary of State, including under

Section 556 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109–102) (''FY 2006 FOAA''), as carried forward in the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5) (''FY 2007 CR''), and Section 649 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161) (''FY 2008 SFOAA''), and delegated to me pursuant to Department of State Delegation of Authority 245, I hereby determine, certify, and report that the Colombian Armed Forces are meeting the conditions contained in Sections 556(a)(2) and 556(a)(3) of FY 2006 FOAA, as carried forward in the FY 2007 CR, as well as Sections 649(c)(2) and 649(c)(3) of the FY 2008 SFOAA, and that I have consulted with Congress as is consistent with the latter.

The Department of State has periodically consulted with internationally recognized human rights organizations regarding the Colombian Armed Forces' progress in meeting the above-mentioned conditions, as provided in Section 556(c) of the FY 2006 FOAA, as carried forward in the FY 2007 CR, and Section 649(d) of the FY 2008 SFOAA.

This Determination and Certification shall be published in the **Federal Register** and copies shall be transmitted to the appropriate committees of Congress.

Dated: July 28, 2008.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E8–17680 Filed 7–30–08; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0086; Notice 2]

Goodyear Dunlop Tires North America, Ltd., Grant of Petition for Decision of Inconsequential Noncompliance

Goodyear Dunlop Tires North American, Ltd, (GDTNA), has determined that certain tires that it manufactured during the period beginning January 2003 through July 2004, do not fully comply with paragraph S6.5(f) of 49 CFR 571.119 (Federal Motor Vehicle Safety Standard (FMVSS) No. 119 *New Pneumatic Tires for Motor Vehicles With a GVWR of More than 4,536 Kilograms (10,000 pounds) and Motorcycles*. On January 18, 2008, GDTNA filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* identifying approximately 3,050 150/60R18 Dunlop D251 motorcycle tires, produced from January 2003 through July 2004, that do not comply with the paragraphs of FMVSS No. 119 cited above.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, GDTNA has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on May 12, 2008 in the **Federal Register** (73 FR 27023). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number ''NHTSA–2008–0086.''

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5299, facsimile (202) 366–7002.

Paragraph S6.5(f) of 49 CFR 571.119 requires:

> S6.5(f) The actual number of plies and the composition of the ply cord material in the sidewall and, if different, in the tread area.

GDTNA described the noncompliance as incorrect labeling of construction materials information on the sidewalls. The labeling incorrectly lists ''TREAD 5 PLIES 2 RAYON + 3 NYLON'' and ''SIDEWALL: 2 PLIES 2 RAYON'' whereas this labeling should be ''TREAD 4 PLIES 2 NYLON + 2 NYLON'' and ''SIDEWALL 2 PLIES 2 NYLON.''

GDTNA stated that it believes the noncompliance is inconsequential to motor vehicle safety because most consumers do not base tire purchase or vehicle operation on the construction information listed on the tire sidewalls, the tires meet or exceed all other applicable FMVSS, they ''were designed, manufactured and tested to the standards and regulations as applicable, and they meet all of the internal and regulatory performance test requirements.''

GDTNA also stated that it has corrected the problem with the affected tire mold and that all subsequent production will have the correct material information shown on the sidewall.

GDTNA additionally stated that no customer complaints have been received.

NHTSA Decision

By way of background, the Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222).

The agency received more than 20 comments on the tire labeling information required by 49 CFR Sections 571.109 and 119, Part 567, Part 574, and Part 575. In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have concluded that it is likely that few consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire.

Therefore, the agency agrees with GDTNA's statement that the incorrect markings in this case do not present a serious safety concern.[1] There is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in the tire. In addition, the tires are certified to meet all the performance requirements of FMVSS No. 119.

In consideration of the foregoing, NHTSA has decided that GDTNA has met its burden of persuasion that the subject FMVSS No. 119 labeling noncompliance is inconsequential to motor vehicle safety. Accordingly, GDTNA's petition is granted and the

[1] This decision is limited to its specific facts. As some commenters on the ANPRM noted, the existence of steel in a tire's sidewall can be relevant to the manner in which it should be repaired or retreaded.

petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 25, 2008.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E8–17527 Filed 7–30–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–RSPA–1997–2426]

Pipeline Safety: National Pipeline Mapping System

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: This document advises gas transmission pipeline operators, hazardous liquid pipeline operators, and Liquefied Natural Gas (LNG) plant operators of voluntary changes pertaining to submittal dates and Operator ID numbers for National Pipeline Mapping System (NPMS) submissions.

FOR FURTHER INFORMATION CONTACT: Amy Nelson by phone at (202) 493–0591 or by e-mail at *amy.nelson@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline Safety Improvement Act of 2002 requires gas transmission pipeline operators, hazardous liquid pipeline operators, and LNG plant operators to submit data to NPMS. Currently, operators submit their data annually, within one year of the last submission date. PHMSA is attempting to simplify NPMS's reporting process and to improve PHMSA's ability to accurately describe an operator's assets internally and to Congress.

II. Advisory Bulletin (ADB–08–07)

To: Operators of Gas Transmission Pipelines, Hazardous Liquid Pipelines and LNG Plant Operators.

Subject: NPMS Submissions.

Purpose: To advise operators of voluntary changes to their NPMS submissions.

Advisory: Beginning on January 1, 2009, PHMSA is requesting that operators submit their NPMS data concurrently with hazardous liquid and gas transmission annual report submissions. Annual reports are due on March 15 each year for gas transmission operators and on June 15 for hazardous liquid operators. PHMSA suggests that beginning on January 1, 2009, gas transmission NPMS submissions be submitted by March 15, 2009, and represent the pipeline operator assets as of December 31, 2008. LNG plant operators would also submit to NPMS by March 15, 2009, representing assets as of December 31, 2008. Hazardous liquid annual reports and NPMS submissions would both be submitted by June 15, 2009, representing assets as of December 31, 2008. In 2010 and beyond, the annual report and NPMS submission due dates would remain March 15 for gas transmission and LNG plants and June 15 for hazardous liquid pipelines. NPMS submissions would represent physical assets as of December 31 of the previous year.

Submitting annual reports and NPMS data at the same time will alleviate the need for pipeline operators to track their last NPMS submission and may decrease the receipt of notices from PHMSA that data has not been submitted.

PHMSA also suggests that Operator ID numbers (internal DOT numbers assigned by PHMSA to the operator for specific assets) in annual report submissions match the same assets described in NPMS submissions. Operators who choose to follow this guidance will use the same Operator ID number to describe a pipeline or LNG asset in both the annual report and NPMS submission beginning with their 2009 submissions. This does not apply to pipeline operators who have requested and been assigned only one Operator ID number. Synchronizing the Operator ID numbers will alleviate confusion in identifying operator assets and improve PHMSA's ability to accurately describe the pipeline operated by a specific pipeline operator. The ability to accurately identify and track operator physical assets is beneficial to PHMSA, pipeline operators, and all stakeholders who utilize our data, and ultimately helps promote pipeline safety.

Pipeline operators whose NPMS submission due date would normally fall between October 1, 2008, and December 31, 2008, and who choose to align their submission dates with annual report due dates, may wait to submit their 2008 data capture until their new submission dates (either March 15, 2009 or June 15, 2009). As stated above, NPMS submissions will reflect the state of the assets on December 31, 2008.

The NPMS processing department encourages operators to submit data prior to the suggested deadlines. Submitting early will speed submission processing and provide time for the processing department to notify operators if a submission is incomplete. Submissions for the December 31, 2008, data capture will be accepted starting January 2, 2009. If operators have no change since their previous NPMS submission, they may continue to send an e-mail to *npms-nr@mbakercorp.com* or use the ''Update your submission online'' tool on the NPMS Web site (*http://www.npms.phmsa.dot.gov*) in lieu of making a submission.

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

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E8–17532 Filed 7–30–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2008–0186]

Pipeline Safety: Voluntary Survey of Regulated and Unregulated Low-Stress Pipeline Information

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA's Office of Pipeline Safety (OPS) is requesting each operator of a rural low-stress hazardous liquid pipeline to complete a voluntary survey to gather information concerning the mileage and characteristics of these pipelines to assess the costs of subjecting rural low-stress pipeline mileage to the pipeline safety standards and regulations pursuant to the PIPES Act. The purpose of this notice is to request all operators of LSPs to complete the voluntary survey, including operators of low-stress pipelines that will not be subject to the pipeline safety standards and regulations until Phase II of the rulemaking proceeding.

DATES: It is requested that the voluntary survey be completed by September 15, 2008.

ADDRESSES: To complete the voluntary survey, go to the OPS Online Data Entry Web site at *http://*

opsweb.phmsa.dot.gov. For those individuals that cannot access the Internet, please contact Carson Poe at 617–494–2765 for filing instructions.

FOR FURTHER INFORMATION CONTACT: Roger Little by telephone at 202–366–4569, by fax at 202–366–4566, or by mail at DOT, PHMSA, PHP–10, 1200 New Jersey Avenue, SE., Washington, DC 20590, or by e-mail at *roger.little@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

With certain exceptions, section 4 of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) (Pub. L. 109–468) requires PHMSA to issue regulations subjecting low-stress hazardous liquid transmission pipelines (LSPs) to the same standards and regulations as other hazardous liquid transmission pipelines. On June 3, 2008, PHMSA issued a Final Rule that subjected larger diameter rural LSPs located within a half-mile buffer zone of an unusually sensitive area (USA) to the part 195 standards and regulations (73 FR 31364). In that rulemaking proceeding, PHMSA explained that it was only the first phase of a two-phase approach to meeting the PIPES Act mandate and that additional rural LSP mileage would be subjected to the part 195 regulations in Phase II.

The June 3, 2008 Final Rule subjected all operators of LSPs to certain reporting requirements, including LSPs that will be considered in the Phase II rulemaking. These reporting requirements include incident reports and safety-related condition reports as reflected in 49 CFR 195.48, but did not require the reporting of pipeline mileage or characteristics (except to the extent that operators of regulated LSP mileage subject to the integrity management requirements must report high consequence area (HCA) mileage).

In order to assess the costs of subjecting LSP mileage to the pipeline safety standards and regulations pursuant to the PIPES Act, PHMSA has initiated a voluntary survey on rural LSPs. The voluntary survey supports DOT's Strategic Safety Goal. PHMSA will be better able to promulgate future safety-related LSP regulations with more accurate information about pipelines.

Voluntary survey results will be summarized by the John A. Volpe National Transportation Systems Center (Volpe Center) of DOT. The voluntary survey solicits information on the following:

- Pipeline Mileage—Total number of LSP miles.
- Rural LSP Characteristics—Specific information on interplant pipeline miles, mileage of LSP having a diameter equal to or greater than 8⅝ inches, mileage of steel LSP, and mileage of non-metallic LSP.
- Pipeline Products—Listing of all products transported using rural LSP.
- Pipeline Location by State—Listing of states with LSP and corresponding mileages.
- Unusually Sensitive Areas—Total number of LSP miles within one-half mile of an unusually sensitive area.
- Breakout Tanks—Total number of breakout tanks associated with the LSP miles.

PHMSA will use the results to calculate the economic impacts associated with current and future LSP rulemakings. In addition, PHMSA will be able to oversee the safety of LSPs more effectively with more accurate information.

The voluntary survey is posted on OPS Online Data Entry Web site at *http://opsweb.phmsa.dot.gov*. All companies completing the voluntary survey are asked to do so via the online link provided where possible. Operators who do not have access to the Internet should contact Carson Poe of the Volpe Center by phone at 617–494–2765 for alternate filing instructions.

To ensure that PHMSA reaches all of the targeted operators, PHMSA will also electronically deliver notification of how to complete the voluntary survey to each of the companies operating regulated hazardous liquid pipelines. PHMSA will send the e-mail to the contact person responsible for the most recent annual report submission, as this voluntary survey is closely related to the infrastructure information PHMSA receives through the annual reports.

In an effort to reach companies that operate currently unregulated pipelines exclusively, PHMSA is working with the American Petroleum Institute (API), the Independent Petroleum Association of America (IPAA), and the Association of Oil Pipelines (AOPL) to announce the voluntary survey via these industry associations' e-mail newsletters to their members.

The Office of Management and Budget (OMB) regulations (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, PHMSA has received OMB approval for the initiation of this voluntary survey as follows:

Title: Rural Low-Stress Pipelines Survey.

OMB Control Number: 2137–0623.

Affected Public: Hazardous liquid pipeline operators.

Expiration Date: June 30, 2011.

Estimated Number of Respondents: 158.

Estimated Number of Responses: 158.

Estimated Annual Burden Hours: 2,528 hours.

Issued in Washington, DC on July 25, 2008.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E8–17530 Filed 7–30–08; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Thursday,
July 31, 2008

Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, et al.

Hazardous Materials: Revision to Requirements for the Transportation of Batteries and Battery-Powered Devices; and Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175, 176, and 178

[Docket Nos. PHMSA–2007–0065 (HM–224D) and PHMSA–2008–0005 (HM–215J)]

RIN 2137–AE31

Hazardous Materials: Revision to Requirements for the Transportation of Batteries and Battery-Powered Devices; and Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA proposes to amend the Hazardous Materials Regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the Hazardous Materials Regulations with recent changes to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods.

The proposals include amendments and clarifications addressing the safe transportation of batteries and battery-powered devices. Consistent with recent changes to the International Civil Aviation Organization's Technical Instructions, PHMSA is proposing to clarify the prohibition against transporting electrical devices, including batteries and battery-powered devices that are likely to create sparks or generate a dangerous amount of heat. PHMSA also is proposing to modify and enhance requirements for the packaging and handling of batteries and battery-powered devices, particularly in air commerce, to emphasize the safety precautions that are necessary to prevent incidents during transportation. PHMSA developed these proposals in conjunction with the Federal Aviation Administration in order to enhance the safe transportation of batteries and battery-powered devices.

DATES: Comments must be received by September 29, 2008.

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

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
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FOR FURTHER INFORMATION CONTACT: T. Glenn Foster or Charles Betts, Office of Hazardous Materials Standards, telephone (202) 366–8553, or Shane Kelley, International Standards, telephone (202) 366–0656, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., 2nd Floor, Washington, DC 20590–0001.

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I. Background

By final order published December 21, 1990 (Docket HM–181; 55 FR 52402), we comprehensively revised the Hazardous Materials Regulations (HMR; 49 CFR parts 171 to 180) to harmonize U.S. requirements with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). The UN Recommendations are not regulations, but rather are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods (TDG) and the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). These recommendations are amended and updated biennially by the TDG and serve as the basis for national, regional, and international modal regulations, including the International Maritime Organization's International Maritime Dangerous Goods Code (IMDG Code) and International Civil Aviation Organization Technical Instructions (ICAO TI) for the Transport of Dangerous Goods by Air.

Since publication of the 1990 rule, we have issued seven additional international harmonization rules (Dockets HM–215A, 59 FR 67390; HM–215B, 62 FR 24690; HM–215C, 64 FR 10742; HM–215D, 66 FR 33316; HM–215E, 68 FR 44992; HM–215G, 69 FR 76044; and HM–215I, 71 FR 78595) based on the corresponding biennial updates of the UN Recommendations, the IMDG Code, and the ICAO TI.

To maintain alignment of the HMR with international requirements, in this NPRM, we are proposing to incorporate

changes based on the Fifteenth revised edition of the UN Recommendations, Amendment 34 to the IMDG Code, and the 2009–2010 ICAO TI which become effective January 1, 2009.

Federal law and policy strongly favor the harmonization of domestic and international standards for hazardous materials transportation. The Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) permits PHMSA to depart from international standards in order to promote safety or other overriding public interest, but otherwise requires PHMSA to align the HMR with international transport standards and requirements to the extent practicable (see 49 U.S.C. 5120). Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials to and from the United States and becomes increasingly important as the volume of hazardous materials transported in international commerce grows. By facilitating compliance, harmonization also tends to enhance safety for international movements, but only if the international standards themselves provide an appropriate level of safety. To that end, PHMSA actively participates in the development of international standards for the transportation of hazardous materials, frequently advocating the adoption in international standards of particular HMR requirements. When considering the adoption of international standards under the HMR, we review and consider each amendment on its own merit. Each amendment is considered on the basis of its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without diminishing the level of safety currently provided by the HMR and without imposing undue burdens on the regulated public.

II. Transportation of Batteries and Battery-Powered Equipment, Articles and Devices

A. Current Regulatory Requirements

The most significant proposals in this NPRM address the transportation of batteries and battery-powered devices. Currently batteries and battery-powered devices are subject to a number of requirements in the HMR. Most importantly, the HMR restrict the transportation of electrical devices, including batteries and battery-powered devices, that are likely to create sparks or generate a dangerous amount of heat that could cause fire, smoke, or otherwise adversely affect the packaging material or means of conveyance. These batteries and battery-powered devices are forbidden from transportation unless packaged in a manner that prevents such an occurrence (§ 173.21(c)). Additionally, the following types of batteries are subject to packaging and hazard communication requirements:

- Wet (electric storage) batteries (§ 173.159);
- Batteries containing sodium (§ 173.189);
- Lithium cells and batteries (§ 173.185);
- Solid potassium hydroxide batteries (§ 173.213); and
- Battery-powered vehicles and equipment (§ 173.220).

These requirements primarily address the hazards posed by the chemicals contained in the batteries as opposed to the stored electrical energy. For instance, wet cell batteries are required to be packaged in a manner to prevent leakage of the corrosive battery fluid in the event of an accident. The electrical hazard of the battery is addressed through general requirements to prevent short-circuiting, and the general prohibition on transporting such devices without proper protection and packaging (§ 173.21(c)). But the HMR currently prescribes no separate or unique classification for identifying materials that present a hazard in transport based on their stored electrical energy. This proposed rule will address the electrical hazards posed by batteries and battery-powered devices by enhancing packaging and hazard communication requirements.

B. Accident/Incident History

A growing number of incidents involving batteries and battery-powered devices transported by aircraft (see Section II.B) has highlighted the transportation safety risks. Additionally, several factors are contributing to a heightened concern for the future transport of these devices, with particular attention to the risk onboard aircraft, including: (1) The increasing number of batteries and battery-powered portable and handheld devices (e.g., laptops, cellular phones, etc.) carried by airline passengers and otherwise transported in commerce; (2) the development and use of batteries with extended operating life and greater stored energy; and (3) the increasing number of counterfeit batteries in distribution and use. If not adequately protected from damage, short circuiting or, for devices containing batteries, inadvertent activation, batteries and battery-powered devices of all types can create or cause sparks or a dangerous amount of heat for extended periods, and in some cases, cause a fire. Cargo fires are a significant hazard in all modes of transportation and can have particularly catastrophic results in air transportation. If located aboard an aircraft during flight, inadequately protected batteries and battery-powered devices can pose a significant threat to the safety of people, property, and the environment.

PHMSA and the Federal Aviation Administration (FAA) are aware of more than 90 incidents involving batteries or battery-powered devices in air transportation since 1996 that produced smoke, fire or a dangerous amount of heat. These incidents have occurred either on board an aircraft in cargo, checked, or carry-on baggage, or in ground transport facilities associated with air transportation. Many of these incidents involved shipments of batteries as cargo. The remainder involved shipments of electrically powered vehicles, equipment, or apparatus containing batteries. Since most batteries are excepted from the incident reporting requirements in the HMR, it is likely there have been additional incidents in all modes of transportation that were not reported.

One major injury and several minor injuries were reported from these incidents. In some cases, the property damage and business interruption costs resulting from the incidents were significant. Most incidents occurred or were discovered on the ground in air transport facilities or vehicles. Three incidents occurred in flight on passenger and cargo planes, resulting in emergency landings or flight plan diversions.

C. Recent Actions To Enhance Battery Safety

In response to these incidents, PHMSA's predecessor agency (the Research and Special Programs Administration) issued a public advisory on July 7, 1999 (64 FR 36743), reminding the transportation industry and public that batteries and electric devices that contain batteries are forbidden for transport unless properly packaged to prevent the creation of sparks or generation of a dangerous amount of heat (§ 173.21). The FAA issued safety advisories to the airline industry on July 2, 1999, and again on May 23, 2002.

In response to a series of incidents involving batteries carried by airline passengers, PHMSA initiated a campaign to educate the public about ways to reduce the risks posed in the transportation of batteries and battery-

powered devices. The campaign included establishing a dedicated Web page for air travelers and developing a battery safety guide that includes safety measures and tips for the general public, for distribution at airports, in retail outlets, and through electronic media. As part of our battery safety campaign, we recommended various practical measures for complying with the regulations and reducing transportation risks. Recommended practices include keeping batteries installed in electronic devices; packing spare batteries individually in carry-on baggage; keeping spare batteries in their original retail packaging; separating batteries from other metallic objects, such as keys, coins and jewelry; securely packing battery-powered devices in a manner to prevent accidental activation; and ensuring batteries are undamaged and purchased from reputable sources. On March 26, 2007, PHMSA issued a safety advisory notice (72 FR 14167) to further inform the traveling public and airline employees about the importance of properly packing and handling batteries and battery-powered devices when they are carried on board an aircraft.

We have also initiated a comprehensive strategy aimed at reducing the risks posed by batteries and battery-powered devices in transportation. On February 22, 2007; April 26, 2007; May 24–25, 2007; and April 11, 2008, PHMSA hosted meetings with public and private sector stakeholders who share our concern for the safe transportation of batteries and battery-powered devices. The meetings provided an opportunity for representatives of the National Transportation Safety Board (NTSB), the Consumer Product Safety Commission, manufacturers of batteries and battery-powered devices, airlines, airline employee organizations, testing laboratories, and the emergency response and law enforcement communities to share and disseminate information about battery-related risks and developments. Understanding these risks is essential to promote improvements in industry standards and best practices. Together we identified a series of immediate and longer-term actions that participants are taking or will take to enhance safety, including:

- Comprehensive reporting and investigation of battery-related incidents;
- Improved battery, consumer product, and software design;
- Development and implementation of a technical standards agenda;
- Consideration and implementation of improved regulatory standards;
- Focused enforcement; and
- Development and implementation of a public outreach and education campaign.

The new requirements proposed in this NPRM are an important element of the safety strategy, designed to address specific battery-related hazards not adequately addressed by existing HMR requirements.

D. Proposals To Enhance the Safe Transportation of Batteries

In this NPRM, we propose the following provisions to enhance the safe transportation of batteries and battery-powered devices:

- Require reporting of incidents involving batteries and battery-powered devices (devices include equipment) or vehicles.
- Clarify the requirement that batteries, and battery-powered devices and vehicles, be offered for transportation and transported in a manner that prevents short-circuiting, dangerous evolution of heat, damage to terminals, and, in the case of transportation by aircraft, unintentional activation.
- Require a certification on the shipping documentation that batteries and battery-powered devices have met the conditions and all requirements for transport as specified in the applicable exception or special provision.
- Eliminate the requirement to disconnect the terminals when a battery-powered wheelchair or mobility aid is transported as checked baggage, provided the wheelchair or mobility aid design provides an effective means of preventing unintentional activation.

The measures proposed in this rule will harmonize the HMR with international standards applicable to the transportation of batteries and battery-powered devices. More importantly, these measures will provide data and information to develop an understanding of the root causes of battery incidents in transportation and reduce the associated risks.

1. Prevention of Short Circuits, Dangerous Evolution of Heat, Sparks, Unintentional Activation, or Damage to Terminals

In this NPRM, we are proposing a number of revisions to clarify that batteries of all types and battery-powered devices, equipment, and vehicles must be packaged for transportation in a manner that prevents short-circuiting, damage to terminals, dangerous evolution of heat, and, for transportation by aircraft, unintentional activation. We are also proposing several examples of packaging methods that may meet this performance standard, including packaging each battery or each battery-powered device in fully enclosed inner packagings made of non-conductive material, and separating batteries and battery-powered devices in a manner to prevent contact with other batteries, devices or conductive materials (e.g., metal) in the packagings. Batteries designed with exposed terminals or connectors should have the exposed terminals or connectors individually protected with non-conductive caps. We propose to include language in §§ 171.15, 171.16, 173.21, 173.159, 173.220, and 175.10 to further clarify these requirements.

2. Incident Reporting

Since most batteries are currently excepted from the incident reporting requirements in the HMR, it is likely that numerous incidents involving batteries and battery-powered devices in all modes of transportation that have gone un-reported. This under-reporting has made it difficult to assess the full extent of incidents in transportation and their causes. Therefore, in this NPRM, we propose to require the reporting in accordance with §§ 171.15 and 171.16 of the HMR of all incidents involving shipments of batteries or battery-powered devices involving fire, violent rupture, explosion, or a dangerous evolution of heat. The proposed reporting requirement applies to all battery shipments, including batteries that are prepared and offered as excepted from HMR requirements. The proposed incident reporting requirement is consistent with incident reporting provisions recently adopted by ICAO. (See §§ 171.15 and 171.16.)

3. Batteries Installed in Equipment

The HMR include a number of provisions applicable to batteries installed in vehicles, machinery, or other types of equipment. Section 173.220 sets forth transportation requirements for internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles or equipment. Generally, this section excepts battery-powered vehicles, machinery, and equipment from the HMR, provided they meet certain minimal requirements. We are aware of several incidents resulting in a dangerous evolution of heat initiated by batteries of this design which have been inadequately protected. In this NPRM, we propose to require battery-powered vehicles, machinery, and equipment,

including battery-powered wheelchairs and mobility aids, to conform to the new requirements being proposed in § 173.159, including requirements for protecting terminals and preventing short-circuiting and unintentional activation. In addition, we propose to clarify that battery-powered vehicles, machinery, and equipment are forbidden to be transported unless packaged in a manner preventing the creation of sparks, a dangerous amount of heat and, in air transportation, unintentional activation.

Section 175.10 sets forth exceptions for passengers, crewmembers, and air operators. Currently, the HMR permit a wheelchair or other battery-powered mobility device to be carried on board a passenger aircraft as checked baggage provided that (1) visual inspection, including removal of the battery if necessary, reveals no obvious defects; (2) the battery is disconnected and terminals are insulated to prevent short-circuiting; and (3) the battery is securely attached to the wheelchair or mobility device or removed and separately packaged. We are concerned, however, that repeated handling of the battery in a wheelchair or other mobility device could result in damage or other problems that could compromise safety. Moreover, the design for batteries and their housing has significantly improved in recent years. Therefore, in this NPRM, we propose to revise paragraph § 175.10(a)(15) to eliminate the current requirement to disconnect the terminals when a battery-powered wheelchair or other mobility device is transported as checked baggage provided the device provides an effective means of preventing unintentional activation. Battery terminals must continue to be protected from short-circuiting, but such protection is inherent in the design of most wheelchairs and mobility devices. This proposal will enhance safety while providing improved accommodation for passengers traveling with wheelchairs or mobility devices and is consistent with corresponding provisions in the ICAO TI.

4. Non-Spillable Batteries

Section 173.159 sets forth requirements for the transportation of wet batteries, including non-spillable batteries. As currently provided in § 173.159(d), non-spillable batteries are excepted from the HMR provided certain conditions are met. Unless all of the conditions specified in § 173.159(d) are met, the non-spillable battery is fully subject to the HMR as a wet electric storage battery. International regulations outline the conditions in which a battery can be considered non-spillable and provide packaging requirements specific to non-spillable batteries. Non-spillable batteries meeting additional requirements are excepted from all other requirements of the HMR. In this NPRM, we are proposing to describe in § 173.159(f) the conditions in which a battery can be considered non-spillable and relocate the exceptions pertaining to non-spillable batteries to a new § 173.159a. Consistent with international requirements, we are proposing to specify that batteries can be considered ''non-spillable,'' provided they are capable of passing a vibration test and a pressure differential test without leakage. We are also proposing to require non-spillable batteries to be packaged in strong outer packaging and securely fastened in the battery holder or the equipment when the battery is an integral part of the operation of mechanical or electronic equipment. In addition, we propose to specify that except for the incident reporting requirements of §§ 171.15 and 171.16, non-spillable batteries are not subject to the requirements of the HMR if they meet the following additional conditions:

- At a temperature of 55 °C (131 °F), the battery does not contain any unabsorbed free-flowing liquid, and must be designed so that electrolyte will not flow from a ruptured or cracked case;
- The battery must be protected against short-circuiting and securely packaged in strong outer packaging;
- The battery must be marked ''NONSPILLABLE'' or ''NONSPILLABLE BATTERY''; and
- For transportation by aircraft;
- They must meet the provisions of § 173.159(b); and
- Indicate that all conditions for transport as specified in the applicable exception or special provision have been met with the words, ''not restricted'' on the airway bill. This indication will allow freight forwarders and operators to verify that the consignor is aware of, and has complied with, the applicable regulatory requirements.

5. Conforming Amendments

We propose a number of conforming amendments in this NPRM to ensure that batteries are transported in accordance with the proposed requirements in § 173.159. For example, § 173.21(c) currently prohibits the transportation of electrical devices unless packaged to prevent the creation of sparks or generation of a dangerous amount of heat. In this NPRM, we propose to revise this paragraph to clarify that the term ''electrical devices'' includes ''batteries'' and ''battery-powered devices.'' We also propose to revise Special provision 130 to specify that ''Batteries, dry, sealed, n.o.s.'' are not subject to the requirements of the HMR except those pertaining to incident reporting, short circuit protection, damage to terminals, prevention of a dangerous amount of heat, damage to terminals, and when transported by aircraft, unintentional activation and an indication on the air waybill that all conditions for transport have been met (Special provision 130).

In addition, we are proposing to amend certain entries in the Hazardous Materials Table (HMT) in § 172.101. Currently, under the HMR, dry batteries are not subject to incident reporting or measures to prevent unintentional activation until a dangerous amount of heat has developed. As indicated above, in this NPRM, we propose to extend the requirements for incident reporting and enhanced packaging to cover all batteries and battery-powered devices. Thus, we propose to remove the entry ''Batteries, dry, *not subject to the requirements of this subchapter*'' in favor of a new entry, '''Batteries, dry, sealed, n.o.s.''

Note that shippers must distinguish between the proper shipping name ''Batteries, dry, sealed, n.o.s.,'' and the existing proper shipping name ''Batteries, wet, non-spillable, *electric storage.*'' Batteries described as ''Batteries, wet, non-spillable, *electric storage*'' have metallic lead and lead oxide electrodes and sulfuric acid electrolytes just like regular ''wet'' batteries, but the acid is either gelled up with silica or absorbed in a mat of micro-glass fibers. These batteries are not truly ''sealed'' (non-spillable) but are ''valve regulated'' (they are technically termed ''valve-regulated lead-acid'' or ''VRLA''). The resealable valves prevent the entrance of oxygen from the outside air, but release excess hydrogen and oxygen formed during overcharging. These types of batteries are generally used for 12-volt vehicular starting applications and uninterruptible power supply applications.

Batteries described under the proposed new proper shipping name ''Batteries, dry, sealed, n.o.s'' are hermetically ''sealed'' and generally utilize other metals and/or carbon as electrodes. These batteries are typically used for portable power applications. The rechargeable (and some nonrechargeable) types have gelled alkaline electrolytes (rather than acidic) making it difficult for them to generate hydrogen or oxygen when overcharged.

The entry ''Batteries, dry, containing potassium hydroxide solid, *electric storage*'' would be revised by adding to column (7) a reference to proposed new Special provision ''237.'' The new special provision would specify that, for transportation by aircraft, ''Batteries, dry, containing potassium hydroxide solid, *electric storage*'' must be prepared and packaged in accordance with the requirements of § 173.159(a), and for transportation by aircraft, § 173.159(b)(2). The entry ''Batteries, wet, non-spillable, *electric storage*'' would be revised by adding to column (8A), a reference to proposed new § 173.159a.

Section 173.189 sets forth transportation requirements for batteries containing sodium or cells containing sodium. In this NPRM, we propose to revise paragraph (e) to specify that vehicles, machinery and equipment powered by sodium batteries must be consigned under the entry ''Battery-powered vehicle *or* Battery-powered equipment.''

Section 176.84 contains additional stowage and segregation requirements for hazardous materials on cargo and passenger vessels. In this NPRM, in order to fully align the HMR with the IMDG Code, a new vessel stowage code ''146'' is added to the § 176.84(b) table to specify that, ''Category B stowage applies for unit loads in open cargo transport units.'' The new vessel stowage code ''146'' is assigned to ''Batteries, wet, filled with acid, *electric storage,*'' UN2794 and ''Batteries, wet, filled with alkali, *electric storage,*'' UN2795 in column (10B) of the HMT.

6. Lithium Batteries

Except for incident reporting requirements, this NPRM does not propose any amendments pertaining to the transportation of lithium batteries. PHMSA is working to evaluate and reduce lithium battery risks through targeted enforcement; inspections and testing, including root cause investigation of all incidents; public outreach; and other non-regulatory initiatives.

As we identify other opportunities for safety improvement, further rulemaking may be necessary. Before developing additional rulemaking proposals, PHMSA plans to complete an assessment of the costs and benefits of further restrictions and available alternatives. In the meantime, we will continue to monitor and evaluate the safety performance of lithium batteries in transportation, identify and target counterfeit and other non-conforming batteries, and encourage the development and introduction of safer battery designs.

III. Additional Harmonization Proposals in This NPRM

In addition to the battery proposals detailed above, in this NPRM, we are proposing the following amendments to harmonize the HMR with the most recent revisions to the UN Recommendations, ICAO TI, and IMDG Code:

- *Hazardous Materials Table (HMT):* Amendments to the HMT to add, revise, or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, passenger and cargo aircraft maximum quantity limitations and vessels stowage provisions.
- *Fuel Cells:* Amendments to the HMT to add four new proper shipping names to describe the range of fuel used in fuel cell cartridges: (1) Corrosive substances (UN3477); (2) liquefied flammable gas (UN3478); (3) hydrogen in metal hydride (UN3479); and (4) water-reactive substances (UN3476). In addition, we are proposing amendments to expand the types of fuel cell cartridges permitted in carry-on baggage to include water-reactive substances and hydrogen in a metal hydride. Amendments to § 173.230 provide packaging requirements for fuel cells and, except for transportation by aircraft, limited quantity exceptions for the various types of fuel cell cartridges specified above.
- *Small Quantity Exceptions:* Amendments maintaining current allowances for small quantities of Division 2.2, Class 3, Division 4.1, Division 4.2 (PG II and III), Division 4.3 (PG II and III), Division 5.1, Division 5.2, Division 6.1, Class 7, Class 8, and Class 9 materials transported by highway and rail and adopting the UN and ICAO excepted quantity provisions for transportation by aircraft or vessel.
- *Incident Reporting:* Amendments to provisions that except certain hazardous materials or commodities from the requirements of the HMR, including incident reporting requirements. The HMR contain overriding provisions in §§ 171.15 and 171.16 requiring notice of specific types of incidents to the National Response Center (NRC) and submission of a Hazardous Materials Incident Report, DOT Form F 5800.1, when in possession of a hazardous material at the time of an incident. We would amend several provisions to emphasize the need to provide notice to the NRC and to address the need to obtain more accurate and complete data on incidents. The NRC relies on notices to gather and distribute spill data to emergency responders, and the DOT hazardous materials transportation safety program relies on DOT Form F 5800.1 to gather basic information on incidents that occur during transportation.
- *Organic Peroxide Tables:* Amendments to the Organic Peroxide Tables to add, revise, or remove certain hazardous materials and provisions.
- *Incorporation by Reference:* Amendments to incorporate by reference the updated ICAO TI, IMDG Code, and UN Recommendations.
- *Hazard Communication on Air waybills:* Amendments to require the consignor to indicate on the ''air waybill'' that certain hazardous materials or articles have met the conditions for transport as specified in the applicable exception or special provision.
- *Petitions for Rulemaking:* We are addressing several petitions for rulemaking: P–1490, requesting PHMSA to remove the requirement that the type of package must be included on the notification of pilot-in-command; P–1494, requesting PHMSA to specify that pictograms described in the UN GHS are not prohibited under the HMR; P–1505, requesting PHMSA to include a new proper shipping name ''Powder, smokeless,'' UN0509, to the § 172.101 HMT and to include the new entry among the explosives assigned Packaging Instruction 114(b) in § 173.62; and P–1516, requesting PHMSA to allow the marine pollutant list to remain the basis in domestic transportation for regulating substances hazardous to the environment while permitting substances meeting the new IMDG Code criteria to be transported as substances hazardous to the environment. We are also addressing petitions P–1517 and P–1518, requesting PHMSA to align provisions for the transport of fuel cell systems and cartridges in the HMR with international standards.
- *Requirements for Marine Pollutants:* Recently, the classification criteria for marine pollutants in the IMDG Code were amended for consistency with the aquatic toxicity criteria adopted within the GHS. The HMR currently allow materials meeting the criteria of a marine pollutant under the prior IMDG Code criteria to be classified as such for domestic or international transportation (see paragraph 4 of the introduction to Appendix B of 172.101). The new classification system adopted into the IMDG Code is complicated, and the associated criteria for classifying mixtures containing marine pollutants would involve an additional layer of complexity without a corresponding

public benefit; therefore, we are not proposing to adopt the new IMDG Code environmental classification system. In this rulemaking, we are proposing to maintain the current regulatory approach to facilitate transportation without mandating use of the new GHS-based criteria. We also propose to adopt a new marking for marine pollutants consistent with the marking adopted within the IMDG Code. These actions will provide the greatest possible harmonization with international requirements without imposing an undue burden on industry. This proposal is also consistent with a Petition for Rulemaking (P–1516) filed by the Dangerous Goods Advisory Council (DGAC). DGAC requested that for domestic transportation the marine pollutant list be maintained as the basis for regulating substances hazardous to the environment while permitting a substance meeting the new IMDG Code criteria to be transported as a substance hazardous to the aquatic environment. DGAC also recommended that the current 10% rule for classifying mixtures containing marine pollutants be used while allowing compliance with the mixture calculation in the IMDG Code. Though we have not proposed to implement a 10% rule for marine pollutants irrespective of whether they are identified as a severe marine pollutant, we request comments on that recommendation. In particular, we are interested in the environmental impacts of such a change and its effect on human health and the environment. We invite comments on the practical consequences of the differing approaches, for instance, in the event of release of such substances into aquatic resources and drinking water.

IV. Amendments Not Being Considered for Adoption in This NPRM

This NPRM proposes changes to the HMR based on amendments to the Fifteenth revised edition of the UN Recommendations, Amendment 34 to the IMDG Code, and the 2009–2010 ICAO TI, which become effective January 1, 2009. However, we are not proposing to adopt all of the amendments to those documents into the HMR. In many cases, amendments to the international recommendations and regulations have not been adopted because the framework or structure of the HMR makes adoption unnecessary. In other cases, we have handled, or will be handling, the amendments in separate rulemaking proceedings. If we have inadvertently omitted an amendment in this NPRM, we will attempt to include the omission in the final rule. However, our ability to make changes in a final rule is limited by requirements of the Administrative Procedure Act (5 U.S.C. 553). In some instances, we can adopt a provision inadvertently omitted in the NPRM if it is clearly within the scope of changes proposed in the notice, does not require substantive changes from the international standard on which it is based, and imposes minimal or no cost impacts on persons subject to the requirement. Otherwise, in order to provide opportunity for notice and comment, the change must be proposed in an NPRM.

One of the goals of this rulemaking is to continue to maintain consistency between the HMR and the international requirements. We are not striving to make the HMR identical to the international regulations but rather to remove or avoid potential barriers to international transportation.

Below is a listing of those significant amendments to the international regulations that we are not proposing to adopt in this NPRM, with a brief explanation of why the amendment was not included:

• *Requirements for Hazardous Materials Security.* The UN and ICAO have adopted minimal requirements pertaining to hazardous materials security. On March 25, 2003, we published a final rule to enhance the security of hazardous materials transported in commerce (68 FR 14510). In the final rule, shippers and carriers of certain highly hazardous materials are required to develop and implement security plans. In addition, all shippers and carriers of hazardous materials are required to include a security component. The security plan requirements apply to shipments of hazardous materials that must be placarded and to select agents. In a separate rulemaking, we are considering revising the list of materials for which security plans are required to ensure that the requirements apply only to those materials that pose a true security risk in transportation. See the advance notice of proposed rulemaking (ANPRM) published on September 21, 2006 (71 FR 55156).

• *Requirements for Radioactive Materials.* We are not proposing to adopt provisions pertaining to the transportation of Class 7 (radioactive) materials. Amendments to requirements pertaining to the transportation of Class 7 (radioactive) materials are based on changes contained in the International Atomic Energy Agency (IAEA) publication, ''IAEA Safety Standards: Regulations for the Safe Transport of Radioactive Materials.'' Due to their complexity, these changes are being addressed in a separate rulemaking under Docket HM–250.

• *Requirements for Infectious Substances.* The UN and ICAO have adopted minimal standards applicable to the transportation of human remains and animal carcasses as to which there is minimal likelihood that pathogens are present. For purposes of the HMR, such specimens are not considered hazardous, and their transportation is not subject to the HMR. These specimens are currently regulated by the Food and Drug Administration of the U.S. Department of Health and Human Services, the U.S. Department of Agriculture and subject to State and local authorities. Therefore, we are not proposing to incorporate the new international provisions into the HMR.

• *Requirement for Definition of ''Target'' for Use During Packaging Testing.* Amendments to the HMR pertaining to the definition of a ''target'' for a drop test performed on non-bulk packagings are not being proposed in this rulemaking. The UN Recommendations amended the description to specify that the surface of a target must be immovable, free of defects, rigid, and large enough to ensure that the test package falls entirely upon the surface. We believe the current provisions in the HMR pertaining to the drop test method for non-bulk packagings adequately address this issue.

• *Requirement for Vibration Test for All Intermediate Bulk Containers (IBCs).* Amendments to the HMR pertaining to the test method and duration of a vibration test for IBCs are not being proposed in this rulemaking. PHMSA successfully helped to introduce to the UN Recommendations a vibration test requirement for IBCs that would both enhance safety and help to establish a more equivalent testing protocol for manufacturers of IBCs worldwide. However, the vibration test adopted by the UN may be conducted as a ''stand-alone'' design-type test on an otherwise untested IBC. In contrast, the vibration test originally introduced by PHMSA would require the vibration test to be conducted in sequence with other required tests. We believe this method provides a higher degree of safety, and therefore, are not proposing to amend the vibration test requirements currently in the HMR.

• *Requirement for Bromine (UN1744).* In the Fifteenth edition of the UN Recommendations, a packing instruction and a special packing provision for ''Bromine,'' UN1744 were consolidated into a new packing instruction specifically for Bromine. After reviewing this new packing

instruction, we believe the current provisions in the HMR pertaining to the packaging of Bromine are adequate.

• *Exceptions to Packaging for Paint and Paint-Related Material.* Amendments authorizing certain exceptions from performance testing of packagings containing paint and certain paint-related materials are not being proposed in this rulemaking. Currently, both the UN Recommendations and the HMR contain certain packaging exceptions for specific adhesives, printing inks, printing ink related materials, paint, paint-related materials and resin solutions (see UN Packing Instruction P001, Special Packing Provision PP1 and 49 CFR 173.173(b)(2)). The Fifteenth revised edition of the UN Recommendations expands the exceptions to also include such materials when classified as environmentally hazardous substances. We are currently reviewing the incident data related to these exceptions, and may consider this issue for a future rulemaking.

• *Requirements for Lithium Batteries.* Amendments to the HMR pertaining to lithium batteries based on the Fifteenth revised edition of the UN Recommendations are not being proposed in this rulemaking. We are reviewing these requirements and may consider them for a future rulemaking.

• *Requirements for Additional Signage.* Amendments to the HMR pertaining to additional signage in airports are not being proposed in this rulemaking. We are reviewing these amendments, including the related cost impacts, and may consider them for a future rulemaking. We request comments to provide information and suggestions that we can use during a future review.

V. Section-by-Section Review

Following is a section-by-section review of the amendments proposed in this NPRM. Note that this section-by-section review excludes the proposals applicable to the transportation of batteries and battery-powered devices, which are detailed in Section II of this Notice. We request comments providing information and suggestions that we can use during the review of these proposals.

Part 171

Section 171.7

The ''National Technology Transfer and Advancement Act of 1996'' directs agencies to use voluntary consensus standards. According to the Office of Management and Budget (OMB), Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' government agencies must use voluntary consensus standards wherever practical in the development of regulations. Agency adoption of industry standards promotes productivity and efficiency in government and industry, expands opportunities for international trade, conserves resources, improves health and safety, and protects the environment.

To these ends, PHMSA actively participates in the development and updating of consensus standards through representation on more than 20 consensus standards bodies. PHMSA regularly reviews updated consensus standards and considers their merit for inclusion in the HMR.

Section 171.7 lists all standards incorporated by reference into the HMR. For this rulemaking, we evaluated updated international consensus standards pertaining to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements and determined that the revised standards provide an enhanced level of safety without imposing significant compliance burdens. These standards have a well-established and documented safety history; their adoption will maintain the high safety standard currently achieved under the HMR. Therefore, we propose to update the incorporation by reference materials for the ICAO TI, the IMDG Code, and the UN Recommendations. The updated editions of these standards become effective January 1, 2009.

We propose to revise the following standards:

• The Technical Instructions for the Safe Transport of Dangerous Goods by Air, 2007–2008 Edition.

• International Convention for the Safety of Life at Sea (SOLAS) Amendments 2000, Chapter II–2, Regulation 19, 2001.

• The International Maritime Organization's International Maritime Dangerous Goods Code, 2006 Edition, Incorporating Amendment 33–06, English Edition, Volumes 1 and 2.

• The UN Recommendations on the Transport of Dangerous Goods, Fourteenth revised edition (2005), Volumes I and II.

Section 171.14

This section lists specific transition periods for certain provisions adopted into the HMR. Paragraph (d) of this section specifies transition provisions for previously adopted amendments intended to harmonize the HMR with international standards. We are proposing revisions to this paragraph to provide specific transitional provisions for certain amendments proposed in this NPRM. We are proposing an effective date of January 1, 2009, and a mandatory compliance date of January 1, 2010. We propose to permit voluntary compliance as of January 1, 2009, to correspond with the effective implementation dates of the 2009–2010 ICAO TI and Amendment 34 of the IMDG Code. This authorization would allow shippers to prepare their international shipments in accordance with international standards that will become effective on January 1, 2009.

Section 171.25

Section 171.25 specifies additional requirements for the use of the IMDG Code when a hazardous material is offered for transportation to, from, or within the United States by vessel, and by motor carrier and rail, provided all or part of the movement is by vessel. Recently, an incident occurred in which a portable tank containing ''Argon, refrigerated liquid (cryogenic liquid),'' UN1951, stowed below the deck of a vessel released its contents, resulting in the asphyxiation deaths of three individuals who entered the confined cargo space where the portable tank was stowed. The HMR currently prohibit the stowage of such materials below deck (§ 176.76(g)) because of the potential hazard of asphyxiation when large volumes of refrigerated liquefied gases are released below the deck of a vessel in confined spaces. However, the IMDG Code does not prohibit the stowage of tanks below deck in all cases. Some refrigerated liquefied gases, including argon, are assigned to stowage ''Category B'' in column (16) of the dangerous goods list of the IMDG Code. Therefore, in this NPRM, we propose to revise § 171.25 to specify that portable tanks, cargo tanks, and tank cars containing cryogenic liquids must be ''on deck'' regardless of the stowage authorized in the IMDG Code.

Part 172

Section 172.101 Hazardous Materials Table (HMT)

Section 172.101 contains the HMT and explanations for each of its columns. We propose to make various amendments to the HMT. Readers should review all changes for a complete understanding of the proposed amendments. For purposes of the Government Printing Office's typesetting procedures, proposed

changes to the HMT will appear under three sections of the Table, ''remove,'' ''add,'' and ''revise.'' Certain entries in the HMT, such as those with proposed revisions to the proper shipping names, will appear as a ''remove'' and ''add.'' Proposed amendments to the HMT for the purpose of harmonizing with international standards include, but are not limited to, the following:

In the final rule for Docket HM–215G (69 FR 76044; December 20, 2004), we added new generic entries for Organometallic substances consistent with descriptions added to the UN Recommendations. In the final rule, we allowed the continued use of certain specific Organometallic entries; however, we anticipated removing the specific Organometallic entries from the HMT by January 1, 2007. The entries were to be removed because they were superseded by more appropriate generic entries. However, the entries intended to be removed currently remain in the HMT. Therefore, we are proposing to remove the following Organometallic entries for consistency with the intent of HM–215G:

UN3052 Aluminum alkyl halides, liquid
UN3461 Aluminum alkyl halides, solid
UN3076 Aluminum alkyl hydrides
UN3051 Aluminum alkyls
UN1366 Diethylzinc
UN1370 Dimethylzinc
UN2445 Lithium alkyls, liquid
UN3433 Lithium alkyls, solid
UN3053 Magnesium alkyls
UN2005 Magnesium diphenyl

Special provision ''TP12'' states: ''This material is considered highly corrosive to steel.'' The phrase ''highly corrosive to steel'' is not defined by any specific criteria. Further, ''TP12,'' unlike other TP codes, is simply a statement and does not apply any regulatory requirement. It is unclear if all highly corrosive materials are assigned Special provision ''TP12,'' or if this statement provides any useful guidance for selecting an appropriate portable tank. Therefore, we are proposing to revise the following entries by removing Special provision ''TP12'':

UN1716 Acetyl bromide
UN1717 Acetyl chloride
UN2584 Alkyl sulfonic acids, liquid *or* Aryl sulfonic acids, liquid *with more than 5 percent free sulfuric acid*
UN2571 Alkyl sulfuric acids
UN2817 Ammonium hydrogendifluoride, solution, PG II and III
UN2796 Battery fluid, acid
UN1736 Benzoyl chloride
UN1737 Benzyl bromide
UN1738 Benzyl chloride
UN1738 Benzyl chloride *unstabilized*
UN1739 Benzyl chloroformate
UN2692 Boron tribromide
UN1742 Boron trifluoride acetic acid complex, liquid
UN1743 Boron trifluoride propionic acid complex, liquid
UN1744 Bromine
UN1744 Bromine solutions
UN1745 Bromine pentafluoride
UN1746 Bromine trifluoride
UN2513 Bromoacetyl bromide
NA2742 sec-Butyl chloroformate
UN2353 Butyryl chloride
NA9263 Chloropivaloyl chloride
UN1754 Chlorosulfonic acid *with or without sulfur trioxide*
UN1755 Chromic acid solution, PG II and PG III
UN1758 Chromium oxychloride
UN2240 Chromosulfuric acid
NA9264 3,5-Dichloro-2,4,6-trifluoropyridine
UN1764 Dichloroacetic acid
UN1768 Difluorophosphoric acid, anhydrous
NA2845 Ethyl phosphonous dichloride, anhydrous [*pyrophoric liquid*]
NA2927 Ethyl phosphonothioic dichloride, anhydrous or Ethyl phosphorodichloridate
UN1776 Fluorophosphoric acid anhydrous
UN1778 Fluorosilicic acid
UN1777 Fluorosulfonic acid
UN1782 Hexafluorophosphoric acid
UN1789 Hydrochloric acid PG II and PG III
UN1786 Hydrofluoric acid and Sulfuric acid mixtures
UN1790 Hydrofluoric acid, *with more than 60 percent strength*
UN1790 Hydrofluoric acid, *with not more than 60 percent strength*
NA2742 Isobutyl chloroformate
UN3246 Methanesulfonyl chloride
NA9206 Methyl phosphonic dichloride
NA2845 Methyl phosphonous dichloride, *pyrophoric liquid*
NA1556 Methyldichloroarsine
UN1826 Nitrating acid mixtures, spent *with more than 50 percent nitric acid*
UN1826 Nitrating acid mixtures, spent *with not more than 50 percent nitric acid*
UN1796 Nitrating acid mixtures *with more than 50 percent nitric acid*
UN1796 Nitrating acid mixtures *with not more than 50 percent nitric acid*
UN2031 Nitric acid *other than red fuming, with more than 70 percent nitric acid*
UN2031 Nitric acid *other than red fuming, with not more than 20 percent nitric acid*
UN2031 Nitric acid *other than red fuming, with not more than 70 percent nitric acid*
UN2032 Nitric acid, red fuming
UN1798 Nitrohydrochloric acid
UN2308 Nitrosylsulfuric acid, liquid
UN1873 Perchloric acid *with more than 50 percent but not more than 72 percent acid, by mass*
UN1817 Pyrosulfuryl chloride
UN2879 Selenium oxychloride
UN1906 Sludge, acid
UN1828 Sulfur chlorides
UN1829 Sulfur trioxide, stabilized
UN1831 Sulfuric acid, fuming *with less than 30 percent free sulfur trioxide*
UN1831 Sulfuric acid, fuming *with 30 percent or more free sulfur trioxide*
UN1832 Sulfuric acid, spent
UN1830 Sulfuric acid *with more than 51 percent acid*
UN2796 Sulfuric acid *with not more than 51 percent acid*
UN1834 Sulfuryl chloride
UN1836 Thionyl chloride
UN2699 Trifluoroacetic acid
NA9269 Trimethoxysilane

We propose to add a new non-bulk packaging section (§ 173.206) for the transportation of certain flammable, corrosive and toxic materials, specifically, chlorosilanes that have water-reactive properties. For a detailed summary of the rationale, see the preamble discussion for § 173.206. The following entries would be revised in Column (8B) by replacing the current non-bulk packaging provision with ''206'':

UN1724 Allyltrichlorosilane, stabilized
UN1728 Amyltrichlorosilane
UN1747 Butyltrichlorosilane
UN1753 Chlorophenyltrichlorosilane
UN2986 Chlorosilanes, corrosive, flammable, n.o.s.
UN2987 Chlorosilanes, corrosive, n.o.s.
UN2985 Chlorosilanes, flammable, corrosive, n.o.s.
UN3362 Chlorosilanes, toxic, corrosive, flammable, n.o.s.
UN3361 Chlorosilanes, toxic, corrosive, n.o.s.
UN1762 Cyclohexenyltrichlorosilane
UN1763 Cyclohexyltrichlorosilane
UN2434 Dibenzyldichlorosilane
UN1766 Dichlorophenyltrichlorosilane
UN1767 Diethyldichlorosilane
UN1162 Dimethyldichlorosilane
UN1769 Diphenyldichlorosilane
UN1771 Dodecyltrichlorosilane
UN2435 Ethylphenyldichlorosilane
UN1196 Ethyltrichlorosilane
UN1781 Hexadecyltrichlorosilane
UN1784 Hexyltrichlorosilane
UN2437 Methylphenyldichlorosilane
UN1250 Methyltrichlorosilane
UN1799 Nonyltrichlorosilane
UN1800 Octadecyltrichlorosilane
UN1801 Octyltrichlorosilane
UN1804 Phenyltrichlorosilane
UN1816 Propyltrichlorosilane
UN1298 Trimethylchlorosilane
UN1305 Vinyltrichlorosilane, stabilized

For consistency in the assignment of Special provision ''TP13'' (which requires provision of self-contained breathing apparatus when transported by vessel) to all chlorosilanes, the following entries would be revised in Column (7) by adding Special provision ''TP13'':

UN2987 Chlorosilanes, corrosive, n.o.s
UN1781 Hexadecyltrichlorosilane
UN1804 Phenyltrichlorosilane
UN1818 Silicon tetrachloride

We consider Special provision ''TP7'' essential for the safe transport of chlorosilanes. This special provision requires the vapor space to be purged of air by nitrogen or other means. However, there is no consistent assignment of ''TP7'' to chlorosilanes.

For enhanced safety and consistency with international regulations, the following entries would be revised in Column (7) by adding Special provision ''TP7'':

UN3362 Chlorosilanes, toxic, corrosive, flammable, n.o.s.
UN3361 Chlorosilanes, toxic, corrosive, n.o.s.
UN1250 Methyltrichlorosilane
UN1305 Vinyltrichlorosilane, stabilized

Chlorosilanes of Class 3 and Class 8 are currently authorized for transport in metal IBCs under Special provisions ''IB1'' and ''IB2.'' Because metal IBCs have lift-up lids with clamp screws, we are concerned that the overturn of a metal IBC during an accident may lead to an opening of a lift-up lid and result in a release of chlorosilanes from these packagings. To address these concerns, we are proposing to prohibit the use of metal IBCs by removing the respective ''IB1'' or ''IB2'' provisions from the following entries. We are also proposing to add Special provision ''TP7'' to require the vapor space to be purged of air, as discussed above:

UN2986 Chlorosilanes, corrosive, flammable, n.o.s.
UN2987 Chlorosilanes, corrosive, n.o.s.
UN2985 Chlorosilanes, flammable, corrosive, n.o.s.

Bottom discharge openings are currently allowed on portable tanks used for the transport of most chlorosilanes. For example, some chlorosilane entries are assigned Special provision ''T7,'' which provides for bottom opening requirements. As part of a voluntary initiative to enhance safety, portions of the regulated community have begun to use only portable tanks without bottom discharge connections. To further enhance safety and to prohibit the use of portable tanks with bottom discharge openings, we are proposing to revise the following entries by replacing Special provision ''T7'' with ''T10.'' Special provision ''T10'' prohibits the use of bottom discharge openings. We are also proposing to delete the respective IBC special provisions (as indicated below) to prohibit the use of metal IBCs and add Special provision ''TP7'' to require the vapor space to be purged of air, as discussed above:

UN1724 Allyltrichlorosilane, stabilized
UN1728 Amyltrichlorosilane
UN1747 Butyltrichlorosilane
UN1753 Chlorophenyltrichlorosilane
UN1762 Cyclohexenyltrichlorosilane
UN1763 Cyclohexyltrichlorosilane
UN2434 Dibenzyldichlorosilane
UN1766 Dichlorophenyltrichlorosilane
UN1767 Diethyldichlorosilane
UN1162 Dimethyldichlorosilane
UN1769 Diphenyldichlorosilane
UN1771 Dodecyltrichlorosilane
UN2435 Ethylphenyldichlorosilane
UN1196 Ethyltrichlorosilane
UN1781 Hexadecyltrichlorosilane
UN1784 Hexyltrichlorosilane
UN2437 Methylphenyldichlorosilane
UN1799 Nonyltrichlorosilane
UN1800 Octadecyltrichlorosilane
UN1801 Octyltrichlorosilane
UN1804 Phenyltrichlorosilane
UN1816 Propyltrichlorosilane
UN1298 Trimethylchlorosilane

As a safety measure for the transport of most chlorosilanes, we are proposing to apply Special provision ''T10,'' to prohibit bottom discharge openings on portable tanks used to transport chlorosilanes. However, for chlorosilanes meeting the criteria of Division 4.3 and for ''n.o.s.'' entries meeting the criteria for Classes 3, 8 and Division 6.1 that have been assigned ''T10,'' we are considering the general assignment of Special provision ''T14'' rather than ''T10.'' In addition to prohibiting bottom outlet openings, Special provision ''T14'' requires a higher minimum test pressure for the periodic hydrostatic pressure test. We believe a higher minimum test pressure would provide an increased level of safety when transporting these types of chlorosilanes in portable tanks. Some chlorosilanes meeting the above classification criteria (e.g., UN2987 and UN1295) have already been assigned Special provision ''T14.'' Therefore, to enhance safety and for consistency in assigning special provisions, we are proposing to revise the following entries by replacing Special provision ''T10'' with Special provision ''T14'' in Column (7):

UN2988 Chlorosilanes, water-reactive, flammable, corrosive, n.o.s.
UN1183 Ethyldichlorosilane
UN1242 Methyldichlorosilane

The following entries would be revised by assigning PG II in column (5) rather than PG I. The flammability properties (i.e., the flashpoint) place them in PG II, and no additional evidence indicates the entries are more corrosive than all the other chlorosilanes classed as a Class 3, subsidiary Class 8, PG II (e.g., UN1126). Therefore, in accordance with the Precedence of hazard table (§ 173.2a), the entries would be classed as Class 3, subsidiary Class 8, PG II materials. In addition, as discussed above, we would replace Special provision ''T7'' with ''T10'' for most chlorosilanes, however, for these entries Special provision ''T10'' would replace the previously assigned Special provision ''T11.'' Readers should note, this revision is contingent upon the adoption of the proposed change from PG I to PG II. The entries would be revised in Column (5) by assigning PG II and in Column (7) by replacing Special provision ''T11'' with Special provision ''T10'':

UN1250 Methyltrichlorosilane
UN1305 Vinyltrichlorosilane, stabilized

As discussed above, for most chlorosilanes, we are proposing to replace Special provision ''T7'' with ''T10,'' which prohibits bottom discharge openings. In addition, we propose to revise the following entries by replacing Special provision ''T11'' with Special provision ''T14'' which prohibits bottom discharge openings in portable tanks:

UN2986 Chlorosilanes, corrosive, flammable, n.o.s.
UN2985 Chlorosilanes, flammable, corrosive, n.o.s.
UN3362 Chlorosilanes, toxic, corrosive, flammable, n.o.s
UN3361 Chlorosilanes, toxic, corrosive, n.o.s.

Chlorosilanes of Division 6.1 are authorized for transport in metal IBCs under Special provision ''IB1.'' As discussed above, we are proposing to prohibit the use of metal IBCs for the transport of chlorosilanes. Additionally, Special provision ''TP27'' is recommended for chlorosilanes assigned Special provision ''T14.'' If found acceptable according to the test pressure definition in § 178.274, Special provision ''TP27'' allows a test pressure of 4 bar instead of 6 bar. We would assign tank provision ''TP27'' to all ''n.o.s.'' entries of Classes 3, 8 and Division 6.1. Entries for Division 4.3 would not be assigned ''TP27'' because of higher risk of a possible release of a flammable gas. The following entries would be revised in Column (7) by deleting Special provision ''IB1'' and adding Special provision ''TP27'':

UN3362 Chlorosilanes, toxic, corrosive, flammable, n.o.s
UN3361 Chlorosilanes, toxic, corrosive, n.o.s.

The following entries would be revised by adding Special provision ''IP2'' to correct an inconsistency. ''Chloroacetic acid, solid,'' UN1751 is the only Division 6.1, PG II material assigned Special provision ''IB8'' that is not also assigned Special provision ''IP2.'' Similarly, the remaining entries listed below are Division 5.1, PG II materials assigned ''IB8'' but not ''IP2''. The following entries would be revised in Column (7) by adding Special provision ''IP2'':

UN1751 Chloroacetic acid, solid
UN1463 Chromium trioxide, anhydrous.
UN2465 Dichloroisocyanuric acid, dry or Dichloroisocyanuric acid salts
UN1473 Magnesium bromate

UN2627 Nitrites, inorganic, n.o.s.
UN1484 Potassium bromate
UN1485 Potassium chlorate
UN1487 Potassium nitrate and sodium nitrite mixtures
UN1488 Potassium nitrite
UN1490 Potassium permanganate
UN1493 Silver nitrate
UN1494 Sodium bromate
UN1495 Sodium chlorate
UN3247 Sodium peroxoborate, anhydrous
UN2468 Trichloroisocyanuric acid, dry
UN1512 Zinc ammonium nitrite
UN1514 Zinc nitrate

Special provision ''36'' places net quantity limits per package for medicines classed as hazardous materials. However, the quantity limits are inconsistent with the net quantity packaging limits authorized under the limited quantities exceptions authorized for these materials. Therefore, these entries would be revised in Column (7) by removing Special provision ''36'':

UN3248 Medicine, liquid, flammable, toxic, n.o.s.
UN1851 Medicine, liquid, toxic, n.o.s.
UN3249 Medicine, solid, toxic, n.o.s.

Chemical oxygen generators are subject to stringent packaging and shipping requirements. We are proposing to add a new Special provision ''62'' to the following entries to emphasize that chemical oxygen generators are not authorized to be transported under the generic ''oxidizer, n.o.s.'' entries.

UN3098 Oxidizing liquid, corrosive, n.o.s.
UN3139 Oxidizing liquid, n.o.s.
UN3099 Oxidizing liquid, toxic, n.o.s.
UN3085 Oxidizing solid, corrosive, n.o.s.
UN3137 Oxidizing solid, flammable, n.o.s.
UN1479 Oxidizing solid, n.o.s.
UN3100 Oxidizing solid, self-heating, n.o.s.
UN3087 Oxidizing solid, toxic, n.o.s.
UN3121 Oxidizing solid, water-reactive, n.o.s.

The following entries would be revised by adding a reference to packaging section ''307'' to Column (8A) for consistency with international regulations regarding exception from the HMR for manufactured articles and apparatuses containing minimal amounts of inert gas. See the discussion of changes to § 173.307 for additional information regarding this proposed change.

UN1006 Argon, compressed
UN1046 Helium, compressed
UN1970 Krypton, compressed
UN1065 Neon, compressed
UN2036 Xenon, compressed

The entry ''Batteries, dry, containing potassium hydroxide solid, *electric storage*'' would be revised by adding to column (7) a reference to proposed new Special provision ''237.''

The entries ''Boron trifluoride,'' UN1008, and ''Hydrogen iodide, anhydrous'' UN2197, would be revised by adding the Class 8 subsidiary hazard label to Column (6) for consistency with international regulations and for consistency with all other Division 2.3 toxic gas entries in the HMT that also have the Class 8 subsidiary hazard.

The entry ''Calcium manganese silicon,'' UN2844 would be revised in Column (7) by removing Special provision ''IP2.'' When this material is transported in other than metal or rigid plastic IBCs, Special provision ''IP2'' specifies they must be transported in a closed freight container or a closed transport vehicle. However, this is inconsistent with other Division 4.3, PG III materials that are not subject to this Special IBC packaging provision.

For consistency with UN Recommendations, the entry ''Chlorine,'' UN1017, would be revised in Column (6) by adding the Division 5.1 subsidiary hazard label. This label will help communicate that this material may cause or enhance the combustion of other materials.

The hazardous materials descriptions for the entries ''Chloronitrobenzene, liquid *ortho,*'' UN3409, and ''Chloronitrobenzenes, solid *meta or para,*'' UN1578, would be revised in Column (2) by removing the italicized word(s). The italicized word(s) associated with the proper shipping names are a potential source of confusion and would be removed for clarification and consistency with the same entries in the UN Recommendations. This revision appears as a ''Remove/Add'' in this rulemaking.

The entries ''Environmentally hazardous substances, liquid, n.o.s.,'' UN3082 and ''Environmentally hazardous substances, solid, n.o.s.,'' UN3077, would be revised by adding a new Special provision ''335'' in Column (7). Special provision ''335'' clarifies that mixtures of non-hazardous solids and environmentally hazardous liquids or solids may be classified as UN3077 provided there is no free liquid visible at the time the substance is loaded or at the time the packaging or transport unit is closed.

In addition to flammable liquid fuel cell cartridges already provided for by the HMR, a number of other rapidly advancing fuel cell technologies employing a range of fuels continue to emerge. In this NPRM, we are proposing to revise the entry for fuel cells containing a flammable liquid (UN3473) to include fuel cell cartridges containing a flammable liquid packed with or contained in equipment, and to add four new proper shipping names to the HMT to describe the range of fuel used in fuel cell cartridges. These entries are (1) water-reactive substances (UN3476); (2) corrosive substances (UN3477); (3) liquefied flammable gas (UN3478); and (4) hydrogen in metal hydride (UN3479). Readers should note that liquefied flammable gases and hydrogen in a metal hydride are both Division 2.1 materials used in fuel cell cartridges. However, the provisions necessary for the safe transportation of these articles are quite different and therefore, it is necessary to distinguish them with separate shipping descriptions.

A new entry ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing corrosive substances,*'' UN3477, would be added.

The proper shipping name for the entry ''Fuel cell cartridges, *containing flammable liquids,*'' UN3473, would be revised in Column (2) to read ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, containing flammable liquids.'' This revision appears as a ''Remove/Add'' in this rulemaking.

A new entry ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing hydrogen in metal hydride,*'' UN3479, would be added.

A new entry ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing liquefied flammable gas,*'' UN3478, would be added.

A new entry ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing water-reactive substances,*'' UN3476, would be added.

The entry ''Gasohol,'' NA1203, would be revised in Column (7) by adding Special provision ''177'' to indicate that mixtures of gasoline and ethanol with less than 10 percent ethanol for use in internal combustion engines (e.g., automobiles) must be assigned the PG II entry regardless of variations in volatility.

The entry ''Gasoline,'' UN1203, would be revised in Column (7) by adding Special provision ''177'' to indicate that gasoline for use in an internal combustion engine (e.g., automobiles) must be assigned the PG II entry regardless of variations in volatility.

The proper shipping name for the entry ''Hydrogen in a metal hydride storage system,'' UN3468, would be revised in Column (2) to read ''Hydrogen in a metal hydride storage

system *or* Hydrogen in a metal hydride storage system contained in equipment *or* Hydrogen in a metal hydride storage system packed with equipment.'' This revision appears as a ''Remove/Add'' in this rulemaking.

A new entry ''1-Hydroxybenzotriazole, anhydrous, *dry or wetted with less than 20 percent water, by mass,*'' UN0508, would be added.

A new entry ''1-Hydroxybenzotriazole, anhydrous, wetted *with not less than 20 percent water, by mass,*'' UN3474, would be added.

The entry ''Hypochlorite solutions,'' UN1791, would be revised by adding the PG III description and associated packaging provisions to Columns (5) and (8), respectively. The PG III information was inadvertently omitted in a final rule under Docket HM–215I (71 FR 78596; December 29, 2006). This revision appears as a ''Remove/Add'' in this rulemaking.

The entry ''Magnesium nitrate,'' UN1474, would be revised in Column (7) by adding a new Special provision ''332.'' Special provision ''332'' specifies magnesium nitrate hexahydrate is not subject to the HMR. Testing conducted by independent laboratories on magnesium nitrate hexahydrate in accordance with Test O.1: *Test for Oxidizing Solids* of the *UN Manual of Tests and Criteria* indicated magnesium nitrate hexahydrate does not have a burning rate to meet the criteria as a Division 5.1 oxidizer.

The hazardous materials description for the entry ''Nitric acid, *other than red fuming, with not more than 70 percent nitric acid,*'' UN2031, PG II would be revised in Column (2) to read ''Nitric acid, other than red fuming, with at least 65 percent, but not more than 70 percent nitric acid'' to conform with proper shipping names that have similar descriptions (e.g., UN3366). This entry would also be revised in Column (7) by adding Special provision ''IP15,'' and in Column (10B) by removing vessel stowage codes ''44,'' ''110,'' and ''111,'' and adding ''74'' in their place. Special provision ''IP15'' specifies that for UN2031 with more than 55% nitric acid, the use of rigid plastic IBCs and composite IBCs with a rigid plastic inner receptacle would be authorized for two years from the date of manufacture of the IBC. Finally, the entry would be revised by adding a Division 5.1 subsidiary hazard label to column (6). This revision appears as a ''Remove/Add'' in this rulemaking.

A new entry ''Nitric acid, *other than red fuming, with less than 65 percent nitric acid,*'' UN2031, PG II would be added.

The entry ''Nitrocellulose, solution, flammable *with not more than 12.6 percent nitrogen, by mass, and not more than 55 percent nitrocellulose,*'' UN 2059, PG II and PG III, would be revised in Column (7) by adding a new Special provision ''198.'' Special provision ''198'' authorizes nitrocellulose solutions containing less than 20% nitrocellulose to be transported as paint or printing ink.

The entry ''Organometallic substance, liquid, water-reactive, flammable,'' UN3399, would be revised in Column (10A) by removing vessel stowage location code ''E'' and adding ''D'' to harmonize with the IMDG Code and SOLAS. Amendments were also made to SOLAS Chapter II–2/Regulation 19 strictly prohibiting the stowage of 4.3 liquids having a flashpoint less than 23 °C under deck or in enclosed roll-on/roll-off (ro-ro) vessel spaces. SOLAS Chapter II–2/Regulation 19 sets out fire-fighting construction and equipment requirements for vessels carrying dangerous goods. We believe this proposed amendment is necessary to avoid the risk of a carrier stowing a package in an enclosed space that is not properly equipped for a Class 4.3 material with a subsidiary Class 3 and a flashpoint less than 23 °C. When a flammable liquid with a flashpoint less than 23 °C is stowed under deck, the space must be ventilated but cannot have electrical equipment in the space. In most cases, natural or mechanical ventilation is used. However, powered ventilation is required for Class 4.3 under deck due to the risk of moisture in the air and the entry of sea water into the hold through the ventilation openings. This proposed change would prohibit only UN3399 from under deck stowage. All other Class 4.3 liquids, with a subsidiary Class 3 and flashpoint less than 23 °C, are not permitted under deck or in enclosed ro-ro spaces under the IMDG Code.

The proper shipping name for the entry ''Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s.,'' UN3344, would be revised in Column (2) to read ''Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. *or* Pentaerythritol tetranitrate mixture, desensitized, solid, n.o.s. *or* PETN mixture, desensitized, solid, n.o.s.,'' to conform to proper shipping names that have similar descriptions (e.g., UN0411). This revision appears as a ''Remove/Add'' in this rulemaking.

The entry ''Polychlorinated biphenyls, solid,'' UN3432 would be revised in Column (7) by adding Special provisions ''IP2'' and ''IP4'' for consistency with similar requirements for ''Polyhalogenated biphenyls, solid *or* Polyhalogenated terphenyls, solid,'' UN3152. Special provisions ''IP2'' and ''IP4'' require IBCs other than metal or rigid plastic to be offered for transportation in a closed freight container or closed transport vehicle and require flexible, fiberboard, or wooden IBCs to be sift-proof and water-resistant or be fitted with a sift-proof or water-resistant liner, respectively.

The entries ''Potassium persulfate,'' UN1492 and ''Sodium persulfate,'' UN1505, would be revised in Column (10B) by removing vessel stowage code ''56'' and adding ''145.''

The proper shipping name for the entry ''Trinitrophenol, wetted,'' UN1344, would be revised in Column (2) to read ''Trinitrophenol, *or* Picric acid, wetted,'' to conform to proper shipping names that have similar descriptions (e.g., UN3364). This revision appears as a ''Remove/Add'' in this rulemaking.

The proper shipping name for the entry ''Trinitrotoluene, wetted,'' UN1356, would be revised to read ''Trinitrotoluene, wetted *or TNT, wetted*,'' to conform to proper shipping names that have similar descriptions (e.g., UN3366). This revision appears as a ''Remove/Add'' in this rulemaking.

A new entry ''Signals, distress, *ship*,'' UN0505, would be added.

A new entry ''Signals, distress, *ship*,'' UN0506, would be added.

A new entry ''Signals, smoke,'' UN0507, would be added.

A new entry ''Powder, smokeless,'' UN0509, would be added. A discussion of changes to § 173.62 provides an explanation of the addition of this new entry.

Currently, no portable tank instructions are assigned to ''Water-reactive liquid, corrosive, n.o.s.,'' UN3129; ''Water-reactive liquid, n.o.s.,'' UN3148; or to the PG I entries for ''Water reactive solid, corrosive, n.o.s.,'' UN3131; and ''Water-reactive solid, n.o.s.,'' UN2813. We would add portable tank assignments (portable tank special provisions) consistent with the ''Guidelines for Assigning Portable Tank Requirements to Substances in Classes 3 to 9.'' These assignments are consistent with similarly classed entries in the HMT. The entries would be revised in Column (7) as follows:

The entry ''Water-reactive liquid, corrosive, n.o.s.,'' UN3129, PG I, would be revised by adding Special provisions ''T14,'' ''TP2,'' and ''TP7.''

The entry ''Water-reactive liquid, corrosive, n.o.s.,'' UN3129, PG II, would be revised by adding Special provisions ''T11'' and ''TP2.''

The entry ''Water-reactive liquid, corrosive, n.o.s.,'' UN3129, PG III, would be revised by adding Special provisions ''T7'' and ''TP1.''

The entry ''Water-reactive liquid, n.o.s.,'' UN3148, PG I, would be revised by adding Special provisions ''T9,'' ''TP2,'' and ''TP7.''

The entry ''Water-reactive liquid, n.o.s.,'' UN3148, PG II, would be revised by adding Special provisions ''T7'' and ''TP2.''

The entry ''Water-reactive liquid, n.o.s.,'' UN3148, PG III, would be revised by adding Special provisions ''T7'' and ''TP1.''

The entry ''Water-reactive solid, corrosive, n.o.s,'' UN3131, PG I, would be revised by adding Special provisions ''T9'', ''TP7,'' and ''TP33.''

The entry ''Water-reactive solid, n.o.s.,'' UN2813, PG I, would be revised by adding Special provisions ''T9'', ''TP7,'' and ''TP33.''

The proper shipping name for the entry ''Xenon,'' UN2036, would be revised to read ''Xenon, compressed,'' UN2036, for consistency with proper shipping names for other compressed gases (i.e., inert gases). This revision appears as a ''Remove/Add'' in this rulemaking.

Appendix B to § 172.101

Appendix B to § 172.101 lists Marine Pollutants regulated under the HMR and prescribes requirements for classifying and describing a marine pollutant. In this NPRM, we are proposing to amend the introductory text and the List of Marine Pollutants to add an allowance for the use of the revised classification criteria for materials toxic to the aquatic environment (marine pollutants) contained in the IMDG Code. Additionally, under Docket HM–215D (66 FR 33316; June 21, 2001 and 67 FR 15743; April 3, 2002), a number of entries were removed because they no longer met the criteria for a ''Marine Pollutant.'' However, some entries were inadvertently retained. Therefore, we are proposing to remove the following entries from the List of Marine Pollutants: ''5–Ethyl–2-picoline,'' ''Ethyl propenoate, inhibited'' ''Isopropenylbenzene,'' and ''2–Phenylpropene.''

Section 172.102

Section 172.102 lists a number of special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. For consistency with international regulations, we propose to amend § 172.102, Special provisions, as follows:

Special provision ''36'' specifies maximum net quantity limits per package for the transport of medicines classified as flammable or toxic (i.e., UN1851, UN3248, and UN3249). These limits are inconsistent with the packaging limits authorized in limited quantity exceptions for these materials. The entries were initially introduced to the UN Recommendations with a special provision limiting the materials to PG II and III and requiring the materials to have a maximum net quantity per package of 5 L or 5 kg. However, since then, these materials have been authorized in the HMR as limited quantities and consumer commodities. This has created an inconsistency between the quantity limits per package in Special provision ''36'' and the limits outlined in the limited quantity exceptions. Therefore, to resolve this inconsistency, we would remove Special provision ''36.''

Special provision ''137'' specifies conditions for exception from the HMR for certain types of vegetable fibers. We propose to revise the Special provision to include ''tampico fiber, dry'' having a minimum baling density of 360 kg/m^3 as being eligible for this exception.

Special provision ''138'' specifies insolubility criteria for lead compounds. We are proposing to revise the Special provision to add clarifying language that specifies lead compounds meeting the insolubility criteria outlined in the Special provision are not subject to the HMR unless they meet the criteria for one of the other hazard classes.

Special provision ''150'' specifies composition limits for uniform mixtures of fertilizers containing ammonium nitrate as the main ingredient. We are proposing to revise the composition limits outlined in paragraph (b) of the provision by adding the words ''and/or mineral calcium sulphate'' after ''dolomite.''

In the final rule under Docket HM–215G (69 FR 76044; December 20, 2004), we added new generic entries to describe Organometallic materials consistent with descriptions added to the UN Recommendations, but allowed the continued use of several specific Organometallic entries (e.g., Dimethylzinc, UN1370). We anticipated removing these remaining entries from the HMT by January 1, 2007. The entries were to be removed because they were superseded by the addition of the more appropriate generic entries. However, they currently remain in the HMT. Therefore, we are proposing to remove the remaining specific Organometallic entries for consistency with the original intent of HM–215G to remove the entries by January 1, 2007. In addition, we are proposing to remove Special provision ''173.'' Special provision ''173'' provides the option to use an appropriate generic entry listed in the HMT to describe the material and was only assigned to Organometallic materials. Since new generic entries have been added to the HMT, and because the Special provision only applies to entries that are to be removed, this Special provision would be rendered obsolete.

Special provision ''177'' requires materials for use in internal combustion engines (e.g., in automobiles) to be assigned the PG II entry regardless of variations in volatility of the material. The Special provision is currently assigned to the entry ''Ethanol and gasoline mixture *or* Ethanol and motor spirit mixture *or* Ethanol and petrol mixture,'' UN3475. However, the provision also applies to the entries ''Gasohol,'' NA1203 and ''Gasoline,'' UN1203. For consistency with UN Recommendations that assign similar provisions to gasoline and mixtures of ethanol and gasoline, and for uniform application of the provision, we are proposing to revise Special provision ''177'' to specify its application to both gasoline and ethanol/gasoline mixtures.

Special provision ''188'' specifies conditions for exception from the HMR for small lithium cells and batteries. We propose to revise the Special provision to require the reporting of incidents, including those which result in the production of smoke, sparks, or a dangerous evolution of heat.

Special provision ''189'' specifies conditions for exception from the HMR for medium lithium cells and batteries. We propose to revise the Special provision to require the reporting of incidents including those which result in the production of smoke, sparks, or a dangerous evolution of heat.

A new Special provision ''198'' would be added to permit nitrocellulose solutions containing less than 20% nitrocellulose to be transported as paint or printing ink, as applicable.

A new Special provision ''237'' would be added to specify that ''Batteries, dry, containing potassium hydroxide solid, *electric storage*'' must be prepared and packaged in accordance with the requirements of § 173.159(a), (b) and (c), and for transportation by aircraft, § 173.159(d)(2).

A new Special provision ''332'' would be added to specify magnesium nitrate hexahydrate is not subject to the HMR.

A new Special provision ''335'' would be added to clarify proper classification of mixtures of solids which are not

subject to the HMR and environmentally hazardous liquids or solids. Special provision ''335'' specifies these mixtures would be classified as UN3077 and may be transported under that entry provided there is no free liquid visible at the time the material is loaded or the packaging or transport unit is closed.

A new Special provision ''IP15'' would be added to indicate that for ''Nitric acid,'' UN2031, with more than 55% nitric acid, the use of rigid plastic IBCs and composite IBCs with a rigid plastic inner receptacle is permitted for two years from the date of manufacture of the IBC.

A new Special provision ''N90'' would be added to prohibit the use of metal packagings for transport of ''1-Hydroxybenzotriazole, anhydrous, wetted *not less than 20 percent water, by mass*,'' UN3474.

Special provision ''TP12'' would be removed. This provision states ''this material is considered highly corrosive to steel.'' The phrase ''highly corrosive to steel'' is not defined by any specific criteria. Further, ''TP12,'' unlike other TP codes, is simply a statement and does not apply any regulatory requirement. It is unclear if all highly corrosive materials are assigned Special provision ''TP12'' or if this statement provides any useful guidance for selecting an appropriate portable tank. Therefore, we propose to delete Special provision ''TP12'' from § 172.102(c)(8) *''TP'' Codes*.

Section 172.202

Section 172.202 establishes the requirements for the description of hazardous materials on shipping papers. The UN Recommendations do not require the subsidiary hazard to be indicated on the shipping paper when a subsidiary hazard label is not required. We agree that the requirement to indicate the subsidiary hazard on the shipping paper should be consistent with the requirement to apply a subsidiary risk label. Therefore, we propose to harmonize with the UN Recommendations by making an appropriate revision to § 172.202(a)(2) to specify that the subsidiary hazard class or division number is not required to be entered when a corresponding subsidiary hazard label is not required. We also propose to revise paragraph (a)(4) to clarify that the packing group is not required to be indicated on a shipping paper for explosives, self-reactive substances, batteries other than those containing sodium, and organic peroxides in addition to entries that are not assigned a packing group. In addition, we also propose to revise paragraph (a)(6) to clarify that for all articles where ''No Limit'' is shown in Column (9A) or (9B) of the HMT, the quantity must be the gross mass, following the letter ''G.''

Section 172.322

Section 172.322 specifies marking requirements for vessel transportation of each non-bulk packaging and bulk packaging that contains a marine pollutant. In this NPRM we are proposing to adopt the new marking for marine pollutants that has been incorporated into the IMDG Code. We are proposing mandatory use of this marking one year after publication of the final rule. Commenters are requested to submit remarks regarding the impact of adopting a one-year compliance date. As part of their petition to PHMSA (P–1516), DGAC recommended inclusion of the new marine pollutant mark in the HMR.

Section 172.400a

Section 172.400a establishes exceptions for labeling requirements. Currently, the UN Recommendations do not require a package labeled with a Division 4.2 label to bear a Division 4.1 subsidiary hazard label. This is primarily because the Division 4.2 label communicates a more severe spontaneously combustible flammability hazard and as such the Division 4.1 label is not considered to provide additional hazard communication value. In this NPRM, we propose to revise paragraph (c) to include a similar exception.

Section 172.401

Section 172.401 establishes specific requirements for prohibited labeling. We received a petition (P–1494) from the DGAC requesting that PHMSA specify that pictograms described in the United Nations Globally Harmonized System of Classification and Labelling are not prohibited under the HMR. In its petition, DGAC states that the UN Economic and Social Council's Committee of Experts on the Transport of Dangerous Goods and on the GHS established the goal of implementing the GHS in 2008. DGAC contends that to facilitate international trade, it is important that packages bearing GHS pictograms are acceptable for transportation in the United States. DGAC also states that GHS pictograms may already appear on packages used in transportation and cites Annex 7 of the GHS showing examples of GHS pictograms appearing on drums. Pictograms prescribed by GHS are not identical to labels required under the UN Recommendations or the HMR; such pictograms typically consist of a red bordered diamond with a hazard symbol such as a ''flame'' or a ''skull and cross-bones.'' DGAC expects these GHS pictograms to be smaller in size than the transport labels required under the HMR and international regulations.

We agree with DGAC that the GHS pictograms should be permitted on packages intended for transportation in the United States to facilitate international trade. We also believe that such a revision will not diminish the current level of safety affecting these materials. Therefore, in this NPRM, we are proposing to amend § 172.401 which prohibits the transportation of packages bearing any mark or label that could be confused or conflict with a label required under the HMR, to specify that restrictions under this section do not apply to packages labeled in conformance with the GHS.

Section 172.446

Section 172.446 specifies the requirements for Class 9 labels. Unlike the HMR, the international regulations do not have a solid horizontal line dividing the lower and upper half of the Class 9 label. The Class 9 label in § 172.446 depicts a solid horizontal line. For consistency with international regulations and to provide relief to the regulated community, in this NPRM, we propose to revise paragraph (b) to allow a solid horizontal line as an option.

Section 172.448

Section 172.448 establishes the specifications for the ''CARGO AIRCRAFT ONLY'' label. For consistency with international regulations, in this NPRM, we are proposing to replace the current label. The symbol of this label is not altered; however the text is revised to read, ''Forbidden in Passenger Aircraft.'' In addition, we propose to authorize continued use of the current label until January 1, 2013.

Part 173

Section 173.4

Section 173.4 establishes the requirements for exceptions to the HMR for small quantities of Class 3, Division 4.1, Division 4.2 (PG II and III), Division 4.3 (PG II and III), Division 5.1, Division 5.2, Division 6.1, Class 7, Class 8, and Class 9 materials. Recently, provisions for the transport of hazardous materials in excepted quantities were incorporated into the UN Regulations and the IMDG Code. These provisions are based largely on existing excepted quantity provisions provided by the ICAO TI. The provisions permit certain small quantities of hazardous materials

to be transported with minimal regulation, but ensure a high level of safety through stringent packaging and testing requirements.

The excepted quantity provisions adopted within the UN Regulations and the small quantity provisions of the HMR are similar, but not identical. For example, differences include variations in the authorized hazard classes and packing groups; differences in the quantities authorized per package; and differences in marking, documentation and incident reporting requirements. We believe that aligning the existing small quantity provisions in the HMR with the excepted quantity provisions for air and vessel transportation will enhance harmonization and increase safety. Therefore, for consistency with the UN Recommendations and to increase safety and facilitate international transportation, in this NPRM, we are proposing to adopt a new excepted quantity provision for transportation by aircraft and vessel into a new § 173.4a. We stress that we are not proposing to remove the existing small quantity provisions in 173.4, but rather proposing to limit the use of these provisions to domestic highway and rail transportation. We also propose to move the exception for small quantities—less than 1 gram for solids and less than 1 milliliter for liquids per inner packaging currently found in § 173.4(e)—to a new § 173.4b. This would align the requirements of the HMR with those of the ICAO TI and the IMDG Code for transport by air and vessel, while maintaining the existing small quantity exceptions for domestic highway and rail transport. We welcome comments regarding the potential for confusion and any cost impacts resulting from this change. Small quantity exceptions would be separated into the following three sections:

(1) Section 173.4 for small quantities transported by domestic highway and rail only;

(2) Section 173.4a for excepted quantities transported by aircraft and vessel; and

(3) Section 173.4b for de minimis quantities of material (less than 1 gram for solids and less than 1 milliliter for liquids per inner packaging) transported by all modes.

In addition, we considered extending the allowance for small quantity exceptions to fuel cells. Fuel cells by design offer a high degree of integrity and often contain a relatively small amount of hazardous material. However, we wish to maintain the level of safety ensured by the rigorous testing and packaging required for fuel cell cartridges of various types required by the provisions proposed in § 173.230. Therefore, in this NPRM, we propose to revise § 173.4(d) to specify that fuel cell cartridges are not eligible for the small quantity exceptions.

Sections 173.12 and 173.134

Section 173.12 establishes exceptions for shipments of waste materials. Section 173.134 establishes definitions, classification criteria, and exceptions for Division 6.2 (infectious substances). On January 28, 2008, we published a final rule under Docket HM–218D (73 FR 4699) that added a new paragraph (f) in § 173.12 to specify that household waste, as defined in § 171.8, is not subject to the HMR. In addition, we revised a household waste exception in § 173.134(b)(13)(i) to reference the household waste definition in § 171.8. Upon publication of the final rule, we received a comment expressing concern with the implementation of these amendments. The commenter, Regulatory Resources Inc., expressed concern that this amendment was too broad and would allow entities such as large hotels undergoing renovation to offer their waste, including hazardous materials, for transportation as non-regulated materials. This was not our intention. In an effort to reduce confusion, we are proposing to revise these two sections to specify that household waste is not subject to the HMR when transported in accordance with applicable state, local, or tribal requirements.

Section 173.24b

Section 173.24b establishes additional general requirements for bulk packagings. In this NPRM, we are proposing to add a new paragraph to clarify that IBCs and Large Packagings that are not designated and tested for stacking may not be stacked during transportation. In addition, we are also proposing to clarify that IBCs and Large Packagings that are intended for stacking may not have more weight superimposed upon them than is marked on the packaging.

Section 173.62

Section 173.62 establishes specific packaging requirements for explosives. We received a petition (P–1505) from the Sporting Arms & Ammunition Manufacturers' Institute (SAAMI) requesting that PHMSA include a new proper shipping name ''Powder, smokeless,'' UN0509, to the § 172.101 HMT and to include the new entry among the explosives assigned Packaging Instruction 114(b) in § 173.62. In its petition, SAAMI states that the UN Sub-Committee of Experts on the Transport of Dangerous Goods adopted a proposal by SAAMI to add the new entry to its Dangerous Goods List and a related change to the packing provisions in the UN Recommendations.

Typically, we harmonize with the UN following the formal adoption of a proposal into the published version of the UN Recommendations. However, because of the limited scope of this amendment and because the new entry allows for a more accurate classification of smokeless powder, we are proposing to amend § 173.62 to include a new entry UN0509 to the Explosives Table, which specifies the Packing Instruction assigned to each explosive, and to add a reference to the new entry in Packing Instruction 114(b). We also propose to include a ''D'' in column 1 of the table entry to indicate that the entry is appropriate for domestic use but may not be appropriate for international transportation. Following the adoption of the entry within the IMDG Code and the ICAO TI, this indication would no longer be necessary, and it is our intention to remove the ''D'' in a future rulemaking consistent with the adoption of the entry within the aforementioned international regulations.

Additionally, consistent with our proposal to add new entry ''1-Hydroxybenzotriazole, anhydrous, dry or wetted with less than 20% water, by mass,'' Division 1.3C, UN0508, to the HMT, we are adding this material under Packing Instruction ''114(b).'' We propose to revise this instruction to specify that, for UN0508, inner packagings are not required if drums are used as the outer packaging. We also propose to add a new sentence under Packing Instruction 114(b) to prohibit metal packagings for UN0508. In addition, we propose to clarify that inner packagings are not necessary if drums are used as the outer packaging for UN0160 and UN0161.

Section 173.115

The HMR define a Division 2.2 material (non-flammable, nonpoisonous compressed gas—including compressed gas, liquefied gas, pressurized cryogenic gas, compressed gas in solution, asphyxiant gas and oxidizing gas) as any material or mixture that ''exerts in the packaging an absolute pressure of 280 kPa (40.6 psia) or greater at 20 °C (68 °F), or is a cryogenic liquid, and does not meet the definition of Division 2.1 or 2.3.'' Recently, the definition of Division 2.2 gases in the UN Recommendations was amended to include all liquefied gases, irrespective of their pressure. This amendment was made on the basis that certain liquefied gases that pose no pressure hazard at

ambient pressures and temperatures may exhibit a pressure hazard under conditions normally encountered in transport, such as increased temperature. In addition, the pressure of a Division 2.2 gas was amended to be 302 kPa absolute (43.8 psi); a slight increase from the current threshold of 280 kPa absolute (40.6 psi). In order to enhance safety and to maintain global uniformity with respect to the classification of Division 2.2 gases, we are proposing to adopt these amendments. Additionally, in this NPRM, we are proposing to re-designate current paragraph (k) as a new paragraph (l). The new paragraph (k) would read ''For Division 2.2 gases, the oxidizing ability shall be determined by tests or by calculation in accordance with ISO 10156:1996 and ISO 10156–2:2005 (IBR, see § 171.7 of this subchapter.)'' This revision would require the use of specific test and calculation methods for a more accurate determination of the oxidizing ability of Division 2.2 gases. Additionally, we propose to revise § 171.7 to incorporate these ISO standards.

Section 173.137

Section 173.137 establishes packing group criteria for corrosive (Class 8) materials. In this NPRM, we are proposing to add a note to clarify that an additional test on the second material is not required when the initial test on either steel or aluminum indicates the material is corrosive.

Sections 173.162, 173.164, 173.166, 173.186, 173.306, 173.307, 175.10

The ICAO TI recently adopted new amendments to require additional information to be included on the ''air waybill'' for certain hazardous materials. Currently, a number of hazardous materials are excepted from the full regime of the hazard communication requirements that generally apply to the transport of hazardous materials in the ICAO TI when certain conditions are met to ensure an appropriate level of safety. An example is non-spillable batteries, which are excepted if certain conditions specified in Special provision A67 of the ICAO TI are met. Frequently, the ICAO TI contains more restrictive or additional requirements and conditions that apply for air transportation. The special provisions that address these requirements contain packaging provisions, prohibitions, and exceptions from requirements for particular quantities or forms of materials. Many shippers may not be familiar with the regulations and special requirements for the transportation of dangerous goods by air as some shippers may only occasionally ship dangerous goods by air. Frequently, these shippers will offer hazardous materials in the same manner received when the initial mode of transport may have been surface transport.

Shipments of undeclared or improperly prepared hazardous materials, particularly in the air mode, pose a significant safety threat. Improper packing and handling of these shipments could result in a release or a failure to communicate the inherent hazard or risk of the materials to emergency responders and transportation workers. Improperly packaged batteries, electrical devices, and articles such as lighters which contain ignition devices can serve as a source of fire if damaged during handling and transport. The issue of undeclared dangerous goods has received significant attention in recent years. The actual number of undeclared hazardous materials shipments is not known but when reported is generally related to an incident or accident in air transport.

In addition, operator and freight forwarder personnel, particularly those accepting general cargo (non-hazardous materials) are trained to be alert for undeclared or ''hidden'' hazardous materials. Consignments of packages marked with key words such as ''lithium batteries,'' ''chemicals,'' and the like, or with certain markings and labels may be challenged by carriers or freight forwarders and acceptance delayed, while the shipper verifies that the goods are not regulated. Infrequent consignors and those that have not received appropriate training must still be aware of the applicable requirements. The air acceptance process is based on a system of checks and balances that ensures that hazardous materials are properly prepared in accordance with the ICAO TI and in full compliance with all applicable safety requirements. When hazardous materials are offered for transportation in compliance with all applicable requirements, the risk in transport is significantly reduced. To enable air carriers to ascertain that a shipment conforms to applicable requirements, in this NPRM, for transportation by aircraft, we are proposing a number of amendments consistent with recently adopted amendments in the ICAO TI. Specifically we are proposing to require the consignor to include on the ''air waybill'' an indication that a hazardous material or article has met the applicable conditions for transport. This indication will allow freight forwarders and operators to verify that the consignor is aware of, and has complied with, the applicable regulatory requirements. Additionally, it will reduce the likelihood of unnecessary carrier delays by improving communication.

Section 173.196

Section 173.196 establishes packaging requirements for Category A infectious substances. In this NPRM, we are proposing to revise paragraphs (a)(1) and (a)(2) by replacing the word ''watertight'' with ''leakproof.'' These proposed revisions are consistent with international regulations. No substantive changes to the packaging requirements are intended by this wording change.

Section 173.206

In this rulemaking, we are proposing to add a new packaging section (§ 173.206) to the HMR to harmonize with new packaging requirements for water-reactive chlorosilanes adopted in the Fifteenth revised edition of the UN Recommendations. The enhanced packaging requirements more adequately address the water-reactive properties of these materials. We are also evaluating whether packaging for other water-reactive materials should also be enhanced. Depending on the outcome of our evaluation, we may propose further amendments to the UN Recommendations and the HMR. In the meantime, the entries affected by the proposed addition of new packaging § 173.206 are as follows:

UN1724 Allyltrichlorosilane, stabilized
UN1728 Amyltrichlorosilane
UN1747 Butyltrichlorosilane
UN1753 Chlorophenyltrichlorosilane
UN2986 Chlorosilanes, corrosive, flammable, n.o.s.
UN2987 Chlorosilanes, corrosive, n.o.s.
UN2985 Chlorosilanes, flammable, corrosive, n.o.s.
UN3362 Chlorosilanes, toxic, corrosive, flammable, n.o.s.
UN3361 Chlorosilanes, toxic, corrosive, n.o.s.
UN1762 Cyclohexenyltrichlorosilane
UN1763 Cyclohexyltrichlorosilane
UN2434 Dibenzyldichlorosilane
UN1766 Dichlorophenyltrichlorosilane
UN1767 Diethyldichlorosilane
UN1162 Dimethyldichlorosilane
UN1769 Diphenyldichlorosilane
UN1771 Dodecyltrichlorosilane
UN2435 Ethylphenyldichlorosilane
UN1196 Ethyltrichlorosilane
UN1781 Hexadecyltrichlorosilane
UN1784 Hexyltrichlorosilane
UN2437 Methylphenyldichlorosilane
UN1250 Methyltrichlorosilane
UN1799 Nonyltrichlorosilane
UN1800 Octadecyltrichlorosilane
UN1801 Octyltrichlorosilane
UN1804 Phenyltrichlorosilane
UN1816 Propyltrichlorosilane

UN1298 Trimethylchlorosilane
UN1305 Vinyltrichlorosilane, stabilized

Section 173.222

Section 173.222 specifies the requirements for dangerous goods in machinery or apparatus. Paragraph (c) of this section specifies the total net quantity limits contained in one item of machinery or apparatus. Consistent with the ICAO TI, we are proposing to prohibit Division 2.2 gases with subsidiary risks and refrigerated liquefied gases for transportation by aircraft as dangerous goods in machinery or apparatus.

Section 173.225

Section 173.225 specifies packaging requirements and other provisions for organic peroxides. When the § 172.101 table specifies this section, the organic peroxide must be packaged and offered for transportation in accordance with the provisions of this section. Each packaging must also conform to the general requirements of Subpart B of Part 173 and to the applicable requirements of Part 178 of the HMR. Specifically, organic peroxides that require temperature control are subject to § 173.21(f). When an IBC or bulk packaging is authorized and meets the requirements of paragraph (f) or (h) of § 173.225, respectively, lower control temperatures than those specified for non-bulk packaging may be required. An organic peroxide not identified in paragraph (c), (e), or (g) of § 173.225 by technical name, or not assigned to a generic type in accordance with paragraph (b)(3) of this section, must conform to the requirements in paragraph (c) of § 173.128.

The Organic Peroxides Table specifies by technical name those organic peroxides that are authorized for transportation and not subject to the approval provisions of § 173.128. An organic peroxide identified by technical name is authorized for transportation only if it conforms to all applicable provisions of the table. In this NPRM, we are proposing to amend the Organic Peroxides Tables by adding new entries, revising current entries, and adding new Notes ''29,'' ''30,'' and ''31'' following the Organic Peroxides Table. New Note ''29'' would indicate that specific entries are not subject to the requirements of this subchapter for Division 5.2. New Notes ''30'' and ''31'' would indicate that for specific entries, organic peroxides with a boiling point greater than 130 °C (266 °F) or available oxygen less than or equal to 6.7% are acceptable. We are also proposing to add new entries to the Organic Peroxide IBC Table in paragraph (e) of this section.

The following current entries in the Organic Peroxides Table would be amended:

UN3101 tert-Amyl peroxy-3,5,5-trimethylhexanoate
UN3117 Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water]

The following entries would be added to the Organic Peroxides Table:

UN3119 tert-Amyl peroxyneodecanoate
UN3119 tert-Amyl peroxypivalate
UN3106 tert-Butyl peroxy 3,5,5-trimethlyhexanoate
UN3115 Cumyl peroxyneodecanoate
Exempt Cyclohexanone peroxide(s)
UN3105 2,2-DI-(tert-amylperoxy)-butane
Exempt Dibenzoyl peroxide
UN3109 tert-Butyl peroxybenzoate
UN3103 1,1-DI-(tert-butylperoxy)-cyclohexane
UN3109 1,1-Di-(tert-Butylperoxy) cyclohexane
UN3105 1,1-DI-(tert-butylperoxy)-cyclohexane + tert-butylperoxy-2-ethylhexanoate
Exempt Di-(2-tert-butylperoxyisopropyl) benzene(s)
UN3103 1,1-DI-(tert-butylperoxy)-3,3,5-trimethylcyclohexane
UN3118 DI–2,4-dichlorobenzoyl peroxide
Exempt Di-4-chlorobenzoyl peroxide
Exempt Dicumyl peroxide
UN3119 Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water]
UN3119 Di-(2-neodecanoyl-peroxyisopropyl) benzene, as stable dispersion in water
UN3115 3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate
UN3117 3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate
UN3119 3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate [as a stable dispersion in water]
UN3109 Methyl isopropyl ketone peroxide(s)
UN3107 3,3,5,7,7-Pentamethyl-1,2,4-trioxepane

A new Note ''30'' would be added following the Organic Peroxides Table to read:

''Diluent type B with boiling point > 130 °C (266 °F).''

A new ''Note ''31'' would be added following the Organic Peroxides Table to read:

''Active oxygen ≤ 6.7%.''

The following entries would be revised or added to the Organic Peroxide IBC Table as follows:

UN3109 tert-Butyl peroxybenzoate, not more than 32% in diluent type A
UN3109 1,1-Di-(tert-Butylperoxy) cyclohexane, not more than 37% in diluent type A
UN3119 tert-Anyl peroxypivalate, not more than 32% in diluent type A
UN3119 tert-Butyl peroxyneodecanoate, not more than 52%, stable dispersion, in water
UN3119 Di-(2-neodecanoylperoxyisopropyl) benzene, not more than 42%, stable dispersion, in water
UN3119 3-Hydroxy-1,1-dimethylbutyl peroxy-neodecanoate, not more than 52%, stable dispersion, in water

In addition, in the Organic Peroxide Portable Tank Table, UN3119 ''Di-(3,5,5-trimethyl-hexanoyl) peroxide, not more than 38% in diluent type A'' would be revised, and UN3119 ''tert-Amyl peroxyneodecanoate, not more than 47% in diluent type A'' would be added as a new entry.

Section 173.226

Section 173.226 establishes non-bulk packaging requirements for Division 6.1 PG I, Hazard Zone A materials. In this NPRM, we are proposing to editorially revise paragraph (c) to enhance accuracy, reduce misunderstanding, and provide a more user-friendly format.

Section 173.230

Section 173.230 establishes provisions for the transportation of fuel cell cartridges containing flammable liquids. As portable electronic devices continue to evolve, developers of fuel cell technologies are considering various types of fuel sources to meet increasing power demands. In addition to the flammable liquid fuel cell cartridges currently addressed in the HMR, fuel cell technologies may employ a range of fuels, including hydrogen in a metal hydride, butane, borohydrides and formic acid. The fuels may be a gas such as hydrogen in a metal hydride or butane that meets the defining criteria for a Division 2.1 material; a solid borohydride (including formulations) that meets the defining criteria for a Division 4.3 material; or liquid or solid formulations that meet the defining criteria as a Class 8 material (e.g., sodium borohydride, or formic acid).

Provisions addressing these fuel cell technologies have already been adopted in the Fifteenth revised edition of the UN Recommendations, the ICAO TI and the IMDG Code. Additionally, we have received petitions from HMT Associates, L.L.C. (P–1517) and the U.S. Fuel Cell Council (P–1518) requesting that we align the HMR provisions for fuel cell systems and cartridges with international standards. Consistent with DOT's strategic goals of ensuring safety while utilizing 21st century technology, we are proposing to add four new proper shipping names to the HMT to describe the range of fuel used in fuel cell cartridges: ''Water-reactive substances,'' UN3476; ''Corrosive substances,'' UN3477; ''Liquefied flammable gas,'' UN3478; and ''Hydrogen in metal hydride,'' UN3479.

This proposal will provide guidance for the safe transportation of fuel cells and will introduce a greater variety of technology into the global market place. The type of hazard would not be included in the proper shipping name but, instead, would be identified by the hazard class or division (e.g., 2.1; 3; etc.). Readers should note that liquefied flammable gases and hydrogen in a metal hydride are both Division 2.1 materials used in fuel cell cartridges. However, the provisions necessary for the safe transportation of these articles are quite different and therefore, it is necessary to distinguish them with separate shipping descriptions. In addition, because fuel cell cartridges may contain any number of hazardous materials, we also propose to revise § 173.230 to provide a comprehensive system to address the requirements for fuel cell cartridges containing various hazardous materials. Paragraph (a) of this section would outline requirements applicable to fuel cell cartridges containing any authorized fuel, while paragraphs (b), (c), and (d) would outline additional requirements unique to each fuel cell type. Further, paragraph (e) would provide a list of authorized packages and configurations, with paragraph (f) describing the additional requirements for the transportation of fuel cell cartridges by aircraft, including transport by passengers and crewmembers. Finally, paragraphs (g) and (h) would outline the limited quantity and consumer commodity provisions, respectively.

In addition, for consistency with the ICAO TI in regard to the transportation of fuel cell cartridges, in § 175.10, we propose to expand the types of fuel cell cartridges permitted in carry-on baggage by airline passengers and crew to include water-reactive substances and hydrogen in a metal hydride. Fuel cells permitted for transport by passengers and crew must continue to conform to certain rigorous performance criteria outlined in § 175.10.

Section 173.304(b)

Section 173.304(b) specifies additional requirements for liquefied compressed gases in UN pressure receptacles. In a final rule published on June 12, 2006, under Docket PHMSA–2005–17463 (HM–220E) entitled ''UN Cylinders,'' (71 FR 33858), we adopted the filling limits for liquefied compressed gases and mixtures in UN pressure receptacles specified in the UN Recommendations. Based on a review of the P200 filling limits, we lowered the filling limits for ten gases and added a table under paragraph (c) in § 173.304b to specify the revised filling limits. The UN Recommendations subsequently adopted these revised filling limits. Since there is no longer a need for the revised filling limits for liquefied compressed gases in the HMR, in this NPRM, we propose to remove paragraph (c) of § 173.304b in its entirety. Current paragraphs (d) and (e) would be re-designated accordingly.

Section 173.306

Section 173.306 establishes transportation requirements for limited quantities of compressed gases. The ICAO TI have incorporated provisions for the transportation of limited quantities of compressed gases in plastic aerosols to keep abreast with new technology and on the basis that plastic aerosols provide a level of safety equivalent to other authorized packagings. Although the HMR do not currently allow the transportation of these plastic aerosols by air, PHMSA has issued several Special Permits authorizing such transportation with certain restrictions, such as shipping paper, labeling, marking, and packaging requirements. We have reviewed these materials from a risk/safety perspective, and based on an equivalent level of safety determination established by the Special Permits, and a record of the safe transportation of plastic aerosols, we are proposing to adopt requirements for the construction and use of plastic aerosols within the HMR. We believe this proposed amendment will also enhance international harmonization and provide relief to the regulated community by reducing the need for Special Permits to transport these materials. A new aerosol specification ''2S'' is proposed for inclusion in § 173.306, with corresponding requirements as detailed in a new § 178.33b.

We are also proposing to revise paragraph (j) to require the consignor to include on an air waybill or other shipping documentation an indication that a hazardous material or article has met the applicable conditions for air transport. This indication will allow freight forwarders and operators to verify that the consignor is aware of, and has complied with, the applicable regulatory requirements.

Section 173.307

Section 173.307 specifies exceptions for compressed gases. The ICAO TI have Special provision (A69) excepting from regulation articles containing minimal amounts of gallium, mercury, or inert gas. Based on a review that indicated the special provision was not assigned appropriately among all inert gases, ICAO proposed to assign the special provision to all the inert gases concerned. The HMR do not currently have a similar provision for inert gases, although the HMR have the same exception for articles containing gallium or mercury in §§ 173.162 and 173.164, respectively. Rather than adding a new special provision, we are proposing to add to this section a general exception for articles containing inert gas. This exception would specify that manufactured articles or apparatuses, each containing not more than 100 mg of inert gas and packaged so that the quantity of inert gas per package does not exceed 1 g, are not subject to the HMR.

Section 173.322

Section 173.322 establishes specific packaging requirements for ethyl chloride (UN1037). Recently, PHMSA became aware of an incident involving an aluminum compressed gas cylinder containing ethyl chloride. The investigation of this incident suggests the possibility that a reaction occurred within the aluminum cylinder as a result of the incompatibility between the ethyl chloride gas and the aluminum cylinder. The HMR currently prohibit the transportation of ethyl chloride in UN pressure receptacles constructed of aluminum alloy but have no such prohibition for specification cylinders. To address this occurrence, in this NPRM, we are proposing to prohibit the filling of specification cylinders made of aluminum alloy (e.g., DOT 3AL) with ethyl chloride.

Part 175

Section 175.10

Section 175.10 establishes exceptions for the transportation of certain hazardous materials by aircraft, including hazardous materials that may be carried by passengers, crewmembers, and air operators in checked or carry-on baggage. In this NPRM, we are proposing to revise the exception for dry ice in paragraph (a)(10) to clarify that dry ice carried in both carry-on and checked baggage is subject to the approval of the aircraft operator.

As noted under the discussion in § 173.230, we are also proposing to revise paragraph (a)(18) to expand the types of fuel cell cartridges permitted in carry-on baggage by airline passengers and crew. Fuel cells permitted for transport by passengers and crewmembers must continue to conform to the rigorous performance criteria outlined in § 175.10.

In addition, we are proposing to revise paragraph (a) and add a new paragraph (c) to specify that the

requirements to submit incident reports under §§ 171.15 and 171.16 of this subchapter apply to the air carrier.

Section 175.33

Section 175.33 establishes requirements for shipping papers and notification of pilot-in-command for hazardous materials transported by aircraft. We are proposing several amendments to strengthen and clarify these requirements, harmonize with international standards, and address a recommendation of the National Transportation Safety Board (NTSB) arising out of a 2006 incident.

On February 7, 2006, United Parcel Service Company (UPS) flight 1307, landed at its destination, Philadelphia International Airport, after a cargo smoke indication in the cockpit. The flight crewmembers evacuated the airplane upon landing and sustained minor injuries. The aircraft and most of the cargo, however, were destroyed. In its investigation of the incident, the NTSB determined that UPS personnel were able to retrieve the notice to captain (NOTOC), which contained information on the hazardous materials on board the airplane. However, NTSB also determined that personnel did not provide emergency responders with detailed information about the hazardous materials on board the airplane in a timely manner, and such a delay could have potentially created a safety hazard. As a result of its findings, NTSB recommended that PHMSA ''require aircraft operators that transport hazardous materials to immediately provide consolidated and specific information about hazardous materials on board an aircraft, including proper shipping name, hazard class, quantity, number of packages, and location to on-scene emergency responders upon notification of an accident or incident.'' (NTSB Recommendation A–07–106)

The HMR currently require aircraft operators to make available, upon request, to an authorized official of a Federal, State, or local government agency, including an emergency responder, at reasonable times and locations, the documents or information required by § 175.33, which include shipping papers and notification of pilot-in-command. However, aircraft operators are not required to provide hazardous materials information to emergency responders immediately upon notification of an accident or incident. We agree with NTSB that delays in the transmittal of information to emergency responders could delay timely and effective response to incidents. Under the Docket HM–206C NPRM published on March 25, 2003 (68 FR 14341), we stated that the ''information'' must be provided to an emergency responder with no undue delay.'' Therefore, in this NPRM, we are proposing to revise paragraph (c)(4) of this section to require aircraft operators that transport hazardous materials to provide immediate and specific information about hazardous materials on board an aircraft, including proper shipping name, hazard class, quantity, number of packages, and location, to on-scene emergency responders in the event of an accident or incident.

In addition, for consistency with international regulations, in this NPRM, we are proposing to add a new paragraph (a)(11) to specify that for ''Carbon dioxide, solid (dry ice),'' UN1845, only the UN number, proper shipping name, class, total quantity, exact location aboard the aircraft, and the airport at which the package(s) is to be unloaded need be provided.

In response to a FedEx Express petition, [P–1490], we are also proposing to revise § 175.33(a)(1)(i) to remove the requirement that the type of package must be included on the notification of pilot-in-command.

Section 175.75

Section 175.75 specifies the requirements for quantity limitations and cargo locations for hazardous materials transported by aircraft. Paragraph (d) requires that each package containing a hazardous material acceptable only for cargo aircraft must be loaded in such a manner that a crew member or other authorized person can access, handle and when size and weight permit, separate such packages from other cargo during flight. To increase flexibility in these stowage requirements, we believe we can expand this requirement to allow for the stowage of these materials in inaccessible cargo compartments without decreasing the current level of safety, provided the compartment has an FAA-approved fire or smoke detection system and a fire-suppression system. Therefore, in this NPRM, we are proposing to revise paragraph (d) to provide an alternative that a package containing a hazardous material acceptable only for cargo aircraft may be loaded in an inaccessible cargo compartment provided the compartment has an FAA-approved fire or smoke detection system and a fire-suppression system. Accordingly, we would also revise paragraph (d) to provide for a more user-friendly format.

Section 175.88

Section 175.88 specifies the requirements for the inspection, orientation and securing of packages of hazardous materials transported by aircraft. We are proposing to revise paragraph (c) to specify that packages of hazardous materials must be secured at all times in an aircraft in a manner that will prevent shifting or prevent a change in the position of the packages in the cargo compartment.

Part 176

Section 176.2

Section 176.2 establishes definitions specific to the transportation of hazardous materials by vessel. In this NPRM, we are proposing to editorially revise the definition for ''Commandant'' to update a routing designation.

Section 176.3

Section 176.3 establishes requirements for shipments of hazardous materials that are unacceptable for transportation by vessel, and requires compliance with parts 172 and 173 of the HMR. In this NPRM, we are proposing to specify that compliance with part 171 is also required.

Section 176.84

Section 176.84 establishes requirements for stowage and segregation for cargo vessels and passenger vessels. Consistent with proposed revisions for certain materials in the HMT, we are proposing to remove stowage codes ''134,'' ''139,'' and ''140,'' and add a new stowage code ''145.'' Stowage code 140 is assigned to ''Aluminum alkyl halides, liquid,'' UN3052, and ''Aluminum alkyl halides, solid,'' UN3461. Both of these shipping descriptions are proposed to be removed consistent with the adoption of appropriate generic organometallic entries. Stowage code ''139'' provides instruction to ''stow 'separated from' mercury salts.'' The provision is a duplicate of stowage code ''70,'' and both codes are assigned to the entry ''1,4-Butynediol,'' UN2716. Additionally, stowage code ''139'' is only assigned to this specific entry. Therefore, we are proposing to remove stowage code ''139.'' Stowage code ''140'' provides instruction to ''stow 'separated from' UN3052 and UN3461,'' which are identification numbers for aluminum alkyl halides in liquid and solid form, respectively. These entries are proposed to be removed in this rule. Consistent with the removal of these UN numbers from the hazardous materials table we are proposing to remove stowage code ''140.'' Stowage code ''145'' provides instruction to ''stow 'separated from' ammonium compounds

except for UN1444.'' The stowage code is assigned to ''Potassium persulfate,'' UN1492, and ''Sodium persulfate,'' UN1505. These materials may form explosive mixtures with ammonium compounds; however, they do not react dangerously or form explosive mixtures when in contact with ''Ammonium persulphate,'' UN1444. Finally, in order to fully align the HMR with the IMDG Code, a new vessel stowage code ''146'' is added to specify that, ''Category B stowage applies for unit loads in open cargo transport units.'' The new vessel stowage code ''146'' is assigned to ''Batteries, wet, filled with acid, *electric storage*,'' UN2794 and ''Batteries, wet, filled with alkali, *electric storage*,'' UN2795 in column (10B) of the HMT.

Section 176.172

Section 176.172 establishes the structural serviceability requirements for freight containers and vehicles carrying Class 1 (explosive) materials on vessels. The IMDG Code, as recently amended, establishes similar requirements; however, unlike the HMR, the IMDG requirements expressly except containers carrying Division 1.4 explosives. Under the HMR, as provided in § 176.172(c), Division 1.4 explosive materials need not be accompanied by a statement certifying that the freight container is structurally serviceable. However, this certification exception does not explicitly except freight containers carrying Division 1.4 explosives from the underlying serviceability requirements. Because Division 1.4 explosives pose a minimal explosive risk, the structural serviceability requirements, like an accompanying certification, become correspondingly less valuable as a safety control. Therefore, in this rulemaking, we propose to amend paragraph (a) of this section to be consistent with the requirements of the IMDG Code, by excluding freight containers containing Division 1.4 explosive materials from the serviceability requirements.

Part 178

Section 178.33b

As noted in the discussion under § 173.306, we are proposing to add a new section that defines the design, construction, and testing requirements for plastic aerosols. Specifically, we are proposing to add a new § 178.33b to specify packaging; compliance; type and size; inspection; duties of an inspector; material; manufacture; design qualification, production, and leak testing; and marking requirements for plastic aerosols.

Section 178.502

Section 178.502 establishes the identification codes for marking packagings to certify conformance with UN performance standards. We propose to include a note at the end of this section to indicate that plastic materials include other polymeric materials such as rubber and, thus, the code used to designate plastic packagings may also be used for packagings constructed of other polymeric materials.

Section 178.703

Section 178.703 establishes marking requirements for IBCs. We propose to include an additional marking requirement to specify the maximum permitted stacking load applicable when an IBC is in use, with a transition date until January 1, 2011. The symbol must be not less than 100 mm (3.9 inches) × 100 mm (3.9 inches), and must be durable and clearly visible. The letters and numbers must be at least 12 mm high (.48 inches). The mass marked above the symbol must not exceed the load imposed during the design test divided by 1.8.

Section 178.801

Section 178.801 establishes general requirements for the testing of IBCs. For clarification, in this NPRM, we propose to add a sentence to paragraph (f) to specify that the IBC must be fitted with the primary bottom closure during production testing and inspection.

Section 178.810

Section 178.810 establishes the requirements for a drop test conducted for the qualification of all IBC design types. In this NPRM, we propose to revise the criteria in paragraph (e) for passing the drop test to specify that no damage is permitted which renders the IBC unsafe to be transported for salvage or for disposal, or results in a loss of contents. In addition, we are revising this paragraph to specify that the IBC must be capable of being lifted by an appropriate means until clear of the floor for five minutes.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This proposed rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This proposed rule amends regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. To this end, as discussed in detail above, the proposed rule amends the HMR to more fully align them with the biennial updates of the UN Recommendations, the IMDG Code and the ICAO TI; this will facilitate the transport of hazardous materials in international commerce.

Harmonization serves to facilitate international transportation; at the same time, harmonization promotes the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to align the HMR with international standards, we review and consider each amendment on its own merit based on its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated public. Thus, as explained in the corresponding sections above, we are not proposing harmonization with certain specific provisions of the UN Recommendations, the IMDG Code, and the ICAO TI. Moreover, we are maintaining a number of current exceptions for domestic transportation that should minimize the compliance burden on the regulated community.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This rule proposes to amend the HMR to maintain alignment with international standards by incorporating various amendments to facilitate the transport of hazardous material in international commerce. To this end, as discussed in detail above, the rule proposes to incorporate changes into the HMR based on the Fifteenth revised edition of the UN Recommendations, Amendment 34 to the IMDG Code, and the 2009–2010 ICAO TI, which become effective January 1, 2009. The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international

requirements to the greatest extent possible.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. This proposed rule applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors, battery manufacturers, radiopharmaceutical companies, and training companies. Benefits resulting from the adoption of the amendments in this proposed rule include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by U.S. manufacturers of hazardous materials.

The majority of amendments in this proposed rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

We propose a one-year transition period to allow for training of employees and to ease any burden on entities affected by the amendments. The total net increase in costs to businesses in implementing the proposed rule is considered to be minimal. Initial start-up and inventory costs would result from these changes; however, the costs would be offset by greater long-term savings of conformance with one set of regulations and a one-year transition period. A regulatory evaluation is available for review in the public docket for this rulemaking.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects, as follows:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This proposed rule addresses covered subject items (1), (2), (3), (4) and (5) above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This proposed rule is necessary to incorporate changes adopted in international standards, effective January 1, 2009. If the changes in this proposed rule are not adopted in the HMR, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with a dual system of regulations. The changes in this proposed rulemaking are intended to avoid this result. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes the effective date of Federal preemption be 90 days from publication of a final rule in this matter.

D. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule facilitates the transportation of hazardous materials in international commerce by providing consistency with international standards. This proposed rule applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical users and suppliers, packaging manufacturers, distributors, battery manufacturers, and training companies. As discussed above, under *Executive Order 12866*, the majority of amendments in this proposed rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

Many companies will realize economic benefits as a result of these amendments. Additionally, the changes effected by this final rule will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. Therefore, I certify that these amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This proposed rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. There are no new information collection requirements in this notice of proposed rulemaking.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $132 million or more, adjusted for inflation, to either State, local or tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Counsel on Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

PHMSA is proposing to amend the Hazardous Materials Regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the Hazardous Materials Regulations with recent changes to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods. The amendments are intended to enhance the safety of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and effective emergency response in the event of a hazardous materials incident.

The HMR regulate materials that meet the definition of a marine pollutant in all modes of transportation. The intended effect is to increase the level of safety associated with the transportation of substances hazardous to the marine environment by way of improved communication of their presence in transportation and establishing appropriate requirements for their packaging. The HMR uses a list based system designed to help shippers determine if a material meets the definition of a marine pollutant. Recently, the IMO adopted a criteria based system for identification of materials hazardous to the marine environment based on the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

2. Alternatives

In developing this proposed rule, we considered three alternatives:

(1) Do nothing.

(2) Adopt the international standards in their entirety.

(3) Adopt most of the international standards, with certain modifications based on safety or economic considerations.

Alternative 1:

Because our goal is to facilitate uniformity, compliance, commerce and safety in the transportation of hazardous materials, we rejected this alternative.

Alternative 2:

Under this alternative, we would adopt the classification criteria for marine pollutants in the IMDG Code consistent with the aquatic toxicity criteria adopted within the GHS. However, the new classification system adopted into the IMDG Code is complicated and the associated criteria for classifying mixtures containing marine pollutants would involve an additional layer of complexity without a corresponding public benefit. Therefore, we are not proposing to require the use of the new IMDG Code environmental classification system.

Alternative 3:

Consistency between U.S. and international regulations helps to assure the safety of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and effective emergency response in the event of a hazardous materials incident. Under Alternative 3, we would harmonize the HMR with international standards to the extent consistent with U.S. safety and economic goals. As indicated above, we would not adopt provisions that, in our view, do not provide an adequate safety level. Further, we would provide for exceptions and extended compliance periods to minimize the potential economic impact of any revisions on the regulated community.

Under this alternative, we would maintain the current marine pollutant criteria and list while permitting the use of the GHS Criteria. If a material not listed as a marine pollutant in the HMR meets the definition of a marine pollutant in accordance with the GHS, that material may be transported as a marine pollutant in accordance with the applicable regulations. Alternative 3 is the only alternative that addresses, in all respects, the purpose of this regulatory action, which is to facilitate the safe and efficient transportation of hazardous materials in international commerce. These actions will provide the greatest possible harmonization with international requirements without posing an undue increased cost burden on industry. For these reasons, alternative 3 is our recommended alternative.

3. Analysis of Environmental Impacts

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, or loading, unloading, or handling problems. The ecosystems that could be affected by a release include air, water, soil, and ecological resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the accident scene. Most hazardous materials are not transported in quantities sufficient to cause significant, long-term environmental damage if they are released.

The hazardous material regulatory system is a risk-management system that is prevention-oriented and focused on identifying hazards and reducing the probability and quantity of a hazardous material release. Amending the Hazardous Materials Regulations to maintain alignment with international standards enhances the safe transportation of hazardous materials in domestic and international commerce. When considering the adoption of

international standards under the HMR, we review and consider each amendment on its own merit and assess their impact on transportation safety and the environment.

Alternative 1 would maintain the current marine pollutant classification system without change. We do not believe this would result in any significant impacts on the environment. Alternative 2 may result in a significant environmental impact if a material listed in the current marine pollutant list does not meet the GHS criteria. The recommended alternative 3 maintains the marine pollutant criteria and allows the voluntary use of the GHS criteria adopted by the IMDG Code. When a material meets the criteria under the GHS criteria but not the HMR, the material may still be transported under the applicable requirements for a marine pollutant. This would communicate the presence of an environmentally hazardous material consistent with the IMDG Code. Conversely, if a listed marine pollutant does not meet the GHS criteria, the material must be transported as a marine pollutant under the HMR unless approved by the Associate Administrator. The recommended alternative 3 would not result in any significant impact on the environment.

4. Consultations and Public Comment

On June 22, 2005, November 16, 2005, June 21, 2006, and November 29, 2006, PHMSA hosted public meetings with public and private stakeholders to discuss draft U.S. positions on the United Nations' Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) proposals for the Fifteenth revised edition of the UN Recommendations on the Transport of Dangerous Goods Model Regulations. In addition, PHMSA and the U.S. Coast Guard hosted a public meeting on August 29, 2006, and hosted a second meeting on September 6, 2007, to discuss amendments to the IMDG Code. A public meeting was held in October 2007 to discuss amendments to the ICAO TI. During these public meetings, U.S. positions on proposed amendments to the UN Recommendations were considered and discussed. Positions were established based on input received during these meetings in conjunction with internal review, including thorough technical review.

We have identified a number of immediate and long-term actions that participants in the international community are taking or will take to enhance the safe transportation of hazardous materials. Through this integrated and cooperative approach, we believe we can be most successful in reducing incidents, enhancing safety, and protecting the public. We expect to receive comments from other agencies and affected members of the regulated and international communities during the comment period.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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) or you may visit *http://www.dot.gov/privacy.html.*

K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the proposed rule to ensure that it does not exclude imports that meet this objective. Accordingly, this rulemaking is consistent with PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

2. In § 171.7, in the paragraph (a)(3) table, the following changes are made:

a. Under the entry ''International Civil Aviation Organization (ICAO),'' the entry ''Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2007–2008 Edition'' is revised;

b. Under the entry ''International Maritime Organization (IMO)'' the entries ''International Maritime Dangerous Goods Code (IMDG Code), 2006 Edition, Incorporating Amendment 33–06 (English Edition), Volumes 1 and 2,'' and ''International Convention for the Safety of Life at Sea (SOLAS) Amendments 2000, Chapter II–2, Regulation 19, 2001'' are revised;

c. Under the entry ''International Organization for Standardization,'' the entries ''ISO 10156:1996, Gases and Gas Mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Second edition, May 2005 (E)'' and ''ISO 10156–2:2005, Gas cylinders—Gases and gas mixtures—Part 2: Determination of oxidizing ability of toxic and corrosive gases and gas mixtures, First

edition, August 2005, (E)'' are added in appropriate numerical order; and

d. Under the entry ''United Nations,'' the entry ''UN Recommendations on the Transport of Dangerous Goods, Fourteenth revised edition (2005), Volumes I and II'' is revised.

The addition and revisions read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * *	* * *
International Civil Aviation Organization (ICAO).	
* * * *	* * *
Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2009–2010 Edition.	171.8; 171.22; 171.23; 171.24; 172.202; 172.401; 172.512; 172.602; 173.56; 173.320; 175.33; 178.3.
International Maritime Organization (IMO).	
* * * *	* * *
International Convention for the Safety of Life at Sea (SOLAS), Amendments 2002, Chapter II–2/Regulation 19, 2004.	176.63, 176.84.
International Maritime Dangerous Goods Code (IMDG Code), 2008 Edition, Incorporating Amendment 34–08 (English Edition), Volumes 1 and 2.	171.22; 171.23; 171.25; 172.101 Appendix B; 172.202; 172.401; 172.502; 172.602; 173.21; 173.56; 176.2; 176.5; 176.11; 176.27; 176.30; 176.84; 178.3.
* * * *	* * *
International Organization for Standardization.	
* * * *	* * *
ISO 10156:1996, Gases and Gas Mixtures— Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Second edition, May 2005 (E).	173.115.
ISO 10156–2:2005, Gas cylinders—Gases and gas mixtures— Part 2: Determination of oxidizing ability of toxic and corrosive gases and gas mixtures, First edition, August 2005, (E).	173.115.
* * * *	* * *
United Nations.	
* * * *	* * *
UN Recommendations on the Transport of Dangerous Goods, Fifteenth revised edition (2007). Volumes I and II.	171.12; 171.22; 171.23; 172.202; 172.401; 172.502; 173.22; 173.24; 173.24b; 173.40; 173.56; 173.192; 173.197; 173.302b; 173.304b; 178.75; 178.274; 178.801.
* * * *	* * *

3. In § 171.14, paragraphs (d) introductory text, (d)(1) and (d)(2) introductory text are revised to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(d) A final rule published in the **Federal Register** on [PUBLICATION DATE OF FINAL RULE], effective January 1, 2009, resulted in revisions to this subchapter.

During the transition period, until January 1, 2010, as provided in paragraph (d)(1) of this section, a person may elect to comply with either the applicable requirements of this subchapter in effect on December 31, 2008, or the requirements published in the [PUBLICATION DATE OF FINAL RULE] final rule.

(1) *Transition dates.* The effective date of the final rule published on [PUBLICATION DATE OF FINAL RULE] is January 1, 2009. A delayed compliance date of January 1, 2010, is authorized. Unless otherwise specified, on and after January 1, 2010, all applicable regulatory requirements adopted in the final rule in effect on January 1, 2009, must be met.

(2) *Intermixing old and new requirements.* Marking, labeling, placarding, and shipping paper descriptions must conform to either the old requirements of this subchapter in effect on December 31, 2008, or the new requirements of this subchapter in the final rule [PUBLICATION DATE OF FINAL RULE] without intermixing communication elements, except that intermixing is permitted during the applicable transition period for packaging, hazard communication and handling provisions, as follows:

* * * * *

4. In § 171.15, paragraphs (b)(4) and (b)(5) are revised and a new paragraph (b)(6) is added to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

* * * * *

(b) * * *

(4) A release of a marine pollutant occurs in a quantity exceeding 450 L (119 gallons) for a liquid or 400 kg (882 pounds) for a solid;

(5) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the person in possession of the hazardous material, it should be reported to the NRC even though it does not meet the criteria of paragraph (b)(1), (2), (3) or (4) of this section; or

(6) A fire, violent rupture, explosion or a dangerous evolution of heat occurs involving electrical devices, such as batteries or battery-powered devices.

* * * * *

5. In § 171.16, paragraph (a)(2) is revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

(a) * * *

(2) An unintentional release of hazardous material or the discharge of any quantity of hazardous waste. For incidents involving batteries or battery-powered devices, this includes those incidents resulting in the production of smoke, sparks, or dangerous evolution of heat;

* * * * *

6. In § 171.25, new paragraph (c)(5) is added to read as follows:

§ 171.25 Additional requirements for the use of IMDG Code.

* * * * *

(c) * * *

(5) Portable tanks, cargo tanks, and tank cars containing cryogenic liquids must be stowed ''on deck'' regardless of the stowage authorized in the IMDG Code. Cargo tanks or tank cars containing cryogenic liquids may be stowed one deck below the weather deck when transported on a trailership or trainship that is unable to provide ''on deck'' stowage because of the vessel's design. Tank cars must be Class DOT–113 or AAR–204W tank cars.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

7. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.53.

8. In § 172.101, in the Hazardous Materials Table, in Column (7), remove ''TP12'' each place it appears.

9. In § 172.101, the Hazardous Materials Table is amended by removing, adding and revising entries, in the appropriate alphabetical sequence, to read as follows:

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE].												
	*		*		*	*	*		*	*			
	Aluminum alkyl halides, liquid.	4.2	UN3052	I	4.2, 4.3	173, B9, B11, T21, TP2, TP7.	None	181	244	Forbidden	Forbidden	D	134
	Aluminum alkyl halides, solid.	4.2	UN3461	I	4.2, 4.3	173, T21, TP7, TP33.	None	181	244	Forbidden	Forbidden	D	134
	Aluminum alkyl hydrides	4.2	UN3076	I	4.2, 4.3	173, B9, B11, T21, TP2, TP7.	None	181	244	Forbidden	Forbidden	D.	
	Aluminum alkyls	4.2	UN3051	I	4.2, 4.3	173, B9, B11, T21, TP2, TP7.	None	181	244	Forbidden	Forbidden	D.	
	*		*		*	*	*		*	*			
	Batteries, dry, *not subject to the requirements of this subchapter.*				130.								
	*		*		*	*	*		*	*			
+	Chloronitrobenzene, liquid *ortho*.	6.1	UN3409	II	6.1	IB2, T7, TP2.	153	202	243	5 L	60 L	A.	
+	Chloronitrobenzenes, solid *meta or para*.	6.1	UN1578	II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	A.	
	*		*		*	*	*		*	*			
	Chlorosilanes, toxic, corrosive, n.o.s.	6.1	UN3361	II	6.1, 8	IB1, T11, TP2, TP13.	None	202	243	1 L	30 L	C	40
	Chlorosilanes, toxic, corrosive, flammable, n.o.s.	6.1	UN3362	II	6.1, 3, 8	IB1, T11, TP2, TP13.	None	202	243	1 L	30 L	C	40, 125
	*		*		*	*	*		*	*			
	Diethylzinc	4.2	UN1366	I	4.2, 4.3	173, B11, T21, TP2, TP7.	None	181	244	Forbidden	Forbidden	D	18
	*		*		*	*	*		*	*			
	Dimethylzinc	4.2	UN1370	I	4.2, 4.3	173, B11, B16, T21, TP2, TP7.	None	181	244	Forbidden	Forbidden	D	18
	*		*		*	*	*		*	*			
	Fuel cell cartridges *containing flammable liquids.*	3	UN3473	II	3		150	230	None	5 L	60 L	A.	

*		*		*	*	*		*	*				
Hydrogen in a metal hydride storage system.	2.1	UN3468		2.1	167	None	214	None	Forbidden	100 kg gross.	D.		
*		*		*	*	*		*	*				
Hypochlorite solutions	8	UN1791	II	8	A7, B2, B15, IB2, IP5, N34, T7, TP2, TP24.	154	202	242	1 L	30 L	B	26	
*		*		*	*	*		*	*				
Lithium alkyls, liquid	4.2	UN2445	I	4.2, 4.3	173, B11, T21, TP2, TP7.	None	181	244	Forbidden	Forbidden	D.		
Lithium alkyls, solid	4.2	UN3433	I	4.2, 4.3	173, B11, T21, TP7, TP33.	None	181	244	Forbidden	Forbidden	D.		
*		*		*	*	*		*	*				
Magnesium alkyls	4.2	UN3053	I	4.2, 4.3	B11, T21, TP2, TP7.	None	181	244	Forbidden	Forbidden	D	18	
*		*		*	*	*		*	*				
Magnesium diphenyl	4.2	UN2005	I	4.2	173, T21, TP7, TP33.	None	187	244	Forbidden	Forbidden	C.		
*		*		*	*	*		*	*				
Nitric acid *other than red fuming, with not more than 70 percent nitric acid.*	8	UN2031	II	8	A6, B2, B47, B53, IB2, T8, TP2, TP12.	None	158	242	Forbidden	30 L	D	44, 66, 89, 90, 110, 111	
*		*		*	*	*		*	*				
Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. *with more than 10 percent but not more than 20 percent PETN, by mass.*	4.1	UN3344	II	4.1	118, N85	None	214	None	Forbidden	Forbidden	E.		
*		*		*	*	*		*	*				
Trinitrophenol, wetted *with not less than 30 percent water, by mass.*	4.1	UN1344	I	4.1	23, A8, A19, N41.	None	211	None	1 kg	15 kg	E	28, 36	
*		*		*	*	*		*	*				
Trinitrotoluene, wetted *with not less than 30 percent water, by mass.*	4.1	UN1356	I	4.1	23, A2, A8, A19, N41.	None	211	None	0.5 kg	0.5 kg	E	28	
*		*		*	*	*		*	*				
Xenon	2.2	UN2036		2.2		306	302	None	75 kg	150 kg	A.		
*		*		*	*	*		*	*				
[ADD].													
*		*		*	*	*		*	*				
Batteries, dry, sealed, n.o.s.					130.								

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*		*	*			
+	Chloronitrobenzenes, liquid.	6.1	UN3409	II	6.1	IB2, T7, TP2.	153	202	243	5 L	60 L	A.	
+	Chloronitrobenzenes, solid.	6.1	UN1578	II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	A.	
		*	*		*	*	*		*	*			
	Chlorosilanes, corrosive, flammable, n.o.s.	8	UN2986	II	8, 3	T14, TP2, TP7, TP13, TP27.	None	206	243	1 L	30 L	C	40
		*	*		*	*	*		*	*			
	Chlorosilanes, toxic, corrosive, flammable, n.o.s.	6.1	UN3362	II	6.1, 3, 8	T14, TP2, TP7, TP13, TP27.	None	206	243	1 L	30 L	C	40, 125
	Chlorosilanes, toxic, corrosive, n.o.s.	6.1	UN3361	II	6.1, 8	T14, TP2, TP7, TP13, TP27.	None	206	243	1 L	30 L	C	40
		*	*		*	*	*		*	*			
	Fuel cell cartridges *or* Fuel cell cartridges contained in equipment or Fuel cell cartridges packed with equipment, *containing corrosive substances*.	8	UN3477		8		230	230	230	5 kg	50 kg	A.	
	Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing flammable liquids*.	3	UN3473		3		230	230	230	5 kg	50 kg	A.	
	Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing hydrogen in metal hydride*.	2.1	UN3479		2.1		230	230	230	1 kg	15 kg	B.	

Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing liquefied flammable gas*.	2.1	UN3478		2.1		230	230	230	1 kg	15 kg	B.	
Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing water-reactive substances*.	4.3	UN3476		4.3		230	230	230	5 kg	50 kg	A.	
*		*		*	*	*		*	*			
Hydrogen in a metal hydride storage system *or* Hydrogen in a metal hydride storage system contained in equipment *or* Hydrogen in a metal hydride storage system packed with equipment.	2.1	UN3468		2.1	167	None	214	None	Forbidden	100 kg gross.	D	40
*		*		*	*	*		*	*			
1-Hydroxybenzotriazole, anhydrous, *dry or wetted with less than 20 percent water, by mass*.	1.3C	UN0508		1.3C		None	62	None	Forbidden	Forbidden	10.	
1-Hydroxybenzotriazole, anhydrous, wetted, *with not less than 20 percent water, by mass*.	4.1	UN3474	I	4.1	162, N90	None	211	None	0.5 kg	0.5 kg	D	28, 36
*		*		*	*	*		*	*			
Hypochlorite solutions	8	UN1791	II	8	A7, B2, B15, IB2, IP5, N34, T7, TP2, TP24.	154	202	242	1 L	30 L	B	26
			III	8	IB3, N34, T4, TP2, TP24.	154	203	241	5 L	60 L	B	26
*		*		*	*	*		*	*			
Nitric acid *other than red fuming, with at least 65 percent, but not more than 70 percent nitric acid*.	8	UN2031	II	8, 5.1	A6, B2, B47, B53, IB2, IP15, T8, TP2.	None	158	242	Forbidden	30 L	D	66, 74, 89, 90
Nitric acid, *other than red fuming, with less than 65 percent nitric acid*.	8	UN2031	II	8	A6, B2, B47, B53, IB2, IP15, T8, TP2.	None	158	242	Forbidden	30 L	D	44, 66, 89, 90, 110, 111

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. *or* Pentaerythritol tetranitrate mixture, desensitized, solid, n.o.s. *or* PETN mixture, desensitized, solid, n.o.s., *with more than 10 percent but not more than 20 percent PETN, by mass.*	4.1	UN3344	II	4.1	118, N85	None	214	None	Forbidden	Forbidden	E.	
	*		*		*	*	*		*	*			
D	Powder, smokeless	1.4C	UN0509		1.4C		None	62	None	Forbidden	Forbidden	A.	
	*		*		*	*	*		*	*			
	Signals, distress, *ship*	1.4G	UN0505		1.4G		None	62	None	Forbidden	75 kg	06.	
	Signals, distress, *ship*	1.4S	UN0506		1.4S		None	62	None	25 kg	100 kg	05.	
	*		*		*	*	*		*	*			
	Signals, smoke	1.4S	UN0507		1.4S		None	62	None	25 kg	100 kg	05.	
	*		*		*	*	*		*	*			
	Trinitrophenol, wetted *or* Picric acid, wetted, *with not less than 30 percent water by mass.*	4.1	UN1344	I	4.1	23, A8, A19, N41.	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*	*	*		*	*			
	Trinitrotoluene, wetted *or* TNT, wetted, *with not less than 30 percent water by mass.*	4.1	UN1356	I	4.1	23, A2, A8, A19, N41.	None	211	None	0.5 kg	0.5 kg	E	28, 36
	*		*		*	*	*		*	*			
	Xenon, compressed	2.2	UN2036		2.2		306, 307	302	None	75 kg	150 kg	A.	
	*		*		*	*	*		*	*			
	[REVISE].												
	*		*		*	*	*		*	*			
	Allyltrichlorosilane, stabilized.	8	UN1724	II	8, 3	A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	30 L	C	40

*	*			*	*	*		*	*			
Amyltrichlorosilane	8	UN1728	II	8	A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40
*	*			*	*	*		*	*			
Argon, compressed	2.2	UN1006		2.2		306, 307	302	314, 315	75 kg	150 kg	A.	
*	*			*	*	*		*	*			
Batteries, dry, containing potassium hydroxide solid, *electric, storage*.	8	UN3028	III	8	237	None	213	None	25 kg gross	230 kg gross.	A	52
Batteries, wet, filled with acid, *electric storage*.	8	UN2794	III	8		159	159	159	30 kg gross	No limit	A	146
Batteries, wet, filled with alkali, *electric storage*.	8	UN2795	III	8		159	159	159	30 kg gross	No limit	A	52, 146
Batteries, wet, non-spillable, *electric storage*.	8	UN2800	III	8		159a	159	159	No limit	No limit.		
*	*			*	*	*		*	*			
Boron trifluoride	2.3	UN1008		2.3, 8	2, B9, B14	None	302	314, 315	Forbidden	Forbidden	D	40
*	*			*	*	*		*	*			
Butyltrichlorosilane	8	UN1747	II	8, 3	A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	30 L	C	40
*	*			*	*	*		*	*			
1,4-Butynediol	6.1	UN2716	III	6.1	A1, IB8, IP3, T1, TP33.	None	213	240	100 kg	200 kg	C	52, 53, 70
*	*			*	*	*		*	*			
Calcium manganese silicon.	4.3	UN2844	III	4.3	A1, A19, IB8, IP4, T1, TP33.	151	213	241	25 kg	100 kg	A	52, 85, 103
*	*			*	*	*		*	*			
Chlorine	2.3	UN1017		2.3, 5.1, 8	2, B9, B14, N86, T50, TP19.	None	304	314, 315	Forbidden	Forbidden	D	40, 51, 55, 62, 68, 89, 90
*	*			*	*	*		*	*			
Chloroacetic acid, solid	6.1	UN1751	II	6.1, 8	A3, A7, IB8, IP2, IP4, N34, T3, TP33.	153	212	242	15 kg	50 kg	C	40
Chlorophenyltrichlorosilane.	8	UN1753	II	8	A7, B2, B6, N34, T10, TP2, TP7.	None	206	242	Forbidden	30 L	C	40
*	*			*	*	*		*	*			
Chlorosilanes, corrosive, n.o.s.	8	UN2987	II	8	B2, T14, TP2, TP7, TP13, TP27.	None	206	242	1 L	30 L	C	40

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Chlorosilanes, flammable, corrosive, n.o.s.	3	UN2985	II	3, 8	T14, TP2, TP7, TP13, TP27.	None	206	243	1 L	5 L	B	40
	*		*		*	*	*		*	*			
	Chlorosilanes, water-reactive, flammable, corrosive, n.o.s.	4.3	UN2988	I	4.3, 3, 8	A2, T14, TP2, TP7, TP13.	None	201	244	Forbidden	1 L	D	21, 28, 40, 49, 100
	*		*		*	*	*		*	*			
	Chromium trioxide, anhydrous.	5.1	UN1463	II	5.1, 6.1, 8	IB8, IP2, IP4, T3, TP33.	None	212	242	5 kg	25 kg	A.	
	*		*		*	*	*		*	*			
	Cyclohexenyltrichlorosilane.	8	UN1762	II	8	A7, B2, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40
	*		*		*	*	*		*	*			
	Cyclohexyltrichlorosilane	8	UN1763	II	8	A7, B2, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40
	*		*		*	*	*		*	*			
	Dibenzyldichlorosilane	8	UN2434	II	8	B2, T10, TP2, TP7, TP13.	154	206	242	1 L	30 L	C	40
	*		*		*	*	*		*	*			
	Dichloroisocyanuric acid, dry *or* Dichloroisocyanuric acid salts.	5.1	UN2465	II	5.1	28, IB8, IP2, IP4, T3, TP33.	152	212	240	5 kg	25 kg	A	13
	*		*		*	*	*		*	*			
	Dichlorophenyltrichlorosilane.	8	UN1766	II	8	A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40

	*		*		*	*	*		*		*			
	Diethyldichlorosilane	8	UN1767	II	8, 3	A7, B6, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	30 L	C	40
	*		*		*	*	*		*		*			
	Dimethyldichlorosilane	3	UN1162	II	3, 8	B77, T10, TP2, TP7, TP13.	None	206	243	Forbidden	Forbidden	B	40
	*		*		*	*	*		*		*			
	Diphenyldichlorosilane	8	UN1769	II	8	A7, B2, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40
	*		*		*	*	*		*		*			
	Dodecyltrichlorosilane	8	UN1771	II	8	A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40
	*		*		*	*	*		*		*			
G	Environmentally hazardous substance, liquid, n.o.s.	9	UN3082	III	9	8, 146, 335, IB3, T4, TP1, TP29.	155	203	241	No limit	No limit	A.	
G	Environmentally hazardous substance, solid, n.o.s.	9	UN3077	III	9	8, 146, 335, B54, IB8, IP3, N20, T1, TP33.	155	213	240	No limit	No limit	A.	
	*		*		*	*	*		*		*			
	Ethyldichlorosilane	4.3	UN1183	I	4.3, 8, 3	A2, A3, A7, N34, T14, TP2, TP7, TP13.	None	201	244	Forbidden	1 L	D	21, 28, 40, 49, 100
	*		*		*	*	*		*		*			
	Ethylphenyldichlorosilane	8	UN2435	II	8	A7, B2, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C.	
	*		*		*	*	*		*		*			
	Ethyltrichlorosilane	3	UN1196	II	3, 8	A7, N34, T10, TP2, TP7, TP13.	None	206	243	1 L	5 L	B	40

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
D	Gasohol *gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*	3	NA1203	II	3	144, 177	150	202	242	5 L	60 L	E.	
	Gasoline *includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*	3	UN1203	II	3	144, 177, B1, B33, T8.	150	202	242	5 L	60 L	E.	
	*		*		*	*	*		*	*			
	Helium, compressed	2.2	UN1046		2.2		306, 307	302	302, 314	75 kg	150 kg	A.	
	*		*		*	*	*		*	*			
	Hexadecyltrichlorosilane	8	UN1781	II	8	A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40
	*		*		*	*	*		*	*			
	Hexyltrichlorosilane	8	UN1784	II	8	A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40
	*		*		*	*	*		*	*			
	Hydrogen iodide, anhydrous.	2.3	UN2197		2.3, 8	3, B14, N86, N89.	None	304	314, 315	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
	Krypton, compressed	2.2	UN1056		2.2		306, 307	302	None	75 kg	150 kg	A.	
	*		*		*	*	*		*	*			
	Magnesium bromate	5.1	UN1473	II	5.1	A1, IB8, IP2, IP4, T3, TP33.	152	212	242	5 kg	25 kg	A	56, 58
	*		*		*	*	*		*	*			
	Magnesium nitrate	5.1	UN1474	III	5.1	332, A1, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A.	
	*		*		*	*	*		*	*			
	Medicine, liquid, flammable, toxic, n.o.s.	3	UN3248	II	3, 6.1	IB2	150	202	None	1 L	5 L	B	40
				III	3, 6.1	IB3	150	203	None	5 L	5 L	A.	
	Medicine, liquid, toxic, n.o.s.	6.1	UN1851	II	6.1		153	202	243	5 L	5 L	C	40
				III	6.1		153	203	241	5 L	5 L	C	40
	Medicine, solid, toxic, n.o.s.	6.1	UN3249	II	6.1	T3, TP33	153	212	None	5 kg	5 kg	C	40

			III	6.1	T1, TP33	153	213	None	5 kg	5 kg	C	40
*		*		*	*	*		*	*			
Methyl Chloromethyl Ether.	6.1	UN1239	I	6.1, 3	1, B9, B14, B30, B72, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
*		*		*	*	*		*	*			
Methyldichlorosilane	4.3	UN1242	I	4.3, 8, 3	A2, A3, A7, B6, B77, N34, T14, TP2, TP7, TP13.	None	201	243	Forbidden	1 L	D	21, 28, 40, 49, 100
*		*		*	*	*		*	*			
Methylphenyldichlorosilane.	8	UN2437	II	8	T10, TP2, TP7, TP13.	None	206	242	1 L	30 L	C	40
*		*		*	*	*		*	*			
Methyltrichlorosilane	3	UN1250	II	3, 8	A7, B6, B77, N34, T10, TP2, TP7, TP13.	None	206	243	1L	5 L	B	40
*		*		*	*	*		*	*			
Neon, compressed	2.2	UN1065		2.2		306, 307	302	None	75 kg	150 kg	A.	
*		*		*	*	*		*	*			
Nitrites, inorganic, n.o.s.	5.1	UN2627	II	5.1	33, IB8, IP2, IP4, T3, TP33.	152	212	None	5 kg	25 kg	A	46, 56, 58, 133
*		*		*	*	*		*	*			
Nitrocellulose, *with not more than 12.6 percent, by dry mass* mixture with *or* without plasticizer, with *or* without pigment.	4.1	UN2557	II	4.1	44	151	212	None	1 kg	15 kg	D	28, 36
*		*		*	*	*		*	*			
Nitrocellulose, solution, flammable *with not more than 12.6 percent nitrogen, by mass, and not more than 55 percent nitrocellulose.*	3	UN2059	I	3	198, T11, TP1, TP8, TP27.	None	201	243	1 L	30 L	E.	
			II	3	198, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
			III	3	198, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Nitrocellulose with alcohol with not less than 25 percent alcohol by mass, and *with not more than 12.6 percent nitrogen, by dry mass.*	4.1	UN2556	II	4.1		151	212	None	1 kg	15 kg	D	28, 36
	Nitrocellulose with water *with not less than 25 percent water by mass.*	4.1	UN2555	II	4.1		151	212	None	15 kg	50 kg	E	28, 36
	*		*		*	*	*		*	*			
	Nitroguanidine, wetted *or* Picrite, wetted *with not less than 20 percent water, by mass.*	4.1	UN1336	I	4.1	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*	*	*		*	*			
	4-Nitrophenylhydrazine, *with not less than 30 percent water, by mass.*	4.1	UN3376	I	4.1	162, A8, A19, A20, N41.	None	211	None	Forbidden	15 kg	E	28, 36
	*		*		*	*	*		*	*			
	Nitrostarch, wetted *with not less than 20 percent water, by mass.*	4.1	UN1337	I	4.1	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*	*	*		*	*			
	Nonyltrichlorosilane	8	UN1799	II	8	A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40
	*		*		*	*	*		*	*			
	Octadecyltrichlorosilane	8	UN1800	II	8	A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40
	*		*		*	*	*		*	*			
	Octyltrichlorosilane	8	UN1801	II	8	A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40

*		*			*	*	*		*		*			
G	Organometallic substance, liquid, water-reactive, flammable.	4.3	UN3399	I	4.3, 3	T13, TP2, TP7.	None	201	244	Forbidden	1 L	D	40, 52
				II	4.3, 3	IB1, IP2, T7, TP2, TP7.	None	202	243	1 L	5 L	D	40, 52
				III	4.3, 3	IB2, IP4, T7, TP2, TP7.	None	203	242	5 L	60 L	E	40, 52
*		*			*	*	*		*		*			
G	Oxidizing liquid, corrosive, n.o.s.	5.1	UN3098	I	5.1, 8	62, A6	None	201	244	Forbidden	2.5 L	D	13, 56, 58, 106, 138
				II	5.1, 8	62, IB1	None	202	243	1 L	5 L	B	34, 56, 58, 106, 138
				III	5.1, 8	62, IB2	152	203	242	2.5 L	30 L	B	34, 56, 58, 106, 138
G	Oxidizing liquid, n.o.s	5.1	UN3139	I	5.1	62, 127, A2, A6.	None	201	243	Forbidden	2.5 L	D	56, 58, 106, 138
				II	5.1	62, 127, A2, IB2.	152	202	242	1 L	5 L	B	56, 58, 106, 138
				III	5.1	62, 127, A2, IB2.	152	203	241	2.5 L	30 L	B	56, 58, 106, 138
G	Oxidizing liquid, toxic, n.o.s.	5.1	UN3099	I	5.1, 6.1	62, A6	None	201	244	Forbidden	2.5 L	D	56, 58, 106, 138
				II	5.1, 6.1	62, IB1	152	202	243	1 L	5 L	B	56, 58, 95, 106, 138
				III	5.1, 6.1	62, IB2	152	203	242	2.5 L	30 L	B	56, 58, 95, 106, 138
G	Oxidizing solid, corrosive, n.o.s.	5.1	UN3085	I	5.1, 8	62	None	211	242	1 kg	15 kg	D	13, 56, 58, 106, 138
				II	5.1, 8	62, IB6, IP2, T3, TP33.	None	212	242	5 kg	25 kg	B	13, 34, 56, 58, 106, 138
				III	5.1, 8	62, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	B	13, 34, 56, 58, 106, 138
G	Oxidizing solid, flammable, n.o.s.	5.1	UN3137	I	5.1, 4.1	62	None	214	214	Forbidden	Forbidden.		
G	Oxidizing solid, n.o.s	5.1	UN1479	I	5.1	62, IB5, IP1.	None	211	242	1 kg	15 kg	D	56, 58, 106, 138
				II	5.1	62, IB8, IP2, IP4, T3, TP33.	152	212	240	5 kg	25 kg	B	56, 58, 106, 138
				III	5.1	62, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	B	56, 58, 106, 138
G	Oxidizing solid, self-heating, n.o.s.	5.1	UN3100	I	5.1, 4.2	62	None	214	214	Forbidden	Forbidden.		
				II	5.1, 4.2	62	None	214	214	Forbidden	Forbidden.		
G	Oxidizing solid, toxic, n.o.s.	5.1	UN3087	I	5.1, 6.1	62	None	211	242	1 kg	15 kg	D	56, 58, 106, 138
				II	5.1, 6.1	62, IB6, IP2, T3, TP33.	152	212	242	5 kg	25 kg	B	56, 58, 95, 106, 138
				III	5.1, 6.1	62, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	B	56, 58, 95, 106, 138
G	Oxidizing solid, water-reactive, n.o.s.	5.1	UN3121		5.1, 4.3	62	None	214	214	Forbidden	Forbidden.		
*		*			*	*	*		*		*			
	Paint or Paint related material.	8	UN3066	II	8	B2, IB2, T7, TP2, TP28.	154	173	242	1 L	30 L	A	40

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	8	B52, IB3, T4, TP1, TP29.	154	173	241	5 L	60 L	A	40
	*		*		*	*	*		*	*			
	Phenyltrichlorosilane	8	UN1804	II	8	A7, B6, N34, T10, TP2, TP7, TP13.	None	206	242	Forbidden	30 L	C	40
	*		*		*	*	*		*	*			
	Polychlorinated biphenyls, solid.	9	UN3432	II	9	9, 81,140, IB8, IP2, IP4, T3, TP33.	155	212	240	100 kg	200 kg	A	95
	*		*		*	*	*		*	*			
	Potassium bromate	5.1	UN1484	II	5.1	IB8, IP2, IP4, T3, TP33.	152	212	242	5 kg	25 kg	A	56, 58
	*		*		*	*	*		*	*			
	Potassium chlorate	5.1	UN1485	II	5.1	A9, IB8, IP2, IP4, N34, T3, TP33.	152	212	242	5 kg	25 kg	A	56, 58
	*		*		*	*	*		*	*			
	Potassium nitrate and sodium nitrite mixtures.	5.1	UN1487	II	5.1	B78, IB8, IP2, IP4, T3, TP33.	152	212	240	5 kg	25 kg	A	56, 58
	Potassium nitrite	5.1	UN1488	II	5.1	IB8, IP2, IP4, T3, TP33.	152	212	242	5 kg	25 kg	A	56, 58
	*		*		*	*	*		*	*			
	Potassium permanganate.	5.1	UN1490	II	5.1	IB8, IP2, IP4, T3, TP33.	152	212	240	5 kg	25 kg	D	56, 58, 138
	*		*		*	*	*		*	*			
	Potassium persulfate	5.1	UN1492	III	5.1	A1, A29, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A	58, 145
	*		*		*	*	*		*	*			
	Propyltrichlorosilane	8	UN1816	II	8, 3	A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	30 L	C	40

	*		*		*	*	*	*	*	*				
	Silicon tetrachloride	8	UN1818	II	8	A3, A6, B2, B6, T10, TP2, TP7, TP13.	None	202	242	1 L	30 L	C	40
	*		*		*	*	*	*	*	*				
	Silver nitrate	5.1	UN1493	II	5.1	IB8, IP2, IP4, T3, TP33.	152	212	242	5 kg	25 kg	A.	
	*		*		*	*	*	*	*	*				
	Sodium bromate	5.1	UN1494	II	5.1	IB8, IP2, IP4, T3, TP33.	152	212	242	5 kg	25 kg	A	56, 58
	*		*		*	*	*	*	*	*				
	Sodium chlorate	5.1	UN1495	II	5.1	A9, IB8, IP2, IP4, N34, T3, TP33.	152	212	240	5 kg	25 kg	A	56, 58
	*		*		*	*	*	*	*	*				
	Sodium peroxoborate, anhydrous.	5.1	UN3247	II	5.1	IB8, IP2, IP4, T3, TP33.	152	212	240	5 kg	25 kg	A	13, 25
	Sodium persulfate	5.1	UN1505	III	5.1	A1, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A	58, 145
	*		*		*	*	*	*	*	*				
	Trichloroisocyanuric acid, dry.	5.1	UN2468	II	5.1	IB8, IP2, IP4, T3, TP33.	152	212	240	5 kg	25 kg	A	13
	*		*		*	*	*	*	*	*				
	Trimethyltrichlorosilane	3	UN1298	II	3, 8	A3, A7, B77, N34, T10, TP2, TP7, TP13.	None	206	243	1 L	5 L	E	40
	*		*		*	*	*	*	*	*				
	Vinyltrichlorosilane, stabilized.	3	UN1305	II	3, 8	A3, A7, B6, N34, T10, TP2, TP7, TP13.	None	206	243	1 L	5 L	B	40
	*		*		*	*	*	*	*	*				
G	Water-reactive liquid, corrosive, n.o.s.	4.3	UN3129	I	4.3, 8	T14, TP2, TP7.	None	201	243	Forbidden	1 L	D.	
				II	4.3, 8	IB1, T11, TP2.	None	202	243	1 L	5 L	E	85
				III	4.3, 8	IB2, T7, TP1.	None	203	242	5 L	60 L	E.	
G	Water-reactive liquid, n.o.s.	4.3	UN3148	I	4.3	T9, TP2, TP7.	None	201	244	Forbidden	1 L	E	40
				II	4.3	IB1, T7, TP2.	None	202	243	1 L	5 L	E	40
				III	4.3	IB2, T7, TP1.	None	203	242	5 L	60 L	E	40

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*		*	*			
G	Water-reactive solid, corrosive, n.o.s.	4.3	UN3131	I	4.3, 8	IB4, IP1, N40, T9, TP7, TP33.	None	211	242	Forbidden	15 kg	D.	
				II	4.3, 8	IB6, IP2, T3, TP33.	151	212	242	15 kg	50 kg	E	85
				III	4.3, 8	IB8, IP4, T1, TP33.	151	213	241	25 kg	100 kg	E	85
		*	*		*	*	*		*	*			
G	Water-reactive solid, n.o.s.	4.3	UN2813	I	4.3	IB4, N40, T9, TP7, TP33.	None	211	242	Forbidden	15 kg	E	40
				II	4.3	IB7, IP2, T3, TP33.	151	212	242	15 kg	50 kg	E	40
				III	4.3	IB8, IP4, T1, TP33.	151	213	241	25 kg	100 kg	E	40
		*	*		*	*	*		*	*			
	Zinc ammonium nitrite	5.1	UN1512	II	5.1	IB8, IP2, IP4, T3, TP33.	None	212	242	5 kg	25 kg	E.	
		*	*		*	*	*		*	*			
	Zinc nitrate	5.1	UN1514	II	5.1	IB8, IP2, IP4, T3, TP33.	152	212	240	5 kg	25 kg	A.	
		*	*		*	*	*		*	*			

* * * * *

10. In Appendix B to § 172.101, introductory paragraphs 4 and 5 are revised and four entries are removed to read as follows:

Appendix B to § 172.101—List of Marine Pollutants

* * * * *

4. If a material is not listed in this appendix and meets the criteria for a marine pollutant as provided in Chapter 2.9 of the IMDG Code, (incorporated by reference; see § 171.7 of this subchapter), the material may be transported as a marine pollutant in accordance with the applicable requirements of this subchapter.

5. If a material or a solution meeting the definition of a marine pollutant in § 171.8 of this subchapter does not meet the criteria for a marine pollutant as provided in section 2.9.3.3 and 2.9.3.4 of the IMDG Code, (incorporated by reference; see § 171.7 of this subchapter), it may be excepted from the requirements of this subchapter as a marine pollutant if that exception is approved by the Associate Administrator.

LIST OF MARINE POLLUTANTS

S.M.P. (1)	Marine pollutant (2)
[REMOVE]	
* * * * * * *	
	5-Ethyl-2-picoline Ethyl propenoate, inhibited.
* * * * * * *	
	Isopropenylbenzene.
* * * * * * *	
	2-Phenylpropene.
* * * * * * *	

11. In § 172.102:

a. In paragraph (c)(1), Special provisions 130, 137, 138, 150, 177, 188 and 189 are revised; new Special provisions 62, 198, 237, 332, and 335 are added; and Special provisions 36 and 173 are removed.

b. In paragraph (c)(4), Table 2 IP Codes is revised.

c. In paragraph (c)(5), new Special provision N90 is added.

d. In paragraph (c)(8), Special provision TP12 is removed.

The revisions and additions read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

62 Oxygen generators (see § 171.8 of this subchapter) are not authorized for transportation under this entry.

* * * * *

130 For other than a dry battery specifically covered by another entry in the § 172.101 Table, ''Batteries, dry, sealed, n.o.s.'' are not subject to any other requirements of this subchapter except for the following:

(1) The incident reporting requirements in §§ 171.15 and 171.16;

(2) Batteries and each battery-powered device or equipment containing such batteries must be prepared and packaged for transport so as to prevent:

(i) The potential of a dangerous evolution of heat;

(ii) Short circuits, including but is not limited to the following:

(a) Packaging each battery or each battery-powered device or equipment when practicable in fully enclosed inner packagings made of non-conductive material;

(b) Separating batteries and battery-powered devices in a manner to prevent contact with other batteries, devices or conductive materials (e.g., metal) in the packagings; or

(c) Ensuring exposed terminals or connectors are individually protected with non-conductive caps, non-conductive tape, or by other appropriate means; and

(iv) Damage to terminals. If not impact resistant, the outer packaging should not be used as the sole means of protecting the battery terminals from damage or short circuiting. Batteries must be securely cushioned and packed to prevent any shifting which could loosen terminal caps or reorient the terminals to produce short circuits. Terminal protection methods include but are not limited to the following:

(a) Securely attaching covers of sufficient strength to protect the terminals;

(b) Packaging the battery in a rigid plastic packaging; or

(c) Constructing the battery with terminals that are recessed or otherwise protected so that the terminals will not be subjected to damage if the package is dropped; and

(3) When transported by aircraft,

(i) Packaged in a manner that prevents unintentional activation, (*e.g.* adequate packaging, switch caps or locks, recessed switches, trigger locks, temperature sensitive circuit breakers, etc.); and

(ii) The air waybill must contain the words, ''not restricted.''

* * * * *

137 Cotton, dry; flax, dry; sisal, dry; and tampico fiber, dry are not subject to the requirements of this subchapter when they are baled in accordance with ISO 8115, ''Cotton Bales—Dimensions and Density'' (IBR, see § 171.7 of this subchapter) to a density of not less than 360 kg/m^3 (22.1 lb/ft^3) for cotton, 400 kg/m^3 (24.97 lb/ft^3) for flax, 620 kg/m^3 (38.71 lb/ft^3) for sisal and 360 kg/m^3 (22.1 lb/ft^3) for tampico fiber and transported in a freight container or closed transport vehicle.

138 Lead compounds which, when mixed in a ratio of 1:1000 with 0.07M (Molar concentration) hydrochloric acid and stirred for one hour at a temperature of 23 °C ± 2 °C, exhibit a solubility of 5% or less are considered insoluble and are not subject to the requirements of this subchapter unless they meet criteria as another hazard class or division.

* * * * *

150 This description may be used only for uniform mixtures of fertilizers containing ammonium nitrate as the main ingredient within the following composition limits:

a. Not less than 90% ammonium nitrate with not more than 0.2% total combustible, organic material calculated as carbon, and with added matter, if any, that is inorganic and inert when in contact with ammonium nitrate; or

b. Less than 90% but more than 70% ammonium nitrate with other inorganic materials, or more than 80% but less than 90% ammonium nitrate mixed with calcium carbonate and/or dolomite and/or mineral calcium sulphate, and not more than 0.4% total combustible, organic material calculated as carbon; or

c. Ammonium nitrate-based fertilizers containing mixtures of ammonium nitrate and ammonium sulphate with more than 45% but less than 70% ammonium nitrate, and not more than 0.4% total combustible, organic material calculated as carbon such that the sum of the percentage of compositions of ammonium nitrate and ammonium sulphate exceeds 70%.

* * * * *

177 Gasoline or ethanol and gasoline mixtures for use in internal combustion engines (e.g., in automobiles, stationary engines and other engines) must be assigned to this entry regardless of variations in volatility.

* * * * *

188 *Small lithium cells and batteries.* Lithium cells or batteries, including cells or batteries packed with or contained in equipment, are not subject to any other requirements of this subchapter if they meet all of the following:

a. *Primary lithium batteries and cells.*

(1) Primary lithium batteries and cells are forbidden for transport aboard passenger-carrying aircraft. The outside of each package that contains primary (nonrechargeable) lithium batteries or cells must be marked ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' or ''LITHIUM METAL BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' on a background of contrasting color. The letters in the marking must be:

(i) At least 12 mm (0.5 inch) in height on packages having a gross weight of more than 30 kg (66 pounds); or

(ii) At least 6 mm (0.25 inch) on packages having a gross weight of 30 kg (66 pounds) or less, except that smaller font may be used as necessary to fit package dimensions; and

(2) The provisions of paragraph (a)(1) do not apply to packages that contain 5 kg (11 pounds) net weight or less of primary lithium batteries or cells that are contained in or packed with equipment and the package contains no more than the number of lithium batteries or cells necessary to power the piece of equipment;

b. For a lithium metal or lithium alloy cell, the lithium content is not more than 1.0 g. For a lithium-ion cell, the equivalent lithium content is not more than 1.5 g;

c. For a lithium metal or lithium alloy battery, the aggregate lithium content is not more than 2.0 g. For a lithium-ion battery, the aggregate equivalent lithium content is not more than 8 g;

d. Effective October 1, 2009, the cell or battery must be of a type proven to meet the requirements of each test in the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter);

e. Cells or batteries are separated so as to prevent short circuits and are packed in a strong outer packaging or are contained in equipment;

f. Effective October 1, 2008, except when contained in equipment, each package containing more than 24 lithium cells or 12 lithium batteries must be:

(1) Marked to indicate that it contains lithium batteries, and special procedures should be followed if the package is damaged;

(2) Accompanied by a document indicating that the package contains lithium batteries and special procedures should be followed if the package is damaged;

(3) Capable of withstanding a 1.2 meter drop test in any orientation without damage to cells or batteries contained in the package, without shifting of the contents that would allow short circuiting and without release of package contents; and

(4) Gross weight of the package may not exceed 30 kg (66 pounds). This requirement does not apply to lithium cells or batteries packed with equipment;

g. Electrical devices must conform to § 173.21 of this subchapter;

h. Sections 171.15 and 171.16 of this subchapter for those incidents resulting in the production of smoke, sparks, or dangerous evolution of heat; and

i. Lithium batteries or cells are not authorized aboard an aircraft in checked or carry-on luggage except as provided in § 175.10.

* * * * *

189 *Medium lithium cells and batteries.* Effective October 1, 2008, when transported by motor vehicle or rail car, lithium cells or batteries, including cells or batteries packed with or contained in equipment, are not subject to any other requirements of this subchapter if they meet all of the following:

a. The lithium content anode of each cell, when fully charged, is not more than 5 grams.

b. The aggregate lithium content of the anode of each battery, when fully charged, is not more than 25 grams.

c. The cells or batteries are of a type proven to meet the requirements of each test in the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter). A cell or battery and equipment containing a cell or battery that was first transported prior to January 1, 2006 and is of a type proven to meet the criteria of Class 9 by testing in accordance with the tests in the UN Manual of Tests and Criteria, Third revised edition, 1999, need not be retested.

d. Cells or batteries are separated so as to prevent short circuits and are packed in a strong outer packaging or are contained in equipment.

e. The outside of each package must be marked ''LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD AIRCRAFT AND VESSEL'' on a background of contrasting color, in letters:

(1) At least 12 mm (0.5 inch) in height on packages having a gross weight of more than 30 kg (66 pounds); or

(2) At least 6 mm (0.25 inch) on packages having a gross weight of 30 kg (66 pounds) or less, except that smaller font may be used as necessary to fit package dimensions.

f. Except when contained in equipment, each package containing more than 24 lithium cells or 12 lithium batteries must be:

(1) Marked to indicate that it contains lithium batteries, and special procedures should be followed if the package is damaged;

(2) Accompanied by a document indicating that the package contains lithium batteries and special procedures should be followed if the package is damaged;

(3) Capable of withstanding a 1.2 meter drop test in any orientation without damage to cells or batteries contained in the package, without shifting of the contents that would allow short circuiting and without release of package contents; and

(4) Gross weight of the package may not exceed 30 kg (66 pounds). This requirement does not apply to lithium cells or batteries packed with equipment.

g. Electrical devices must conform to § 173.21 of this subchapter; and

h. Sections 171.15 and 171.16 of this subchapter for those incidents resulting in the production of smoke, sparks, or dangerous evolution of heat.

* * * * *

198 Nitrocellulose solutions containing not more than 20% nitrocellulose may be transported as paint or printing ink, as applicable. See UN1210, UN1263, UN3066, UN3469, and UN3470.

237 ''Batteries, dry, containing potassium hydroxide solid, *electric storage*'' must be prepared and packaged in accordance with the requirements of § 173.159(a), (b). For transportation by aircraft, the provisions of § 173.159(d)(2) are applicable.

332 Magnesium nitrate hexahydrate is not subject to the requirements of this subchapter.

335 Mixtures of solids that are not subject to this subchapter and environmentally hazardous liquids or solids may be classified as ''Environmentally hazardous substances, solid, n.o.s.,'' UN3077 and may be transported under this entry, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Each transport unit must be leakproof when used as bulk packaging.

* * * * *

(4) * * *

TABLE 2—IP CODES

IBC code	Authorized IBCs
IP1	IBCs must be packed in closed freight containers or a closed transport vehicle.
IP2	When IBCs other than metal or rigid plastic IBCs are used, they must be offered for transportation in a closed freight container or a closed transport vehicle.
IP3	Flexible IBCs must be sift-proof and water-resistant or must be fitted with a sift-proof and water-resistant liner.
IP4	Flexible, fiberboard or wooden IBCs must be sift-proof and water-resistant or be fitted with a sift-proof and water-resistant liner.
IP5	IBCs must have a device to allow venting. The inlet to the venting device must be located in the vapor space of the IBC under maximum filling conditions.
IP6	Non-specification bulk bins are authorized.
IP7	For UN identification numbers 1327, 1363, 1364, 1365, 1386, 1841, 2211, 2217, 2793 and 3314, IBCs are not required to meet the IBC performance tests specified in part 178, subpart N of this subchapter.
IP8	Ammonia solutions may be transported in rigid or composite plastic IBCs (31H1, 31H2 and 31HZ1) that have successfully passed, without leakage or permanent deformation, the hydrostatic test specified in § 178.814 of this subchapter at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F).
IP13	Transportation by vessel in IBCs is prohibited.
IP14	Air must be eliminated from the vapor space by nitrogen or other means.
IP15	For UN2031 with more than 55% nitric acid, rigid plastic IBCs and composite IBCs with a rigid plastic inner receptacle are authorized for two years from the date of IBC manufacture.
IP20	Dry sodium cyanide or potassium cyanide is also permitted in sift-proof, water-resistant, fiberboard IBCs when transported in closed freight containers or transport vehicles.

(5) * * *

Code/Special Provisions

* * * * *

N90 Metal packagings are not authorized.

* * * * *

12. In § 172.202, paragraphs (a)(3) introductory text, (a)(4), and (a)(6)(vi) are revised to read as follows:

§ 172.202 Description of hazardous material shipping papers.

(a) * * *

(3) The hazard class or division number prescribed for the material, as shown in Column (3) of the § 172.101 table. The subsidiary hazard class or division number is not required to be entered when a corresponding subsidiary hazard label is not required. Except for combustible liquids, the subsidiary hazard class(es) or subsidiary division number(s) must be entered in parentheses immediately following the primary hazard class or division number. In addition—

* * * * *

(4) The packing group in Roman numerals, as designated for the hazardous material in Column (5) of the § 172.101 table. Class 1 materials, self-reactive substances, batteries other than those containing lithium, lithium ions, or sodium, and Division 5.2 materials are excepted from this requirement. In addition, entries that are not assigned a packing group (e.g., Class 7) are excepted from this requirement. The packing group may be preceded by the letters ''PG'' for example ''PG II;'' and

* * * * *

(6) * * *

(vi) For items where ''No Limit'' is shown in Column (9A) or (9B) of the § 172.101 table, the quantity shown must be the net mass or volume of the material. For articles (e.g., UN2800 and UN3166) the quantity must be the gross mass, followed by the letter ''G''; and

* * * * *

13. In § 172.322, paragraphs (d) introductory text, (d)(1), and (e) are revised to read as follows:

§ 172.322 Marine pollutants.

* * * * *

(d) The MARINE POLLUTANT mark is not required—

(1) On a combination package containing a marine pollutant in inner packagings each of which contains:

(i) 5 L (1.3 gallons) or less net capacity for liquids; or

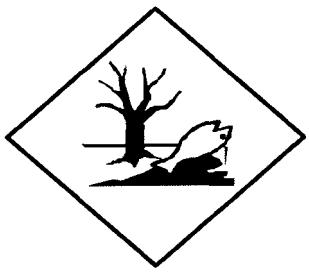
(ii) 5 kg (11 pounds) or less net capacity for solids.

* * * * *

(e) *MARINE POLLUTANT mark.* The MARINE POLLUTANT mark must conform to the following:

(1) Except for size, the MARINE POLLUTANT mark must appear as follows:

Marine Pollutant Mark



Symbol (fish and tree): Black on white or suitable contrasting background.

(2) The symbol and border must be black and the background white, or the symbol, border and background must be of contrasting color to the surface to which the mark be affixed. Each side of the mark must be—

(i) At least 100 mm (4 inches) for marks applied to:

(A) Non-bulk packages, except in the case of packages which, because of their size, can only bear smaller marks;

(B) Bulk packages with a capacity of less than 3,785 L (1,000 gallons); or

(ii) At least 250 mm (10 inches) for marks applied to all other bulk packages.

* * * * *

14. In § 172.400a, paragraph (c) is revised to read as follows:

§ 172.400a Exceptions from labeling.

* * * * *

(c) Notwithstanding the provisions of § 172.402(a), a Division 6.1 subsidiary hazard label is not required on a package containing a Class 8 (corrosive) material which has a subsidiary hazard of Division 6.1 (poisonous) if the toxicity of the material is based solely on the corrosive destruction of tissue rather than systemic poisoning. In addition, a Division 4.1 subsidiary hazard label is not required on a package bearing a Division 4.2 label.

* * * * *

15. In § 172.401, a new paragraph (c)(5) is added to read as follows:

§ 172.401 Prohibited labeling.

* * * * *

(c) * * *

(5) The Globally Harmonized System of Classification and Labelling of Chemicals (GHS) (IBR, see § 171.7 of this subchapter).

* * * * *

16. In § 172.446, paragraph (b) is revised to read as follows:

§ 172.446 CLASS 9 Label.

* * * * *

(b) In addition to complying with § 172.407, the background on the CLASS 9 label must be white with seven black vertical stripes on the top half. The black vertical stripes must be spaced, so that, visually, they appear equal in width to the six white spaces between them. The lower half of the label must be white with the class number ''9'' underlined and centered at the bottom. The solid horizontal line dividing the lower and upper half of the label is optional.

17. Section 172.448 is revised to read as follows:

§ 172.448 CARGO AIRCRAFT ONLY label.

(a) Except for size and color, the CARGO AIRCRAFT ONLY label must be as follows:

(b) The CARGO AIRCRAFT ONLY label must be black on an orange background.

(c) A CARGO AIRCRAFT ONLY label conforming to the specifications in § 172.448 on December 31, 2008, may be used until January 1, 2013.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

18. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

19. Section 173.4 is revised to read as follows:

§ 173.4 Small quantities for highway and rail.

(a) When transported domestically by highway or rail in conformance with this section, small quantities of Class 3, Division 4.1, Division 4.2 (PG II and III), Division 4.3 (PG II and III), Division 5.1, Division 5.2, Division 6.1, Class 7, Class 8, and Class 9 materials that also meet the definition of one or more of these hazard classes, are not subject to any other requirements of this subchapter when—

(1) The maximum quantity of material per inner receptacle or article is limited to—

(i) Thirty (30) mL (1 ounce) for authorized liquids, other than Division 6.1, Packing Group I, Hazard Zone A or B materials;

(ii) Thirty (30) g (1 ounce) for authorized solid materials;

(iii) One (1) g (0.04 ounce) for authorized materials meeting the definition of a Division 6.1, Packing Group I, Hazard Zone A or B material; and

(iv) An activity level not exceeding that specified in §§ 173.421, 173.424, 173.425 or 173.426, as appropriate, for a package containing a Class 7 (radioactive) material.

(2) With the exception of temperature sensing devices, each inner receptacle:

(i) Is not liquid-full at 55 °C (131 °F), and

(ii) Is constructed of plastic having a minimum thickness of no less than 0.2 mm (0.008 inch), or earthenware, glass, or metal;

(3) Each inner receptacle with a removable closure has its closure held securely in place with wire, tape, or other positive means;

(4) Unless equivalent cushioning and absorbent material surrounds the inside packaging, each inner receptacle is securely packed in an inside packaging with cushioning and absorbent material that:

(i) Will not react chemically with the material, and

(ii) Is capable of absorbing the entire contents (if a liquid) of the receptacle;

(5) The inside packaging is securely packed in a strong outside packaging;

(6) The completed package, as demonstrated by prototype testing, is capable of sustaining—

(i) Each of the following free drops made from a height of 1.8 m (5.9 feet) directly onto a solid unyielding surface without breakage or leakage from any inner receptacle and without a substantial reduction in the effectiveness of the package:

(A) One drop flat on bottom;

(B) One drop flat on top;

(C) One drop flat on the long side;

(D) One drop flat on the short side; and

(E) One drop on a corner at the junction of three intersecting edges; and

(ii) A compressive load as specified in § 178.606(c) of this subchapter.

Note to paragraph (a)(6): Each of the tests in paragraph (a)(6) of this section may be performed on a different but identical package; i.e., all tests need not be performed on the same package.

(7) Placement of the material in the package or packing different materials in the package does not result in a violation of § 173.21;

(8) The gross mass of the completed package does not exceed 29 kg (64 pounds);

(9) The package is not opened or otherwise altered until it is no longer in commerce; and

(10) The shipper certifies conformance with this section by marking the outside of the package with the statement ''This package conforms to 49 CFR 173.4.''

(b) A package containing a Class 7 (radioactive) material also must conform to the requirements of § 173.421(a)(1) through (a)(5) or § 173.424(a) through (g), as appropriate.

(c) Packages which contain a Class 2, Division 4.2 (PG I), or Division 4.3 (PG I) material conforming to paragraphs (a)(1) through (a)(10) of this section may be offered for transportation or transported if specifically approved by the Associate Administrator.

(d) Fuel cell cartridges and lithium batteries and cells are not eligible for the exceptions provided in this section.

20. Section 173.4a is added to read as follows:

§ 173.4a Excepted quantities.

(a) Excepted quantities of materials other than articles transported in accordance with this section are not subject to any additional requirements of this subchapter except for:

(1) The training requirements of subpart H of part 172 of this subchapter;

(2) The shipper's responsibilities to properly class their material in accordance with § 173.22 of this subchapter;

(3) Sections 171.15 and 171.16 of this subchapter pertaining to the reporting of incidents;

(4) For a Class 7 (Radioactive) material the requirements for an excepted package; and

(5) For transportation by vessel, the shipping paper requirements of subpart C of part 172 of this subchapter.

(b) *Authorized materials.* Only materials authorized for transport aboard passenger aircraft and appropriately classed within one of the following hazard classes or divisions may be transported in accordance with this section:

(1) Division 2.2 materials with no subsidiary hazard;

(2) Class 3 materials;

(3) Class 4 (PG II and III) materials except for self-reactive materials;

(4) Division 5.1 (PG II and III);

(5) Division 5.2 materials only when contained in a chemical kit or a first aid kit;

(6) Division 6.1, other than PG I, Hazard Zone A or B material;

(7) Class 7, Radioactive material in excepted packages;

(8) Class 8 (PG II and III), except for UN2803 (Gallium) and UN2809 (Mercury); and

(9) Class 9, except for UN1845 (Carbon dioxide, solid or Dry ice), and lithium batteries and cells.

(c) *Inner packaging limits.* The maximum quantity of hazardous materials in each inner packaging is limited to:

(1) 1 g (0.04 ounce) or 1 mL (0.03 ounce) for solids or liquids of Division 6.1, Packing Group I or II or other materials that also meet the definition of a toxic material;

(2) 30 g (1 ounce) or 30 mL (1 ounce) for solids or liquids other than those covered in paragraph (c)(1) of this section; and

(3) For gases a water capacity of 30 mL (1.8 cubic inches) or less.

(d) *Outer packaging aggregate quantity limits.* The maximum aggregate quantity of hazardous material contained in each outer packaging must not exceed the limits provided in the following paragraphs. For outer packagings containing more than one hazardous material, the aggregate quantity of hazardous material must not exceed the lowest permitted maximum aggregate quantity. The limits are as follows:

(1) For other than a Division 2.2 or Division 5.2 material:

(i) Packing Group I—300 g (0.66 pounds) for solids or 300 mL (0.08 gallons) for liquids;

(ii) Packing Group II—500 g (1.1 pounds) for solids or 500 mL (0.1 gallons) for liquids;

(iii) Packing Group III—1 kg (2.2 pounds) for solids or 1 L (0.2 gallons) for liquids;

(2) For Division 2.2 material, 1 L (61 cubic inches); or

(3) For Division 5.2 material, 500 g (1.1 pounds) for solids or 250 mL (0.05 gallons) for liquids.

(e) *Packaging materials.* Packagings used for the transport of excepted quantities must meet the following:

(1) Each inner receptacle must be constructed of plastic, or of glass, porcelain, stoneware, earthenware or metal. When used for liquid hazardous materials, plastic inner packagings must have a thickness of not less than 0.2 mm (0.008 inch).

(2) Each inner packaging with a removable closure must have its closure held securely in place with wire, tape or other positive means. Each inner receptacle having a neck with molded screw threads must have a leak proof, threaded type cap. The closure must not react chemically with the material.

(3) Each inner packaging must be securely packed in an intermediate packaging with cushioning material in such a way that, under normal conditions of transport, it cannot break, be punctured or leak its contents. The intermediate packaging must completely contain the contents in case of breakage or leakage, regardless of package orientation. For liquid hazardous materials, the intermediate packaging must contain sufficient absorbent material that:

(i) Will absorb the entire contents of the inner packaging. In such cases, and

(ii) Will not react dangerously with the material or reduce the integrity or function of the packaging materials.

(iii) The absorbent material may be the cushioning material.

(4) The intermediate packaging must be securely packed in a strong, rigid outer packaging.

(5) Placement of the material in the package or packing different materials in the package must not result in a violation of § 173.21.

(6) Each package must be of such a size that there is adequate space to apply all necessary markings.

(7) The package is not opened or otherwise altered until it is no longer in commerce.

(8) Overpacks may be used and may also contain packages of hazardous material or other materials not subject to the HMR subject to the requirements of § 173.25.

(f) *Package tests.* The completed package as prepared for transport, with

inner packagings filled to not less than 95% of their capacity for solids or 98% for liquids, must be capable of withstanding, as demonstrated by testing which is appropriately documented, without breakage or leakage of any inner packaging and without significant reduction in effectiveness:

(1) Drops onto a solid unyielding surface from a height of 1.8 m (5.9 feet):

(i) Where the sample is in the shape of a box, it must be dropped in each of the following orientations:

(A) One drop flat on the bottom;

(B) One drop flat on the top;

(C) One drop flat on the longest side;

(D) One drop flat on the shortest side; and

(E) One drop on a corner at the junction of three intersecting edges.

(ii) Where the sample is in the shape of a drum, it must be dropped in each of the following orientations:

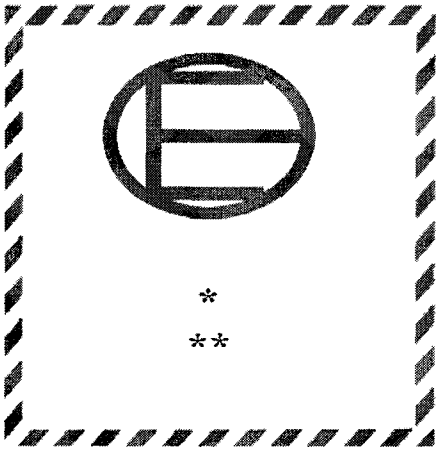
(A) One drop diagonally on the top chime, with the center of gravity directly above the point of impact;

(B) One drop diagonally on the base chime; and

(C) One drop flat on the side.

(2) A compressive load as specified in § 178.606(c) of this subchapter. Each of the tests in this paragraph (f) may be performed on a different but identical package; that is, all tests need not be performed on the same package.

(g) *Marking.* Excepted quantities of hazardous materials packaged, marked, and otherwise offered and transported in accordance with this section must be durably and legibly marked with the following marking:



(1) The ''*'' must be replaced by the primary hazard class, or when assigned, the division of each of the hazardous materials contained in the package. The ''**'' must be replaced by the name of the shipper or consignee if not shown elsewhere on the package.

(2) The symbol shall be not less than 100 mm (3.9 inches) × 100 mm (3.9 inches), and must be durable and clearly visible.

(h) *Documentation.*

(1) For transport by air, a shipping paper is not required, except that, if a document such as an air waybill accompanies a shipment, the document must include the statement ''Dangerous Goods in Excepted Quantities'' and indicate the number of packages.

(2) For transport by vessel, a shipping paper is required and must include the statement ''Dangerous Goods in Excepted Quantities'' and indicate the number of packages.

(i) *Restrictions.* Hazardous material packaged in accordance with this section may not be carried in checked or carry-on baggage.

21. Section 173.4b is added to read as follows:

§ 173.4b De minimis exceptions.

(a) Packing Group II and III materials in Class 3, Division 4.1, Division 4.2, Division 4.3, Division 5.1, Division 6.1, Class 8, and Class 9 do not meet the definition of a hazardous material in § 171.8 of this subchapter when packaged in accordance with this section and, therefore, are not subject to the requirements of this subchapter.

(1) The maximum quantity of material per inner receptacle or article is limited to—

(i) One (1) mL (0.03 ounce) for authorized liquids; and

(ii) One (1) g (0.04 ounce) for authorized solid materials;

(2) Each inner receptacle with a removable closure has its closure held securely in place with wire, tape, or other positive means;

(3) Unless equivalent cushioning and absorbent material surrounds the inside packaging, each inner receptacle is securely packed in an inside packaging with cushioning and absorbent material that:

(i) Will not react chemically with the material, and

(ii) Is capable of absorbing the entire contents (if a liquid) of the receptacle;

(4) The inside packaging is securely packed in a strong outside packaging;

(5) The completed package is capable of sustaining—

(i) Each of the following free drops made from a height of 1.8 m (5.9 feet) directly onto a solid unyielding surface without breakage or leakage from any inner receptacle and without a substantial reduction in the effectiveness of the package:

(A) One drop flat on bottom;

(B) One drop flat on top;

(C) One drop flat on the long side;

(D) One drop flat on the short side; and

(E) One drop on a corner at the junction of three intersecting edges; and

(ii) A compressive load as specified in § 178.606(c) of this subchapter. Each of the tests in this paragraph (a)(5) may be performed on a different but identical package; that is, all tests need not be performed on the same package.

(6) Placement of the material in the package or packing different materials in the package does not result in a violation of § 173.21;

(7) The aggregate quantity of hazardous material per package does not exceed 100 g (0.22 pounds) for solids or 100 mL (3.38 ounces) for liquids;

(8) The gross mass of the completed package does not exceed 29 kg (64 pounds);

(9) The package is not opened or otherwise altered until it is no longer in commerce; and

(10) For transportation by aircraft:

(i) The hazardous material is authorized to be carried aboard passenger-carrying aircraft in Column 9A of the § 172.101 Hazardous Materials Table; and

(ii) Material packed in accordance with this section may not be carried in checked or carry-on baggage.

(b) [Reserved]

22. In § 173.12, as amended on January 28, 2008, paragraph (f) is revised to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(f) *Household waste.* Household waste, as defined in § 171.8 of this subchapter, is not subject to the requirements of this subchapter when transported in accordance with applicable state, local, or tribal requirements.

23. In § 173.21, paragraph (c) is revised to read a follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(c) Electrical devices, such as batteries and battery-powered devices, which are likely to create sparks or generate a dangerous evolution of heat, unless packaged in a manner which precludes such an occurrence.

* * * * *

24. In § 173.24b, paragraph (e) is redesignated as paragraph (f) and revised, and a new paragraph (e) is added to read as follows:

§ 173.24b Additional general requirements for bulk packagings.

* * * * *

(e) Stacking of IBCs and Large Packagings:

(1) IBCs and Large Packagings not designed and tested to be stacked. No packages or freight (hazardous or otherwise) may be stacked upon an IBC or a Large Packaging that was not designed and tested to be stacked upon.

(2) IBCs and Large Packagings designed and tested to be stacked. The superimposed weight placed upon an IBC or a Large Packaging designed to be stacked may not exceed the maximum permissible stacking test mass marked on the packaging.

(f) *UN portable tanks.* (1) A UN portable tank manufactured in the United States must conform in all details to the applicable requirements in parts 172, 173, 178 and 180 of this subchapter.

(2) *UN portable tanks manufactured outside the United States.* A UN portable tank manufactured outside the United States, in accordance with national or international regulations based on the UN Recommendations (IBR, see § 171.7 of this subchapter), which is an authorized packaging under § 173.24 of this subchapter, may be filled, offered and transported in the United States, if the § 172.101 Table of this subchapter authorizes the hazardous material for transportation in the UN portable tank and it conforms to the applicable T codes, and tank provision codes, or other special provisions assigned to the hazardous material in Column (7) of the Table. In addition, the portable tank must—

(i) Conform to applicable provisions in the UN Recommendations (IBR, see § 171.7 of this subchapter) and the requirements of this subpart;

(ii) Be capable of passing the prescribed tests and inspections in part 180 of this subchapter applicable to the UN portable tank specification;

(iii) Be designed and manufactured according to the ASME Code (IBR, see § 171.7 of this subchapter) or a pressure vessel design code approved by the Associate Administrator;

(iv) Be approved by the Associate Administrator when the portable tank is designed and constructed under the provisions of an alternative arrangement (see § 178.274(a)(2) of this subchapter); and

(v) The competent authority of the country of manufacture must provide reciprocal treatment for UN portable tanks manufactured in the United States.

25. In § 173.62, in paragraph (b), the Explosives Table is amended by adding entries in the appropriate numerical order, and in paragraph (c), in the Table of Packing Methods, packing instruction entry 114(b) is revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(b) * * *

EXPLOSIVES TABLE

ID#	PI
* * * * *	
UN0505	135
UN0506	135
UN0507	135
UN0508	114(b)
UN0509	114(b)
* * * * *	

(c) * * *

(5) * * *

TABLE OF PACKING METHODS—CONTINUED

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* * * * * * *			
114(b) This packing instruction applies to dry solids.	Bags paper, kraft plastics textile, sift-proof woven plastics, sift-proof.	Not necessary	Boxes. natural wood, ordinary (4C1). natural wood, sift-proof walls (4C2) plywood (4D).
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0077, 0132, 0234, 0235 and 0236, packagings must be lead free. 2. For UN 0160 and UN 0161, when metal drums (1A2 or 1B2) are used as the outer packaging, metal packagings must be so constructed that the risk of explosion, by reason of increased internal pressure from internal or external causes is prevented. 3. For UN 0160, UN 0161, and UN0508, inner packagings are not necessary if drums are used as the outer packaging. 4. For UN 0508 and UN0509, metal packagings shall not be used.	Receptacles, fibreboard, metal, paper, plastics, woven plastics, sift-proof.		reconstituted wood (4F). fibreboard (4G). Drums. steel, removable head (1A2). aluminum, removable head (1B2) plywood (1D). fibre (1G). plastics, removable head (1H2).
* * * * * * *			

26. In § 173.115, paragraph (b) is revised, (k) is redesignated as new paragraph (l), and new paragraph (k) is added to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(b) Division 2.2 (*non-flammable, nonpoisonous compressed gas—including compressed gas, liquefied gas, pressurized cryogenic gas, compressed gas in solution, asphyxiant gas and oxidizing gas*). For the purpose of this subchapter, a non-flammable, nonpoisonous compressed gas (Division 2.2) means any material (or mixture) which—

(1) Exerts in the packaging an absolute pressure of 302 kPa (43.8 psia) or greater at 20 °C (68 °F), is a liquefied gas or is a cryogenic liquid, and

(2) Does not meet the definition of Division 2.1 or 2.3.

* * * * *

(k) For Division 2.2 gases, the oxidizing ability shall be determined by tests or by calculation in accordance with ISO 10156:1996 and ISO 10156–2:2005 (IBR, see § 171.7 of this subchapter).

(l) The following applies to aerosols (see § 171.8 of this subchapter):

(1) An aerosol must be assigned to Division 2.1 if the contents include 85% by mass or more flammable components and the chemical heat of combustion is 30 kJ/g or more;

(2) An aerosol must be assigned to Division 2.2 if the contents contain 1% by mass or less flammable components and the heat of combustion is less than 20 kJ/g.

(3) Aerosols not meeting the provisions of paragraphs (a) or (b) of this section must be classed in accordance with the appropriate tests of the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter). An aerosol which was tested in accordance with the requirements of this subchapter in effect on December 31, 2005, is not required to be retested.

(4) Division 2.3 gases may not be transported in an aerosol container.

(5) When the contents are classified as Division 6.1, PG III or Class 8, PG II or III, the aerosol must be assigned a subsidiary hazard of Division 6.1 or Class 8, as appropriate.

(6) Substances of Division 6.1, PG I or II, and substances of Class 8, PG I are forbidden from transportation in an aerosol container.

(7) Flammable components are Class 3 flammable liquids, Division 4.1 flammable solids, or Division 2.1 flammable gases. The chemical heat of combustion must be determined in accordance with the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter).

* * * * *

27. In § 173.134, as amended on January 28, 2008, paragraph (b)(13)(i) is revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions and exceptions.

* * * * *

(b) * * *

(13) * * *

(i) Household waste as defined in § 171.8, when transported in accordance with applicable state, local, or tribal requirements.

* * * * *

28. In § 173.137, paragraph (c)(2) is revised and a note to the section is added to read as follows:

§ 173.137 Class 8—Assignment of packing group.

* * * * *

(c) * * *

(2) That do not cause full thickness destruction of intact skin tissue but exhibit a corrosion on either steel or aluminum surfaces exceeding 6.25 mm (0.25 inch) a year at a test temperature of 55 °C (130 °F) when tested on both materials. The corrosion may be determined in accordance with the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) or other equivalent test methods.

Note to § 173.137: When an initial test on either a steel or aluminum surface indicates the material being tested is corrosive, the follow up test on the other surface is not required.

29. Section 173.159 is revised to read as follows:

§ 173.159 Batteries, wet.

(a) Electric storage batteries, containing electrolyte acid or alkaline corrosive battery fluid (wet batteries), may not be packed with other materials except as provided in paragraphs (g) and (h) of this section and in §§ 173.220 and 173.222; and any battery or battery-powered device, equipment or vehicle must be prepared and packaged for transport so as to prevent:

(1) The potential of a dangerous evolution of heat;

(2) Short circuits, including, but not limited to:

(i) Packaging each battery or each battery-powered device or equipment when practicable in fully enclosed inner packagings made of non-conductive material;

(ii) Separating batteries and battery-powered devices in a manner to prevent contact with other batteries, devices or conductive materials (e.g., metal) in the packagings; or

(iii) Ensuring exposed terminals are protected with non-conductive caps, non-conductive tape, or by other appropriate means; and

(3) Damage to terminals. If not impact resistant, the outer packaging should not be used as the sole means of protecting the battery terminals from damage or short circuiting. Batteries must be securely cushioned and packed to prevent any shifting which could loosen terminal caps or reorient the terminals. Terminal protection methods include but are not limited to:

(i) Securely attaching covers of sufficient strength to protect the terminals;

(ii) Packaging the battery in a rigid plastic packaging; or

(iii) Constructing the battery with terminals that are recessed or otherwise protected so that the terminals will not be subjected to damage if the package is dropped.

(b) For transportation by aircraft:

(1) The packaging for wet batteries must incorporate an acid-or alkali-proof liner, or include a supplementary packaging with sufficient strength and adequately sealed to prevent leakage of electrolyte fluid in the event of spillage; and

(2) Any battery-powered device, equipment or vehicle must be prepared and packaged for transport so as to prevent unintentional activation (e.g., adequate packaging, switch caps or locks, recessed switches, trigger locks, temperature sensitive circuit breakers, etc.).

(c) The following specification packagings are authorized for batteries packed without other materials provided all requirements of paragraph (a) of this section, and for transportation by aircraft, paragraph (b) of this section, are met:

(1) Wooden box: 4C1, 4C2, 4D, or 4F

(2) Fiberboard box: 4G

(3) Plywood drum: 1D

(4) Fiber drum: 1G

(5) Plastic drum: 1H2

(6) Plastic jerrican: 3H2

(7) Plastic box: 4H2

(d) The following non-specification packagings are authorized for batteries packed without other materials provided all requirements of paragraph (a) of this section, and for transportation by aircraft, paragraph (b) of this section, are met:

(1) Electric storage batteries are firmly secured to skids or pallets capable of withstanding the shocks normally incident to transportation are authorized for transportation by rail, highway, or vessel. The height of the completed unit must not exceed 1½ times the width of the skid or pallet. The unit must be capable of withstanding, without damage, a superimposed weight equal to two times the weight of the unit or, if the weight of the unit exceeds 907 kg (2000 pounds), a superimposed weight of 1814 kg (4000 pounds). Battery terminals must not be relied upon to support any part of the superimposed weight and must not short out if a conductive material is placed in direct contact with them.

(2) Electric storage batteries weighing 225 kg (500 pounds) or more, consisting of carriers' equipment, may be shipped by rail when mounted on suitable skids. Such shipments may not be offered in interchange service.

(3) One to three batteries not over 11.3 kg (25 pounds) each, packed in strong outer boxes. The maximum authorized gross weight is 34 kg (75 pounds).

(4) Not more than four batteries not over 7 kg (15 pounds) each, packed in strong outer fiberboard or wooden boxes. The maximum authorized gross weight is 30 kg (65 pounds).

(5) Not more than five batteries not over 4.5 kg (10 pounds) each, packed in strong outer fiberboard or wooden boxes. The maximum authorized gross weight is 30 kg (65 pounds).

(6) Single batteries not exceeding 34 kg (75 pounds) each, packed in 5-sided slip covers or in completely closed fiberboard boxes. Slip covers and boxes must be of solid or double-faced corrugated fiberboard of a least 91 kg (200 pounds) Mullen test strength. The slip cover or fiberboard box must fit snugly and provide inside top clearance of at least 1.3 cm (0.5 inch) above battery terminals and filler caps with reinforcement in place. Assembled for shipment, the bottom edges of the slipcover must come to within 2.5 cm (1 inch) of the bottom of the battery. The completed package (battery and box or slip cover) must be capable of withstanding a top-to-bottom compression test of at least 225 kg (500 pounds) without damage to battery terminal caps, cell covers or filler caps.

(7) Single batteries exceeding 34 kg (75 pounds) each may be packed in completely closed fiberboard boxes. Boxes must be of double-wall corrugated fiberboard of at least 181 kg (400 pounds) test, or solid fiberboard testing at least 181 kg (400 pounds); a box may have hand holes in its ends provided that the hand holes will not materially weaken the box. Sides and ends of the box must have cushioning between the battery and walls of the box; combined thickness of cushioning material and walls of the box must not be less than 1.3 cm (0.5 inch); and cushioning must be excelsior pads, corrugated fiberboard, or other suitable cushioning material. The bottom of the battery must be protected by a minimum of one excelsior pad or by a double-wall corrugated fiberboard pad. The top of the battery must be protected by a wood frame, corrugated trays or scored sheets of corrugated fiberboard having minimum test of 91 kg (200 pounds), or other equally effective cushioning material. Top protection must bear evenly on connectors and/or edges of the battery cover to facilitate stacking of batteries. No more than one battery may be placed in one box. The maximum authorized gross weight is 91 kg (200 pounds).

(e) When transported by highway or rail, electric storage batteries containing electrolyte or corrosive battery fluid are not subject to any other requirements of this subchapter, if all of the following are met:

(1) No other hazardous materials may be transported in the same vehicle;

(2) The batteries must be loaded or braced so as to prevent damage and short circuits in transit;

(3) Any other material loaded in the same vehicle must be blocked, braced, or otherwise secured to prevent contact with or damage to the batteries; and

(4) The transport vehicle may not carry material shipped by any person other than the shipper of the batteries.

(f) Batteries can be considered as non-spillable provided they are capable of withstanding the following two tests, without leakage of battery fluid from the battery:

(1) *Vibration test.* The battery must be rigidly clamped to the platform of a vibration machine, and a simple harmonic motion having an amplitude of 0.8 mm (0.03 inches) with a 1.6 mm (0.063 inches) maximum total excursion must be applied. The frequency must be varied at the rate of 1 Hz/min between the limits of 10 Hz to 55 Hz. The entire range of frequencies and return must be traversed in 95±5 minutes for each mounting position (direction of vibrator) of the battery. The battery must be tested in three mutually perpendicular positions (to include testing with fill openings and vents, if any, in an inverted position) for equal time periods.

(2) *Pressure differential test.* Following the vibration test, the battery must be stored for six hours at 24 °C±4 °C (75 °F±7 °F) while subjected to a pressure differential of at least 88 kPa (13 psig). The battery must be tested in three mutually perpendicular positions (to include testing with fill openings and vents, if any, in an inverted position) for at least six hours in each position.

(g) Electrolyte, acid or alkaline corrosive battery fluid, packed with batteries wet or dry, must be packed in one of the following specification packagings:

(1) In 4C1, 4C2, 4D, or 4F wooden boxes with inner receptacles of glass, not over 4.0 L (1 gallon) each with not over 8.0 L (2 gallons) total in each outside container. Inside containers must be well-cushioned and separated from batteries by a strong solid wooden partition. The completed package must conform to Packing Group III requirements.

(2) Electrolyte, acid, or alkaline corrosive battery fluid included with electric storage batteries and filling kits may be packed in strong rigid outer packagings when shipments are made by, for, or to the Departments of the Army, Navy, or Air Force of the United States. Packagings must conform to military specifications. The electrolyte, acid, or alkaline corrosive battery fluid must be packed in polyethylene bottles of not over 1.0 L (0.3 gallon) capacity each. Not more than 24 bottles, securely separated from electric storage batteries and kits, may be offered for transportation or transported in each package.

(3) In 4G fiberboard boxes with not more than 12 inside packagings of polyethylene or other material resistant to the lading, each not over 2.0 L (0.5 gallon) capacity each. Completed packages must conform to Packing Group III requirements. Inner packagings must be adequately separated from the storage battery. The maximum authorized gross weight is 29 kg (64 pounds). These packages are not authorized for transportation by aircraft.

(h) Dry batteries or battery charger devices may be packaged in 4G fiberboard boxes with inner receptacles containing battery fluid. Completed packagings must conform to Packing Group III requirements. Not more than 12 inner receptacles may be packed in one outer box. The maximum authorized gross weight is 34 kg (75 pounds).

(i) When approved by the Associate Administrator, electric storage batteries, containing electrolyte or corrosive battery fluid in a separate reservoir from which fluid is injected into the battery cells by a power device cartridge assembled with the battery, and which meet the criteria of paragraph (f) are not subject to any other requirements of this subchapter.

30. A new § 173.159a is added to read as follows:

§ 173.159a Exceptions for non-spillable batteries.

(a) Exceptions for hazardous materials shipments in the following paragraphs are permitted only if this section is referenced for the specific hazardous material in the § 172.101 table or in a packaging section in this part.

(b) Non-spillable batteries offered for transportation or transported in accordance with this section are subject to the incident reporting requirements of §§ 171.15 and 171.16 when applicable.

(c) Non-spillable batteries are excepted from the packaging requirements of § 173.159 under the following conditions:

(1) Non-spillable batteries must be securely packed in strong outer packagings and meet the requirements of § 173.159(a). A non-spillable battery which is an integral part of and necessary for the operation of mechanical or electronic equipment must be securely fastened in the battery holder on the equipment;

(2) For batteries manufactured after September 30, 1995, the battery and outer packaging must be plainly and durably marked ''NONSPILLABLE'' or ''NONSPILLABLE BATTERY''. The requirement to mark the outer package does not apply when the battery is

installed in a piece of equipment that is transported unpackaged.

(d) Non-spillable batteries are excepted from all other requirements of this subchapter when offered for transportation and transported in accordance with paragraph (c) of this section and:

(1) At a temperature of 55 °C (131 °F), the battery must not contain any unabsorbed free-flowing liquid, and must be designed so that electrolyte will not flow from a ruptured or cracked case; and

(2) When transported by aircraft:

(i) The airway bill must contain the words ''not restricted''; and

(ii) Any battery-powered device, equipment or vehicle must be prepared and packaged for transport so as to prevent unintentional activation.

31. In § 173.162, paragraph (c) is revised to read as follows:

§ 173.162 Gallium.

* * * * *

(c) Manufactured articles or apparatuses containing gallium are not subject to the requirements of this subchapter except for the following:

(1) For transportation by aircraft:

(i) Each manufactured article or apparatus contains no more than 100 mg (0.0035 ounce) of gallium and is packaged so that the quantity of gallium per package does not exceed 1 g (0.35 ounce);

(ii) The incident reporting requirements of § 171.15 of this subchapter; and

(iii) The airway bill must contain the words ''not restricted.''

(2) For transportation by motor vehicle, rail, or vessel, each manufactured article or apparatus, must contain no more than 100 mg (0.0035 ounce) of gallium and is packaged so that the quantity of gallium per package does not exceed 1 g (0.35 ounce).

32. In § 173.164, paragraph (b) is revised to read as follows:

§ 173.164 Mercury (metallic and articles containing mercury).

* * * * *

(b) Manufactured articles or apparatuses containing mercury are not subject to the requirements of this subchapter except for the following:

(1) For transportation by aircraft:

(i) Each manufactured article or apparatus contains no more than 100 mg (0.0035 ounce) of mercury and is packaged so that the quantity of mercury per package does not exceed 1 g (0.35 ounce);

(ii) The incident reporting requirements of § 171.15 of this subchapter; and

(iii) The airway bill must contain the words ''not restricted.''

(2) For transportation by motor vehicle, rail, or vessel, each manufactured article or apparatus, must contain no more than 100 mg (0.0035 ounce) of mercury and is packaged so that the quantity of mercury per package does not exceed 1 g (0.35 ounce).

* * * * *

33. In § 173.166, paragraph (d)(1) is revised to read as follows:

§ 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.

* * * * *

(d) * * *

(1) An air bag module or seat-belt pretensioner that has been approved by the Associate Administrator and is installed in a motor vehicle, aircraft, boat or other transport conveyance or its completed components, such as steering columns or door panels, is not subject to the requirements of this subchapter except for transportation by air:

(i) The incident reporting requirements of § 171.15 of this subchapter; and

(ii) The air waybill must contain the words ''not restricted.''

* * * * *

34. In § 173.186, paragraph (c) is revised to read as follows:

§ 173.186 Matches.

* * * * *

(c) Safety matches and wax ''Vesta'' matches must be tightly packed in securely closed inner packagings to prevent accidental ignition under conditions normally incident to transportation, and further packed in outer fiberboard, wooden, or other equivalent-type packagings. These matches in outer packagings not exceeding 23 kg (50 pounds) gross weight are not subject to any other requirement of this subchapter except for marking, and for transportation by aircraft, the incident reporting requirements of § 171.15 of this subchapter and the air waybill must contain the words ''not restricted.'' These matches may be packed in the same outer packaging with materials not subject to this subchapter.

* * * * *

35. In § 173.189, paragraph (e) is revised to read as follows:

§ 173.189 Batteries containing sodium or cells containing sodium.

* * * * *

(e) Vehicles, machinery and equipment powered by sodium batteries must be consigned under the entry ''Battery-powered vehicle or Battery-powered equipment.''

36. In § 173.196, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 173.196 Category A infectious substances.

(a) * * *

(1) A leakproof primary receptacle.

(2) A leakproof secondary packaging. If multiple fragile primary receptacles are placed in a single secondary packaging, they must be either wrapped individually or separated to prevent contact between them.

* * * * *

37. In subpart E of part 173, a new § 173.206 is added to read as follows:

§ 173.206 Packaging requirements for chlorosilanes.

(a) When § 172.101 of this subchapter specifies that a hazardous material be packaged under this section, only non-bulk packagings prescribed in this section may be used for its transportation. Each packaging must conform to the general packaging requirements of subpart B of part 173, to the requirements of part 178 of this subchapter at the Packing Group I or II performance level (unless otherwise excepted), and to the particular requirements of the special provisions of Column (7) of the § 172.101 Table.

(b) The following combination packagings are authorized:

Outer packagings:

Steel drum: 1A2
Plastic drum: 1H2
Plywood drum: 1D
Fiber drum: 1G
Steel box: 4A
Natural wood box: 4C1 or 4C2
Plywood box: 4D
Reconstituted wood box: 4F
Fiberboard box: 4G
Expanded plastic box: 4H1
Solid plastic box: 4H2

Inner packagings:

Glass or Steel receptacle

(c) Except for transportation by passenger aircraft, the following single packagings are authorized:

Steel drum: 1A1
Steel jerrican: 3A1
Plastic receptacle in steel drum: 6HA1

38. In § 173.220, paragraphs (a)(2), (c), (d), and (e)(1), and the last two sentences of paragraph (g)(2) are revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery-powered vehicles or equipment.

(a) * * *

(2) It is equipped with a wet battery (including a non-spillable battery), a sodium battery or lithium battery; or

* * * * *

(c) *Battery-powered or installed.* Batteries must be securely installed, and wet batteries must be fastened in an upright position. Batteries must be protected against short circuits and leakage or removed and packaged separately under § 173.159. Battery-powered vehicles, machinery or equipment including battery-powered wheelchairs and mobility aids are not subject to any other requirements of this subchapter except § 173.21 when transported by rail, highway or vessel.

(d) *Lithium batteries.* Except as provided in § 173.185 of this subchapter, vehicles, engines and machinery powered by lithium metal batteries that are transported with these batteries installed are forbidden aboard passenger-carrying aircraft. Lithium batteries contained in vehicles, engines or mechanical equipment must be securely fastened in the battery holder of the vehicle, engine or mechanical equipment and be protected in such a manner as to prevent damage and short circuits (e.g., by the use of non-conductive caps that cover the terminals entirely). Lithium batteries must be of a type that have successfully passed each test in the UN Manual of Tests and Criteria as specified in § 173.185, unless approved by the Associate Administrator. Equipment (other than vehicles, engines or mechanical equipment) containing lithium batteries, must be described as ''Lithium batteries contained in equipment'' and transported in accordance with § 173.185 and applicable special provisions.

(e) *Other hazardous materials.* (1) Items containing hazardous materials, such as, fire extinguishers, compressed gas accumulators, safety devices and other hazardous materials which are integral components of the motor vehicle, engine or mechanical equipment and are necessary for the operation of the vehicle, engine or mechanical equipment, or for the safety of its operator or passengers must be securely installed in the motor vehicle, engine or mechanical equipment. Such items are not otherwise subject to the requirements of this subchapter. Equipment (other than vehicles, engines or mechanical equipment) containing lithium batteries must be described as ''Lithium batteries contained in equipment'' and transported in accordance with § 173.185 and applicable special provisions.

* * * * *

(g) * * *

(2) * * * For transportation by aircraft, the provisions of § 173.159(d)(2) as applicable, other applicable requirements of this subchapter, including shipping papers, emergency response information, notification of pilot-in-command, general packaging requirements, and the requirements specified in § 173.27 must be met. For transportation by vessel, additional exceptions are specified in § 176.905 of this subchapter.

39. In § 173.222, the section heading and paragraph (c)(3) are revised to read as follows:

§ 173.222 Dangerous goods in equipment, machinery or apparatus.

* * * * *

(c) * * *

(3) 0.5 kg (1.1 pounds) in the case of Division 2.2 gases. For transportation by aircraft, Division 2.2 gases with subsidiary risks and refrigerated liquefied gases are not authorized; and

* * * * *

40. a. In § 173.225, in paragraph (c)(8), the Organic Peroxide Table is amended by removing and adding the following entries in the appropriate order; and in the ''NOTES'' immediately following the Table, a new Note ''29,'' ''30'' and ''31'' are added in the appropriate numerical order.

b. In paragraph (e), the Organic Peroxide IBC Table is amended by removing and adding the following entries in the appropriate order.

c. In paragraph (g), the Organic Peroxide Portable Tank Table is amended by adding and revising the following entries in the appropriate order.

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(c) * * *

(8) * * *

ORGANIC PEROXIDE TABLE

Technical name	ID No.	Concent. (mass %)	Diluent (mass %) A	Diluent (mass %) B	Diluent (mass %) I	Water (mass %)	Packing method	Temp control	Temp emergency	Notes
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
[REMOVE]										
*		*		*	*		*		*	
tert-Amyl peroxy-3,5,5-trimethylhexanoate	3101	≤100					OP5.			
*		*		*	*		*		*	
Cyclohexanone peroxide(s)	Exempt				≥68		Exempt.			
*		*		*	*		*		*	
Dibenzoyl peroxide	Exempt	≤35			≥65		Exempt.			
*		*		*	*		*		*	
Di-(2-tert-butylperoxyisopropyl) benzene(s)	Exempt	≤42			≥58		Exempt.			
*		*		*	*		*		*	
Di-4-chlorobenzoyl peroxide	Exempt	≤32			≥68		Exempt.			
*		*		*	*		*		*	
Dicumyl peroxide	Exempt	≤52			≥48		Exempt.			
*		*		*	*		*		*	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water].	3117	≤62					OP8	−15	−5	
*		*		*	*		*		*	
[ADD]										
*		*		*	*		*		*	
tert-Amyl peroxyneodecanoate	3119	≤47	≥53				OP8	0	+10	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concent. (mass %)	Diluent (mass %) A	Diluent (mass %) B	Diluent (mass %) I	Water (mass %)	Packing method	Temp control	Temp emergency	Notes
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
* *		*		*	*		*		*	
tert-Amyl peroxypivalate	3119	≤32	≥68				OP8	+10	+15	
tert-Amyl peroxy-3,5,5-trimethylhexanoate	3105	≤100					OP7.			
* *		*		*	*		*		*	
tert-Butyl peroxy-3,5,5-trimethlyhexanoate	3106	≤42			≥58		OP7.			
* *		*		*	*		*		*	
Cumyl peroxyneodecanoate	3115	≤87	≥13				OP7	−10	0	
* *		*		*	*		*		*	
Cyclohexanone peroxide(s)	Exempt	≤32			≥68		Exempt			29
* *		*		*	*		*		*	
2,2-DI-(tert-amylperoxy)-butane	3105	≤57	≥43				OP7.			
* *		*		*	*		*		*	
Dibenzoyl peroxide	Exempt	≤35			≥65		Exempt			29
* *		*		*	*		*		*	
tert-Butyl peroxybenzoate	3109	≤32	≥68				OP8.			
* *		*		*	*		*		*	
1,1-DI-(tert-butylperoxy)-cyclohexane	3103	≤72		≥28			OP5			30
* *		*		*	*		*		*	
1,1-Di-(tert-Butylperoxy) cyclohexane	3109	≤37	≥63				OP8.			
* *		*		*	*		*		*	
1,1-DI-(tert-butylperoxy)-Cyclohexane + tert-butyl peroxy-2-ethylhexanoate.	3105	≤43 + ≤16	≥41				OP7.			
* *		*		*	*		*		*	
Di-(2-tert-butylperoxyisopropyl) benzene(s)	Exempt	≤42			≥58		Exempt			29
* *		*		*	*		*		*	
1,1-DI-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	3103	≤90		≥10			OP5			30
* *		*		*	*		*		*	
DI-2,4-dichlorobenzoyl peroxide [as a paste]	3118	≤52					OP8	+20	+25	
* *		*		*	*		*		*	
Di-4-chlorobenzoyl peroxide	Exempt	≤32			≥68		Exempt			29
* *		*		*	*		*		*	
Dicumyl peroxide	Exempt	≤52			≥48		Exempt			29
* *		*		*	*		*		*	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water].	3119	≤62					OP8	−15	−5	
* *		*		*	*		*		*	
Di-(2-neodecanoyl-peroxyisopropyl) benzene, as stable dispersion in water.	3119	<42					OP8	−15	−5	
* *		*		*	*		*		*	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate.	3115	≤77	≥23				OP7	−5	+5	
* *		*		*	*		*		*	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate [as a stable dispersion in water].	3119	≤52					OP8	−5	+5	
* *		*		*	*		*		*	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate.	3117	≤52	≥48				OP8	−5	+5	
* *		*		*	*		*		*	
Methyl isopropyl ketone peroxide(s)	3109	(See remark 31).	≥70				OP8			31
* *		*		*	*		*		*	
3,3,5,7,7-Pentamethyl-1,2,4-Trioxepane	3107	≤100					OP8.			

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concent. (mass %)	Diluent (mass %) A	Diluent (mass %) B	Diluent (mass %) I	Water (mass %)	Packing method	Temp control	Temp emergency	Notes
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
*	*	*	*	*	*	*	*	*		

NOTES

* * * * *

29. Not subject to the requirements of this subchapter for Division 5.2.

30. Diluent type B with boiling point >130 °C (266 °F).

31. Available oxygen ≤6.7%.

* * * * *

(e) * * *

ORGANIC PEROXIDE IBC TABLE

UN No.	Organic peroxide	Type of IBC	Maximum quantity (litres)	Control temperature	Emergency temperature
[REMOVE]					
*	* * *	*	*	*	
3109	ORGANIC PEROXIDE, TYPE F, LIQUID.				
*	* * *	*	*	*	
	tert-Butyl peroxy-3,5,5-trimethylhexanoate, not more than 32% in diluent type A.	31A	1250		
		31HA1	1000		
*	* * *	*	*	*	
3119	ORGANIC PEROXIDE, TYPE F, LIQUID, TEMPERATURE CONTROLLED.				
*	* * *	*	*	*	
	tert-Butyl peroxyneodecanoate, not more than 42%, stable dispersion, in water.	31A	1250	−5 °C	+5 °C
	Di-(2-ethylhexyl) peroxydicarbonate, not more than 52%, staple dispersion, in water.	31A	1250	−20 °C	−10 °C
*	* * *	*	*	*	
[ADD]					
*	* * *	*	*	*	
3109	ORGANIC PEROXIDE, TYPE F, LIQUID.				
*	* * *	*	*	*	
	tert-Butyl peroxybenzoate, not more than 32% in diluent type A.	31A	1250		
*	* * *	*	*	*	
	tert-Butyl peroxy-3,5,5-trimethylhexanoate, not more than 37% in diluent type A.	31A	1250		
		31HA1	1000		
*	* * *	*	*	*	
	1,1-Di-(tert-Butylperoxy) cyclohexane, not more than 37% in diluent type A.	31A	1250		
*	* * *	*	*	*	
3119	ORGANIC PEROXIDE, TYPE F, LIQUID, TEMPERATURE CONTROLLED.				
*	* * *	*	*	*	
	tert-Amyl peroxypivalate, not more than 32% in diluent type A.	31A	1250	+10 °C	+15 °C
*	* * *	*	*	*	
	tert-Butyl peroxyneodecanoate, not more than 52%, stable dispersion, in water.	31A	1250	−5 °C	+5 °C
*	* * *	*	*	*	
	Di-(2-ethylhexyl) peroxydicarbonate, not more than 62%, staple dispersion, in water.	31A	1250	−20 °C	−10 °C

ORGANIC PEROXIDE IBC TABLE—Continued

UN No.	Organic peroxide	Type of IBC	Maximum quantity (litres)	Control temperature	Emergency temperature
*	* * *	*	*	*	*
	Di-(2-neodecanoylperoxyisopropyl) benzene, not more than 42%, stable dispersion, in water.	31A	1250	−15 °C	−5 °C
*	* * *	*	*	*	*
	3-Hydroxy-1,1-dimethylbutyl peroxy-neodecanoate, not more than 52%, stable dispersion, in water.	31A	1250	−15 °C	−5 °C
*	* * *	*	*	*	*

* * * * * (g) * * *

ORGANIC PEROXIDE PORTABLE TANK TABLE

UN No.	Hazardous material	Minimum test pressure (bar)	Minimum shell thickness (mm-reference steel) See . . .	Bottom opening requirements See . . .	Pressure relief requirements See . . .	Filling limits	Control temperature	Emergency temperature
	[REMOVE].							
	*	*	*	*	*	*	*	
3119	ORGANIC PEROXIDE, TYPE F, LIQUID, TEMPERATURE CONTROLLED.							
	Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 38% in diluent type A.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	0 °C	+5 °C
	*	*	*	*	*	*	*	
[ADD]								
	*	*	*	*	*	*	*	
3119	ORGANIC PEROXIDE, TYPE F, LIQUID, TEMPERATURE CONTROLLED.							
	tert-Amyl peroxyneodecanoate, not more than 47% in diluent type A.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	−10 °C	−5 °C
	*	*	*	*	*	*	*	
	Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 38% in diluent type A or type B.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	0 °C	+5 °C
	*	*	*	*	*	*	*	

41. In § 173.226, paragraph (c) is revised to read as follows:

§ 173.226 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A.

* * * * *

(c) In combination packagings, consisting of an inner packaging system and an outer packaging, as follows:

(1) Outer packagings:

Steel drum: 1A2
Aluminum drum: 1B2
Metal drum, other than steel or aluminum: 1N2
Plywood drum: 1D
Fiber drum: 1G
Plastic drum: 1H2
Steel box: 4A
Aluminum box: 4B
Natural wood box: 4C1 or 4C2
Plywood box: 4D
Reconstituted wood box: 4F
Fiberboard box: 4G
Expanded plastic box: 4H2
Solid plastic box: 4H2

(2) Inner packaging system. The inner packaging system consists of two packagings:

(i) An impact-resistant receptacle of glass, earthenware, plastic or metal securely cushioned with a non-reactive, absorbent material, and

(A) Capacity of each inner receptacle may not exceed 4 L (1 gallon).

(B) An inner receptacle that has a closure must have a closure which is physically held in place by any means capable of preventing back-off or

loosening of the closure by impact or vibration during transportation.

(ii) Packed within a leak-tight packaging of metal or plastic.

(iii) This combination packaging in turn is packed within the outer packaging.

(3) Additional requirements:

(i) The total amount of liquid contained in the outer packaging must not exceed 16 L (4 gallons).

(ii) The inner packaging system must conform to the performance test requirements of subpart M of part 178 of this subchapter, at the Packaging Group I performance level when subjected to the following tests:

(A) § 178.603—Drop Test

(B) § 178.604—Leakproofness Test

(C) § 178.605—Hydrostatic Pressure Test

(iii) The inner packaging system must meet the above tests without the benefit of the outer packaging.

(iv) The leakproofness and hydrostatic pressure test may be conducted on either the inner receptacle or the outer packaging of the inner packaging system.

(v) The outer package must conform to the performance test requirements of subpart M of part 178 of this subchapter, at the Packaging Group I performance level as applicable for the type of package being used.

* * * * *

42. Section 173.230 is revised to read as follows:

§ 173.230 Fuel cell cartridges containing hazardous material.

(a) *Requirements for fuel cell cartridges.* Fuel cell cartridges, including when contained or packed with equipment, must be designed and constructed to prevent fuel leakage under normal conditions of transportation and be free of electric charge generating components. Fuel cell cartridge design types using liquids as fuels must pass an internal pressure test at a gauge pressure of 100 kPa (15 psig) without leakage. Except for fuel cell cartridges containing hydrogen in metal hydride which must be in conformance with paragraph (d) of this section, each fuel cell cartridge design type including when contained in or packed with equipment, must pass a 1.2 meter (3.9 feet) drop test onto an unyielding surface in the orientation most likely to result in the failure of the containment system with no loss of contents. Fuel cells installed in or integral to a fuel cell system are regarded as contained in equipment. Fuel cell cartridges containing a Division 2.1, Division 4.3 or Class 8 material must meet the following additional requirements.

(b) A fuel cell cartridge designed to contain a Division 4.3 or a Class 8 material may contain an activator provided it is fitted with two independent means of preventing unintended mixing with the fuel during transport.

(c) Each fuel cell cartridge designed to contain a liquefied flammable gas must:

(1) Be capable of withstanding, without leakage or bursting, a pressure of at least two times the equilibrium pressure of the contents at 55 °C (131 °F);

(2) Contain no more than 200 mL of liquefied flammable gas with a vapor pressure not exceeding 1,000 kPa (150 psig) at 55 °C (131 °F); and

(3) Pass the hot water bath test prescribed in accordance with § 173.306(a)(3)(v).

(d) Each fuel cell cartridge designed to contain hydrogen in a metal hydride must conform to the following:

(1) Each fuel cell cartridge must have a water capacity less than or equal to 120 mL (4 fluid ounces).

(2) Each fuel cell cartridge must be capable of withstanding, without leakage or bursting, a pressure of at least two times the design pressure of the cartridge at 55 °C (131 °F) or 200 kPa (30 psig) more than the design pressure of the cartridge at 55 °C (131 °F), whichever is greater. The pressure within the fuel cell cartridge must not exceed 5 MPa (650 psig) at 55 °C (131 °F). The pressure at which the test is conducted is referred to as the ''minimum shell burst pressure.''

(3) Each fuel cell cartridge must be filled in accordance with the procedure provided by the manufacturer. The manufacturer must provide the following information with each fuel cell cartridge:

(i) Inspection procedures to be carried out before initial filling and before refilling of the fuel cell cartridge;

(ii) Safety precautions and potential hazards to be aware of;

(iii) A method of determining when the rated capacity has been achieved;

(iv) Minimum and maximum pressure range;

(v) Minimum and maximum temperature range; and

(vi) Any other requirements to be met for initial filling and refilling including the type of equipment to be used.

(4) Each fuel cell cartridge must be permanently marked with the following information:

(i) The rated charging pressure in megapascals (MPa);

(ii) The manufacturer's serial number of the fuel cell cartridges or unique identification number; and

(iii) The expiration date based on the maximum service life (yyyy/mm).

(5) Each fuel cell cartridge design type must be subjected to and pass the following tests (this includes cartridges integral to a fuel cell):

(i) *Drop test.* A 1.8 m (5.9 feet) drop test onto an unyielding surface must be performed. There must be no leakage. Leakage must be determined using a soap bubble solution or other equivalent means on all possible leak locations, when the fuel cell cartridge is charged to its rated charging pressure. The fuel cell cartridge must then be hydrostatically pressurized to destruction. The burst pressure must be greater than 85% of the minimum shell burst pressure. The drop must be performed in the following four different orientations:

(A) Vertically, on the end containing the shut-off valve assembly;

(B) Vertically, on the end opposite to the shut-off valve assembly;

(C) Horizontally, onto a steel apex with a diameter of 3.8 cm (9.7 in), with the steel apex in the upward position; and

(D) At a 45° angle on the end containing the shut-off valve assembly.

(ii) *Fire test.* Each fuel cell cartridge filled (with hydrogen) to rated capacity must be subjected to a fire engulfment test. The cartridge design (including design types with an integral vent feature) is deemed to pass the fire test if:

(A) The internal pressure vents to zero gauge pressure without the rupture of the cartridge; or

(B) The cartridge withstands the fire for a minimum of 20 minutes without rupture.

(iii) *Hydrogen cycling test.* Each fuel cell cartridge must be subjected to a hydrogen cycling test to ensure that the design stress limits are not exceeded during use. The fuel cell cartridge must be cycled from not more than 5% rated hydrogen capacity to not less than 95% rated hydrogen capacity and back to not more than 5% rated hydrogen capacity. The rated charging pressure used for charging and temperatures must be within the operating temperature range. The cycling must be continued for at least 100 cycles. Following the cycling test the fuel cell cartridge must be charged and the water volume displaced by the cartridge must be measured. The design is deemed to pass the test if the water volume displaced by the cycled cartridge does not exceed the water volume displaced by an uncycled cartridge charged to 95% rated capacity and pressurized to 75% of its minimum shell burst pressure.

(iv) *Production leak test.* Each fuel cell cartridge must be tested for leaks at 15 °C ± 5 °C (59 °F ± 20 °F) while

pressurized to its rated charging pressure. There must be no leakage. Leakage must be determined using a soap bubble solution or other equivalent means on all possible leak locations.

(e) The following packagings are authorized provided the general packaging requirements subpart B of part 173 of this subchapter are met:

(1) For fuel cell cartridges, rigid packagings conforming to the requirements of part 178 of this subchapter at the packing group II performance level; and

(2) Strong outer packagings for fuel cell cartridges contained in equipment or packed with equipment. Large equipment containing fuel cell cartridges may be transported unpackaged if the equipment provides an equivalent level of protection.

(i) Fuel cell cartridges packed with equipment must be packed in inner packagings and placed in the outer packaging along with the equipment they are capable of powering or placed in the outer packaging with cushioning material or dividers. The fuel cell cartridges must be protected against damage that may be caused by the shifting or placement of the equipment and cartridges within the outer packaging; and

(ii) Fuel cell cartridges installed in equipment must be protected against short circuit and unintentional activation.

(f) For transportation by aircraft, the following additional provisions apply:

(1) The package must comply with the applicable provisions of § 173.27 of this subchapter;

(2) For fuel cells contained in equipment, fuel cell systems must not charge batteries during transport;

(3) For transportation aboard passenger aircraft, each fuel cell system and fuel cell cartridge must conform to IEC PAS 62282–6–1 Ed. 1 (IBR, see § 171.7 of this subchapter) or a standard approved by the Associate Administrator;

(4) For fuel cells packed with equipment, the fuel cell cartridges must be packed in inner packagings and placed in the outer packaging along with the equipment they are capable of powering;

(5) The maximum number of fuel cell cartridges in the intermediate packaging must be the minimum number required to power the equipment, plus 2 spares;

(6) Fuel cell cartridges must not charge batteries during transport; and

(7) Large robust articles containing fuel cells may be transported unpackaged when approved by the Associate Administrator.

(8) Fuel cells intended for transportation in carry-on baggage on board passenger aircraft must also comply with the applicable provisions prescribed in § 175.10 of this subchapter.

(g) *Limited quantities.* Limited quantities of hazardous materials contained in fuel cell cartridges are excepted from the labeling, placarding and the specification packaging requirements of this subchapter when packaged according to this section. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. Limited quantities of fuel cell cartridges are not permitted for transportation by aircraft. For transportation by highway, rail and vessel, the following combination packagings are authorized:

(1) For flammable liquids, in fuel cell cartridges not over 1.0 L (0.3 gallon) net capacity each, packed in strong outer packaging.

(2) For water-reactive substances (Division 4.3 Dangerous when wet material), in fuel cell cartridges not over 0.5 L (16.9 fluid ounces) net capacity each for liquids or not over 0.5 kg (1.1 pound) net capacity each for solids, packed in strong outer packaging.

(3) For corrosive materials, in fuel cell cartridges not over 1.0 L (0.3 gallon) net capacity each for liquids or not over 1.0 kg (2.2 pounds) net capacity each for solids packed in strong outer packaging.

(4) For liquefied (compressed) flammable gas, in fuel cell cartridges not over 120 mL (4 fluid ounces) net capacity each, packed in strong outer packaging.

(5) For hydrogen in metal hydride, in fuel cell cartridges not over 120 mL (4 fluid ounces) net capacity each, packed in strong outer packaging.

(h) *Consumer commodities.* A limited quantity which conforms to the provisions of paragraph (g) of this section and is a ''consumer commodity'' as defined in § 171.8 of this subchapter may be renamed ''Consumer commodity'' and reclassed as ORM–D. In addition to the exceptions provided in paragraph (g) of this section, shipments of ORM–D materials are not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, and are eligible for the exceptions provided in § 173.156.

43. Section 173.304b is revised to read as follows:

§ 173.304b Additional requirements for shipment of liquefied compressed gases in UN pressure receptacles.

(a) *General.* Liquefied gases and gas mixtures must be offered for transportation in UN pressure receptacles subject to the requirements in this section and § 173.304. In addition, the general requirements applicable to UN pressure receptacles in §§ 173.301 and 173.301b must be met.

(b) *UN pressure receptacle filling limits.* A UN pressure receptacle is authorized for the transportation of liquefied compressed gases and gas mixtures as specified in this section. When a liquefied compressed gas or gas mixture is transported in a UN pressure receptacle, the filling ratio may not exceed the maximum filling ratio prescribed in this section and the applicable ISO standard. Compliance with the filling limits may be determined by referencing the numerical values and data in Table 2 of P200 of the UN Recommendations (IBR, see § 171.7 of this subchapter). Alternatively, the maximum allowable filling limits may be determined as follows:

(1) For high pressure liquefied gases, in no case may the filling ratio of the settled pressure at 65 °C (149 °F) exceed the test pressure of the UN pressure receptacle.

(2) For low pressure liquefied gases, the filling factor (maximum mass of contents per liter of water capacity) must be less than or equal to 95 percent of the liquid phase at 50 °C. In addition, the UN pressure receptacle may not be liquid full at 60 °C. The test pressure of the pressure receptacle must be equal to or greater than the vapor pressure of the liquid at 65 °C.

(3) For high pressure liquefied gases or gas mixtures, the maximum filling ratio may be determined using the formulas in (3)(b) of P200 of the UN Recommendations.

(4) For low pressure liquefied gases or gas mixtures, the maximum filling ratio may be determined using the formulas in (3)(c) of P200 of the UN Recommendations.

(c) Tetraflouroethylene, stabilized, UN1081 must be packaged in a pressure receptacle with a minimum test pressure of 200 bar and a working pressure not exceeding 5 bar.

(d) Fertilizer ammoniating solution with free ammonia, UN1043 is not authorized in UN tubes or MEGCs.

44. In § 173.306, new paragraph (a)(5) is added; and paragraphs (b)(1), (b)(2), (b)(3), (i), and (j) are revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

(a) * * *

(5) For limited quantities of Division 2.2 gases with no subsidiary risk, when in a plastic container for the sole purpose of expelling a liquid, paste or powder, provided all of the following conditions are met. Special exceptions for shipment of aerosols in the ORM-D class are provided in paragraph (i) of this section.

(i) Capacity must not exceed 1 L (61.0 cubic inches).

(ii) Pressure in the container must not exceed 160 psig at 130 °F. If the pressure in the container is less than 140 psig at 130 °F, a non-DOT specification container may be used. If the pressure in the container exceeds 140 psig at 130 °F but does not exceed 160 psig at 130 °F, the container must conform to specification DOT 2S. All non-DOT specification and specification DOT 2S containers must be capable of withstanding, without bursting, a pressure of one and one-half times the equilibrium pressure of the contents at 130 °F.

(iii) Liquid content of the material and gas must not completely fill the container at 130 °F.

(iv) The container must be packed in strong outside packagings.

(v) Each container must be subjected to a test performed in a hot water bath; the temperature of the bath and the duration of the test must be such that the internal pressure reaches that which would be reached at 55 °C (131 °F) or 50 °C (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F). If the contents are sensitive to heat, the temperature of the bath must be set at between 20 °C (68 °F) and 30 °C (86 °F) but, in addition, one container in 2,000 must be tested at the higher temperature. No leakage or permanent deformation of a container may occur.

(vi) Each outside packaging must be marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS.''

* * * * *

(b) * * *

(1) Foodstuffs or soaps in a nonrefillable metal or plastic container not exceeding 1 L (61.0 cubic inches), with soluble or emulsified compressed gas, provided the pressure in the container does not exceed 140 psig at 130 °F. Plastic containers must only contain Division 2.2 non-flammable soluble or emulsified compressed gas. The metal or plastic container must be capable of withstanding, without bursting, a pressure of one and one-half times the equilibrium pressure of the contents at 130 °F.

(i) Containers must be packed in strong outside packagings.

(ii) Liquid content of the material and the gas must not completely fill the container at 130 °F.

(iii) Each outside packaging must be marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS.''

(2) Cream in refillable metal or plastic containers with soluble or emulsified compressed gas. Plastic containers must only contain Division 2.2 non-flammable soluble or emulsified compressed gas. Containers must be of such design that they will hold pressure without permanent deformation up to 375 psig and must be equipped with a device designed so as to release pressure without bursting of the container or dangerous projection of its parts at higher pressures. This exception applies to shipments offered for transportation by refrigerated motor vehicles only.

(3) Nonrefillable metal or plastic containers charged with a Division 6.1 Packing Group III or nonflammable solution containing biological products or a medical preparation which could be deteriorated by heat, and compressed gas or gases. Plastic containers must only contain 2.2 non-flammable soluble or emulsified compressed gas. The capacity of each container may not exceed 35 cubic inches (19.3 fluid ounces). The pressure in the container may not exceed 140 psig at 130 °F, and the liquid content of the product and gas must not completely fill the containers at 130 °F. One completed container out of each lot of 500 or less, filled for shipment, must be heated, until the pressure in the container is equivalent to equilibrium pressure of the contents at 130 °F. There must be no evidence of leakage, distortion, or other defect. The container must be packed in strong outside packagings.

* * * * *

(i) A limited quantity which conforms to the provisions of paragraph (a)(1), (a)(3), (a)(5), or (b) of this section and is a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''consumer commodity'' and reclassed as ORM–D material. Each package may not exceed 30 kg (66 pounds) gross weight. In addition to the exceptions provided by paragraphs (a) and (b) of this section—

(1) Outside packagings are not required to be marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS'';

(2) Shipments of ORM–D materials are not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, a hazardous waste, or a marine pollutant or unless offered for transportation or transported by aircraft; and

(3) Shipments of ORM–D materials are eligible for the exceptions provided in § 173.156.

(j) *Aerosols and receptacles small, containing gas with a capacity of less than 50 mL.* Aerosols, as defined in § 171.8 of this subchapter, and receptacles small, containing gas, with a capacity not exceeding 50 mL (1.7 oz.) and with a pressure not exceeding 970 kPa (141 psig) at 55 °C (131 °F), containing no hazardous materials other than a Division 2.2 gas, are not subject to the requirements of this subchapter except for transportation by aircraft, the incident reporting requirements of § 171.15 of this subchapter and the air waybill must contain the words ''not restricted.'' The pressure limit may be increased to 2000 kPa (290 psig) at 55 °C (131 °F) provided the aerosols are transported in outer packages that conform to the packaging requirements of Subpart B of this part. This paragraph (j) does not apply to a self-defense spray (e.g., pepper spray).

45. In § 173.307, new paragraph (a)(5) is added to read as follows:

§ 173.307 Exceptions for compressed gases.

(a) * * *

(5) Manufactured articles or apparatuses, each containing not more than 100 mg (0.0035 ounce) of inert gas and packaged so that the quantity of inert gas per package does not exceed 1 g (0.35 ounce) except for transportation by aircraft, the incident reporting requirements of § 171.15 of this subchapter and the air waybill must contain the words ''not restricted.''

* * * * *

46. In § 173.322, paragraph (d) is revised to read as follows:

§ 173.322 Ethyl chloride.

* * * * *

(d) In specification cylinders as prescribed for any compressed gas except acetylene and cylinders made of aluminum alloy.

PART 175—CARRIAGE BY AIRCRAFT

47. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.45 and 1.53.

48. In § 175.10, paragraph (a) introductory text, and paragraphs (a)(10) and (a)(15) are revised and new

paragraphs (a)(18) and (c) are added to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) This subchapter does not apply to the following hazardous materials when carried by aircraft passengers or crewmembers provided the requirements of §§ 171.15 and 171.16 of this subchapter (see paragraph (c) of this section) and the requirements of this section are met:

* * * * *

(10) Dry ice (carbon dioxide, solid), with the approval of the operator:

(i) Quantities may not exceed 2.5 kg (5.5 pounds) per person when used to pack perishables not subject to the HMR. The package must permit the release of carbon dioxide gas; and

(ii) When carried in checked baggage, each package is marked ''DRY ICE'' or ''CARBON DIOXIDE, SOLID,'' and marked with the net weight of dry ice or an indication the net weight is 2.5 kg (5.5 pounds) or less.

* * * * *

(15) * * *

(i) The battery meets the requirements of § 173.159a(d) of this subchapter for non-spillable batteries;

(ii) Visual inspection including removal of the battery, where necessary, reveals no obvious defects (removal of the battery from the housing should be performed by qualified airline personnel only);

(iii) The battery is disconnected unless the wheelchair or mobility aid design provides an effective means of preventing unintentional activation;

(iv) The battery terminals are protected to prevent short circuits; and

(v) The battery is securely attached to the wheelchair or mobility aid; or,

(A) Is removed and placed in a strong, rigid packaging marked ''NONSPILLABLE BATTERY'' (unless fully enclosed in a rigid housing that is properly marked), and

(B) Is handled in accordance with paragraph (a)(16)(iv) of this section.

* * * * *

(18) Portable electronic devices (for example, cameras, cellular phones, laptop computers, and camcorders) powered by fuel cell systems, and not more than two spare fuel cell cartridges per passenger or crew member, when transported in carry-on baggage by aircraft under the following conditions:

(i) Fuel cell cartridges may contain only Division 2.1 liquefied flammable gas, or hydrogen in a metal hydride, Class 3 flammable liquids (including methanol), Division 4.3 water reactive substances, or Class 8 corrosive materials;

(ii) The maximum quantity of fuel in any fuel cell cartridge may not exceed:

(A) 200 mL (6.76 ounces) for liquids,

(B) 120 mL (4 fluid ounces) for liquefied gases in non-metallic fuel cell cartridges, or 200 mL (6.76 ounces) for liquefied gases in metal fuel cell cartridges;

(C) 200 g (7 ounces) for solids; or

(D) 120 mL (4 fluid ounces) for hydrogen in a metal hydride.

(iii) No more than two spare fuel cell cartridges may be carried by a passenger;

(iv) Fuel cell systems containing fuel and fuel cell cartridges including spare cartridges are permitted in carry-on baggage only;

(v) Fuel cell cartridges containing hydrogen in a metal hydride must meet the requirements in § 173.230(d);

(vi) Fuel cell cartridges may not be refillable by the user. Refueling of fuel cell systems is not permitted except that the installation of a spare cartridge is allowed. Fuel cell cartridges that are used to refill fuel cell systems but that are not designed or intended to remain installed (fuel cell refills) in a portable electronic device are not permitted;

(vii) Fuel cell systems and fuel cell cartridges must conform to IEC/PAS 62282–6–1 (IBR; see § 171.7 of this subchapter);

(viii) Interaction between fuel cells and integrated batteries in a device must conform to IEC/PAS 62282–6–1 (IBR, see § 171.7 of this subchapter). Fuel cell systems for which the sole function is to charge a battery in the device are not permitted;

(ix) Fuel cell systems must be of a type that will not charge batteries when the portable electronic device is not in use; and

(x) Each fuel cell cartridge and system that conforms to the requirements in this paragraph (a)(18) must be durably marked by the manufacturer with the wording: ''APPROVED FOR CARRIAGE IN AIRCRAFT CABIN ONLY'' to certify that the fuel cell cartridge or system meets the specifications in IEC/PAS 62282–6–1 (IBR, see § 171.7 of this subchapter) and with the maximum quantity and type of fuel contained in the cartridge or system.

* * * * *

(c) The requirements to submit incident reports as required under §§ 171.15 and 171.16 of this subchapter must be provided by the air carrier.

49. In § 175.33, paragraphs (a)(1)(i) and (c)(4) are revised and a new paragraph (a)(11) is added to read as follows:

§ 175.33 Shipping paper and notification of pilot-in-command.

* * * * *

(a) * * *

(1) * * *

(i) Section 172.101 of this subchapter. Except for the requirement to indicate the type of package, any additional description requirements provided in §§ 172.202, and 172.203 of this subchapter must also be shown on the notification.

* * * * *

(11) For UN1845, Carbon dioxide, solid (dry ice), only the UN number, proper shipping name, hazard class, total quantity, exact location aboard the aircraft, and the airport at which the package(s) is to be unloaded must be provided.

* * * * *

(c) * * *

(4) Make available, upon request, to an authorized official of a Federal, State, or local government agency (including an emergency responder(s)) at reasonable times and locations, the documents or information required to be retained by this paragraph. In the event of a reportable incident, as defined in § 171.15 of this subchapter, make immediately available to an authorized official of a Federal, State, or local government agency (including an emergency responders), the documents or information required to be retained by this paragraph.

* * * * *

50. In § 175.75, paragraph (d) is revised to read as follows:

§ 175.75 Quantity limitations and cargo location.

* * * * *

(d) Each package containing a hazardous material acceptable only for cargo aircraft must be:

(1) Loaded in such a manner that a crew member or other authorized person can access, handle and when size and weight permit, separate such packages from other cargo during flight; or

(2) Loaded in a cargo compartment that has an FAA-approved fire or smoke detection system and a fire-suppression system.

* * * * *

51. In § 175.88, paragraph (c) is revised to read as follows:

§ 175.88 Inspection, orientation and securing packages of hazardous materials.

* * * * *

(c) Packages containing hazardous materials must be secured in an aircraft in a manner that will prevent any shifting or any change in the position of

the packages. Packages containing Class 7 (radioactive) materials must be secured in a manner that ensures that the separation requirements of §§ 175.701 and 175.702 will be maintained at all times during flight.

PART 176—CARRIAGE BY VESSEL

52. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

53. In § 176.2, the definition for ''Commandant'' is revised to read as follows:

§ 176.2 Definitions.

* * * * *

Commandant (CG–522), USCG means the Chief, Office of Operating and Environmental Standards, United States Coast Guard, Washington, DC 20593–0001.

* * * * *

54. In § 176.3, paragraph (a) is revised to read as follows:

§ 176.3 Unacceptable hazardous materials shipments.

(a) A carrier may not transport by vessel any shipment of a hazardous material that is not prepared for transportation in accordance with parts 173 and 173 of this subchapter, or as authorized by part 171, subchapter C.

* * * * *

55. In § 176.84, in paragraph (b), in the Table of provisions, Code ''134'', Code ''139'' and Code ''140'' are removed; and new Codes ''145'' and ''146'' are added in the appropriate numerical order to read as follows:

* * * * *

(b) * * *

Code	Provisions
*	* * * *
145	Stow ''separated from'' ammonium compounds except for UN1444.
146	Category B stowage applies for unit loads in open cargo transport units.

* * * * *

56. In § 176.172, paragraph (a) introductory text is revised to read as follows:

§ 176.172 Structural serviceability of freight containers and vehicles carrying Class 1 (explosive) materials on ships.

(a) *Except for Division 1.4 materials,* a freight container may not be offered for the carriage of Class 1 (explosive) materials, unless the container is structurally serviceable as evidenced by a current CSC (International Convention for Safe Containers) approval plate and verified by a detailed visual examination as follows:

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

57. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

58. In subpart B of part 178, new §§ 178.33b through 178.33b–9 are added to read as follows:

§ 178.33b Specification 2S; inner nonrefillable plastic receptacles.

§ 178.33b–1 Compliance.

(a) Required in all details.

(b) [Reserved]

§ 178.33b–2 Type and size.

(a) Single-trip inside containers.

(b) The maximum capacity of containers in this class shall not exceed one liter (61.0 cubic inches). The maximum inside diameter shall not exceed 3 inches.

§ 178.33b–3 Inspection.

(a) By competent inspector.

(b) [Reserved]

§ 178.33b–4 Duties of inspector.

(a) To inspect material and completed containers and witness tests, and to reject defective materials or containers.

(b) [Reserved]

§ 178.33b–5 Material.

(a) The receptacles must be constructed of polyethylene terephthalate (PET), polyethylene napthalate (PEN), polyamide (Nylon) or a blend of PET, PEN, ethyl vinyl alcohol (EVOH) and/or Nylon.

(b) Material with seams, cracks, laminations or other injurious defects are forbidden.

§ 178.33b–6 Manufacture.

(a) Each container must be manufactured by thermoplastic processes that will assure uniformity of the completed container. No used material other than production residues or regrind from the same manufacturing process may be used. The packaging must be adequately resistant to aging and to degradation caused either by the substance contained or by ultraviolet radiation.

(b) [Reserved]

§ 178.33b–7 Design qualification test.

(a) Drop testing.

(1) To ensure that creep does not affect the ability of the container type to retain the contents, each container type shall be drop tested as follows: three groups of twenty-five filled containers shall be dropped from 1.8m on to a rigid, non-resilient, flat and horizontal surface. One group must be conditioned at 38 °C (100 °F) for 26 weeks, the second group for 100 hours at 50 °C (122 °F) and the third group for 18 hours at 55 °C (131 °F), prior to performing the drop test.

(2) Criteria for passing the drop test: the containers must not break or leak.

(b) [Reserved]

§ 178.33b–8 Production Tests.

(a) *Burst testing.*

(1) One out of each lot of 5,000 containers or less, successively produced per day must be pressure tested to destruction and must not burst below 240 psig. The container tested must be complete as intended for transportation.

(2) Each such 5,000 containers or less, successively produced per day, shall constitute a lot and if the test container shall fail, the lot shall be rejected or ten additional containers may be selected at random and subjected to the test under which failure occurred. These containers shall be complete as intended for transportation. Should any of the ten containers thus tested fail, the entire lot must be rejected. All containers constituting a lot shall be of like material, size, design construction, finish, and quality.

(b) *Leak testing.*

(1) Each empty container must be subjected to a pressure equal to or in excess of the maximum expected in the filled containers at 55 °C (131 °F) 50 °C (122 °F) if the liquid phase does not exceed 95 percent of the capacity of the container at 50 °C (122 °F). This must be at least two-thirds of the design pressure of the aerosol dispenser. If any container shows evidence of leakage at a rate equal to or greater than 3.3×10^{-2}mbar.l.s^{-1} at 20 °C (68 °F), at the test pressure, distortion or other defect, it must be rejected.

(2) Prior to filling, the filler must ensure that the crimping equipment is set appropriately and the specified propellant is used. Once filled, each container must be weighed and leak tested. The leak detection equipment must be sufficiently sensitive to detect at least a leak rate of 2.0×10^{-3} mbar.l.s^{-1} at 20 °C (68°F). Any filled container which shows evidence of leakage, deformation, or excessive weight must be rejected.

§ 178.33b–9 Marking.

(a) Each container must be clearly and permanently marked to show:

(1) DOT–2S.

(2) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. Symbol, if used, must be registered with the Associate Administrator.

(b) [Reserved]

59. In § 178.502, paragraph (d) is revised and a note to the section is added to read as follows:

§ 178.502 Identification codes for packagings.

* * * * *

(d) Identification codes are set forth in the standards for packagings in §§ 178.504 through 178.523 of this subpart.

Note to § 178.502: Plastics materials include other polymeric materials such as rubber.

60. In § 178.703, paragraph (a)(1)(vii) is revised to read as follows:

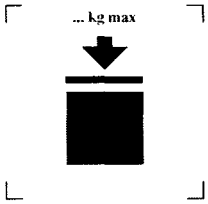
§ 178.703 Marking of IBCs.

* * * * *

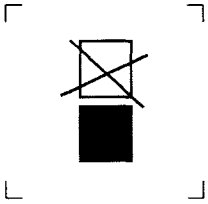
(a) * * *

(1) * * *

(vii) (A) The stacking test load in kilograms (kg). For IBCs not designed for stacking, the figure ''0'' must be shown. For IBCs designed for stacking, the maximum permitted stacking load applicable when the IBC is in use shall be displayed on a symbol for all IBCs manufactured, repaired or remanufactured after January 1, 2011 as follows:



IBCs capable of being stacked



IBCs NOT capable of being stacked

(B) The symbol shall be not less than 100 mm (3.9 inches) × 100 mm (3.9 inches), be durable and clearly visible. The letters and numbers shall be at least 12 mm high (.48 inches). The mass marked above the symbol shall not exceed the load imposed during the design test divided by 1.8.

* * * * *

61. In § 178.801, paragraph (f)(1)(i) is revised to read as follows:

§ 178.801 General requirements.

* * * * *

(f) * * *

(1) * * *

(i) The IBC need not have its closures fitted, except that the IBC must be fitted with its primary bottom closure.

* * * * *

62. In § 178.810, paragraph (e) is revised to read as follows:

§ 178.810 Drop test.

* * * * *

(e) *Criteria for passing the test.* For all IBC design types, there may be no damage which renders the IBC unsafe to be transported for salvage or for disposable, and no loss of contents. The IBC shall be capable of being lifted by an appropriate means until clear of the floor for five minutes. A slight discharge from a closure upon impact is not considered to be a failure of the IBC provided that no further leakage occurs. A slight discharge (e.g., from closures or stitch holes) upon impact is not considered a failure of the flexible IBC provided that no further leakage occurs after the IBC has been raised clear of the ground.

Issued in Washington, DC, on July 15, 2008 under authority delegated in 49 CFR part 106.

Theodore L. Willke,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. E8–16579 Filed 7–30–08; 8:45 am]

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Thursday,
July 31, 2008

Part III

Environmental Protection Agency

40 CFR Part 180

Carbofuran; Proposed Tolerance Revocations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0162; FRL–8373–8]

Carbofuran; Proposed Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke all tolerances for carbofuran. The Agency has determined that the risk from aggregate exposure from the use of carbofuran does not meet the safety standard of section 408(b)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA is specifically soliciting comment on whether there is an interest in retaining any individual tolerance, or group of tolerances, and whether information exists to demonstrate that such tolerance(s) meet(s) the FFDCA section 408(b)(2) safety standard. EPA encourages interested parties to comment on the tolerance revocations proposed in this document and on the proposed time frame for tolerance revocation. Issues not raised during the comment period may not be raised as objections to the final rule, or in any other challenge to the final rule.

DATES: Comments must be received on or before September 29, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0162, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0162. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jude Andreasen Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 305–0076; e-mail address: *andreasen.jude@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

C. What Can I Do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any interested person to submit comments on the Agency's proposal. EPA issues a final rule after considering comments that are submitted in response to this proposed rule. Comments should be limited only to the pesticide and tolerances subject to this proposed notice.

EPA's finding that aggregate exposure from all existing uses of carbofuran is not safe does not necessarily mean that no individual tolerance or group of tolerances could meet the FFDCA 408(b)(2) safety standard and be maintained. For example, in its Interim Reregistration Eligibility Decision (IRED), EPA concluded that the Agency could maintain import tolerances for bananas, coffee, rice, and sugarcane, because dietary risks from the food residues from the import tolerances are below the Agency's level of concern when considered together with the food residues from the phase-out crops, but with no other domestic uses (Ref. 35). However, as discussed in more detail below, EPA can only maintain tolerances that it can determine will be ''safe'' within the meaning of section 408(b)(2)(A)(ii). Accordingly, commenters interested in retaining any tolerance or group of tolerances should consider submitting information to demonstrate that the tolerance(s) meet the statutory standard, rather than merely indicating an interest in retaining the tolerance. Commenters should also be aware that even if EPA determines that any carbofuran tolerance(s) meet the safety standard, those tolerances can only be maintained if EPA can also determine that the cumulative effects from those tolerances, when considered with the exposures from other *N*-methyl carbamate pesticide chemicals, will meet the FFDCA 408(b)(2) safety standard. EPA will not respond to any comments on subjects that do not relate to the evaluation or safety of the pesticide tolerances subject to this proposed notice.

After consideration of comments, EPA will issue a final regulation determining whether revocation of the tolerances is appropriate and making a final finding on whether these tolerances are ''safe'' within the meaning of section 408(b)(2)(A)(ii). Such regulation will be subject to objections pursuant to section 408(g) (21 U.S.C. 346a(g)).

In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you anticipate that you may wish to file objections to the final rule, you must raise those issues in your comments on this proposal. EPA will treat as waived, any issue not originally raised in comments on this proposal. Similarly, if you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings on this rule.

II. Introduction

A. What Action is the Agency Taking?

EPA is proposing to revoke all of the existing tolerances for residues of carbofuran. Currently, tolerances have been established on the following crops: alfalfa, fresh; alfalfa, hay; artichoke, globe; banana; barley, grain; barley, straw, sugar beet; sugar beet, tops; coffee bean; corn, forage; corn, fresh (including sweet corn); corn, grain (including popcorn); corn, stover; cotton, undelinted seed; cranberry; cucumber; grape; grape (raisin); melon; milk; oat, grain; oat, straw; pepper; potato; pumpkin; raisins, waste; rice, grain; rice, straw; sorghum, fodder; sorghum, forage; sorghum, grain; strawberry; soybean; soybean, forage; soybean, hay; squash; sugarcane, cane; sunflower, seed; wheat, grain; wheat, straw. The Agency is proposing to revoke tolerances for these crops because aggregate dietary exposure to residues of carbofuran, including all anticipated dietary exposures and all other exposures for which there is reliable information, is not safe.

EPA has determined that aggregate exposure to carbofuran greater than 0.000075 mg/kg/day (*i.e.*, greater than the acute Population Adjusted Dose (aPAD)) does not meet the safety standard of section 408(b)(2) of the FFDCA. Based on the contribution from food alone, the more sensitive children's subpopulations receive unsafe exposures to carbofuran. At the 99.9th percentile of exposure, aggregate carbofuran dietary exposure from food alone was estimated to range between 0.000121 mg/kg/day for children 6–12 (160% of the aPAD) and 0.000156 mg/kg/day (210% of the aPAD) for children 3–5 years old, the population subgroup with the highest estimated dietary exposure. In addition, EPA's analyses show that those individuals–both adults and children—who receive their drinking water from vulnerable sources are also exposed to levels that exceed EPA's level of concern—in some cases by orders of magnitude. This primarily includes those populations consuming drinking water from groundwater from shallow wells in acidic aquifers overlaid with sandy soils that have had crops treated with carbofuran. Aggregate exposures from food and from drinking water derived from ground water in vulnerable areas (*i.e.*, from shallow wells associated with sandy soils and acidic aquifers, such as are found in the Delmarva Peninsula of Delaware, Maryland, and Virginia) result in even higher estimated exceedances. The aggregate estimates for food and ground water exposure range between 1100% of the aPAD for adults over 50 years, to over 10,000% of the aPAD for infants. Similarly, EPA analyses show substantial exceedances for those populations that obtain their drinking water from reservoirs (*i.e.*, surface water) located in small agricultural watersheds, prone to runoff, and predominated by crops that are treated with carbofuran, even though there is more uncertainty associated with these exposure estimates. For example, estimated aggregate exposures from food and drinking water derived from surface water, based on the corn use in Nebraska, range between 340% of the aPAD for youths 13–19, and 3900% of the aPAD for infants.

Every sensitivity analysis EPA has performed has shown that estimated exposures (both for food alone as well as for food and water) significantly exceed EPA's level of concern for children. Although the magnitude of the exceedance varies depending the level of conservatism in the assessment, the fact that in each case aggregate exposures from carbofuran fail to meet the FFDCA section 408(b)(2) safety standard, including where EPA relied on highly refined estimates of risk,

using all relevant data and methods, strongly corroborates EPA's conclusion that aggregate exposures from carbofuran are not safe.

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

EPA is taking this action, pursuant to the authority in FFDCA sections 408(b)(1)(b), 408(b)(2)(A), and 408(e)(1)(A). 21 U.S.C. 346a(b)(1)(b), (b)(2)(A), (e)(1)(A).

III. Statutory and Regulatory Background

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities (including animal feed) and processed foods. Section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

Section 408(e) of the FFDCA, 21 U.S.C. 346a(e), authorizes EPA to modify or revoke tolerances on its own initiative. EPA is proposing to revoke these tolerances to implement the Agency's findings made during the reregistration and tolerance reassessment processes. As part of these processes, EPA is required to determine whether each of the existing tolerances meets the safety standard of section 408(b)(2) (21 U.S.C. 346a(b)(2)). Section 408(b)(2)(A)(i) of the FFDCA requires EPA to modify or revoke a tolerance if EPA determines that the tolerance is not ''safe.'' (21 U.S.C. 346a(b)(2)(A)(i)). Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure.

Risks to infants and children are given special consideration. Specifically, section 408(b)(2)(C) states that EPA:

> shall assess the risk of the pesticide chemical based on— ...
>
> (II) available information concerning the special susceptibility of infants and children to the pesticide chemical residues, including neurological differences between infants and children and adults, and effects of in utero exposure to pesticide chemicals; and
>
> (III) available information concerning the cumulative effects on infants and children of such residues and other substances that have a common mechanism of toxicity. ...

(21 U.S.C. 346a(b)(2)(C)(i)(II) and (III)).

This provision further directs that ''[i]n the case of threshold effects, ... an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children.'' (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to ''use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.'' (Id.). The additional safety margin for infants and children is referred to throughout this proposal as the ''children's safety factor.''

IV. Carbofuran Background and Regulatory History

In July 2006, EPA completed a refined acute probabilistic dietary risk assessment for carbofuran as part of the reassessment program under section 408(q) of the FFDCA. The assessment was conducted using Dietary Exposure Evaluation Model-Food Commodity Intake Database (DEEM-FCID(TM), Version 200–2.02), which incorporates consumption data from the United States Department of Agriculture's (USDA's) Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), 1994–1996 and 1998, as well as carbofuran monitoring data from USDA's Pesticide Data Program[1] (PDP), estimated percent crop treated information, and processing/cooking factors, where applicable. The assessment was conducted applying an additional 500–fold safety factor that included a 5X children's safety factor, pursuant to section 408(b)(2)(C). That refined assessment showed acute dietary risks from carbofuran residues in food above EPA's level of concern (Ref 15). Since 2006, EPA has evaluated additional data submitted by the registrant, FMC Corporation, and has further refined its original assessment by incorporating more recent 2005/2006 PDP data, and by conducting additional analyses. In January 2008, EPA published a draft Notice of Intent to Cancel (NOIC) all carbofuran registrations, based in part on carbofuran's dietary risks. As mandated by FIFRA, EPA solicited comments from the Scientific Advisory Panel (SAP) on its draft NOIC. Having considered the comments from the SAP, EPA is initiating the process to revoke all carbofuran tolerances. As noted above, aggregate exposures from food and water to the US population at the upper percentiles of exposure substantially exceed the safe daily levels and thus are ''unsafe'' within the meaning of FFDCA section 408(b)(2) (Ref 12). It is particularly significant that under every analysis EPA has conducted, the levels of carbofuran exceed the safe daily dose for children, even when EPA used the most refined data and models available. Based on these findings, EPA has decided to move as expeditiously as possible to address the unacceptable dietary risks to children. EPA still expects to issue the NOIC subsequent to undertaking the activities required to revoke the carbofuran tolerances.

In May 2008, FMC Corporation, the sole U.S. registrant, submitted a conditional request to cancel use of carbofuran on certain crops and to add use restrictions intended to mitigate ground and surface water contamination from use on other crops (Ref. 32). The tolerances that would have been affected by that proposal are: alfalfa, fresh; alfalfa, hay; artichoke, globe; barley, grain; barley, straw; sugar beet, tops; cranberry; cucumber; grape; grape (raisin); oat, grain; oat, straw; pepper; sorghum, fodder; sorghum, forage; sorghum, grain; strawberry; soybean; soybean, forage; soybean, hay; squash; wheat, grain; wheat, straw. FMC, however, conditioned the request on receiving assurance from EPA that the Agency would permit the retention of several uses that do not meet the FFDCA 408(b)(2) safety standard or the FIFRA registration standard (Id.). EPA, therefore, could not accept the request, and FMC has withdrawn it (Id.). The tolerances that FMC would have sought to retain under that proposal were:

[1] USDA's Pesticide Data Program monitors for pesticides in certain foods at the distribution points just before release to supermarkets and grocery stores.

banana, coffee bean; corn, forage; corn, fresh; corn, grain (including popcorn); corn, stover; cotton, undelinted seed; melon; milk; potato; rice, grain; rice, straw; sugarcane, cane; and sunflower, seed. Based on the contribution from these foods alone, dietary exposures to carbofuran would still be unsafe for the more sensitive children's subpopulations. At the 99.9th percentile, carbofuran dietary exposure from food alone was estimated at 0.000082 mg/kg/day (110% of the aPAD) for children 3–5 years old, the population subgroup with the highest estimated dietary exposure (Ref. 12). In addition, as discussed in more detail in Refs 18 and 54, although FMC's proposed groundwater restrictions would have protected against further contamination in the most vulnerable locations, the Agency could not conclude that the restrictions would be protective of all vulnerable groundwater. EPA also has substantial questions about the efficacy of FMC's proposed surface water restrictions to reduce drinking water exposure in vulnerable reservoirs (Refs. 18 and 54). Accordingly, it has not been shown that drinking water residues of carbofuran would no longer contribute significantly to unsafe aggregate exposures, nor that such exposures would meet the FFDCA safety standard.

V. EPA's Approach to Dietary Risk Assessment

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. A short summary is provided below to aid the reader. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA–PEST/1999/January/Day–04/p34736.htm*.

To assess the risk of a pesticide tolerance, EPA combines information on pesticide toxicity with information regarding the route, magnitude, and duration of exposure to the pesticide. The risk assessment process involves four distinct steps: (1) identification of the toxicological hazards posed by a pesticide; (2) determination of the exposure ''level of concern'' for humans; (3) estimation of human exposure; and (4) characterization of human risk based on comparison of human exposure to the level of concern.

A. Hazard Identification and Selection of Toxicological Endpoint

Any risk assessment begins with an evaluation of a chemical's inherent properties, and whether those properties have the potential to cause adverse effects (*i.e.*, a hazard identification). EPA then evaluates the hazards to determine the most sensitive and appropriate adverse effect of concern, based on factors such as the effect's relevance to humans and the likely routes of exposure.

Once a pesticide's potential hazards are identified, EPA determines a toxicological level of concern for evaluating the risk posed by human exposure to the pesticide. In this step of the risk assessment process, EPA essentially evaluates the levels of exposure to the pesticide at which effects might occur. An important aspect of this determination is assessing the relationship between exposure (dose) and response (often referred to as the dose-response analysis). In evaluating a chemical's dietary risks EPA uses a reference dose (RfD) approach, which involves a number of considerations including:

- A 'point of departure'(PoD) — the value from a dose-response curve that is at the low end of the observable data and that is the toxic dose that serves as the 'starting point' in extrapolating a risk to the human population;
- An uncertainty factor to address the potential for a difference in toxic response between humans and animals used in toxicity tests (*i.e.*, interspecies extrapolation);
- An uncertainty factor to address the potential for differences in sensitivity in the toxic response across the human population (for intraspecies extrapolation); and
- The need for an additional safety factor to protect infants and children, as specified in FFDCA section 408(b)(2)(C).

EPA uses the chosen PoD to calculate a safe dose or RfD. The RfD is calculated by dividing the chosen PoD by all applicable safety or uncertainty factors. Typically in EPA risk assessments, a combination of safety or uncertainty factors providing at least a hundredfold (100X) margin of safety is used: 10X to account for interspecies extrapolation and 10X to account for intraspecies extrapolation. Further, in evaluating the dietary risks for pesticide chemicals, an additional safety factor of 10X is presumptively applied to protect infants and children, unless reliable data support selection of a different factor. In implementing FFDCA section 408, EPA also calculates a variant of the RfD referred to as a PAD. A PAD is the RfD divided by any portion of the children's safety factor that does not correspond to one of the traditional additional uncertainty/safety factors used in general Agency risk assessment. The reason for calculating PADs is so that other parts of the Agency, which are not governed by FFDCA section 408, can, when evaluating the same or similar substances, easily identify which aspects of a pesticide risk assessment are a function of the particular statutory commands in FFDCA section 408. For acute assessments, the risk is expressed as a percentage of a maximum acceptable dose or the acute PAD (*i.e.*, the acute dose which EPA has concluded will be ''safe''). As discussed below in Unit V.C., dietary exposures greater than 100 percent of the acute PAD are generally cause for concern and would be considered ''unsafe'' within the meaning of FFDCA section 408(b)(2)(B). Throughout this document general references to EPA's calculated safe dose are denoted as an acute PAD, or aPAD, because the relevant point of departure for carbofuran is based on an acute risk endpoint.

B. Estimating Human Dietary Exposure Levels

Pursuant to section 408(b) of the FFDCA, EPA has evaluated carbofuran's dietary risks based on ''aggregate exposure'' to carbofuran. By ''aggregate exposure,'' EPA is referring to exposure to carbofuran alone by multiple pathways of exposure. EPA uses available data, together with assumptions designed to be protective of public health and standard analytical methods, to produce separate estimates of exposure for a highly exposed subgroup of the general population, for each potential pathway and route of exposure. For acute risks, EPA then calculates potential aggregate exposure and risk by using probabilistic[2] techniques to combine distributions of potential exposures in the population for each route or pathway. For dietary analyses, the relevant sources of potential exposure to carbofuran are from the ingestion of residues in food and drinking water. The Agency uses a combination of monitoring data and predictive models to evaluate

[2] Probabilistic analysis is used to predict the frequency with which variations of a given event will occur. By taking into account the actual distribution of possible consumption and pesticide residue values, probabilistic analysis for pesticide exposure assessments ''provides more accurate information on the range and probability of possible exposure and their associated risk values.'' (Ref. 58). In capsule, a probabilistic pesticide exposure analysis constructs a distribution of potential exposures based on data on consumption patterns and residue levels and provides a ranking of the probability that each potential exposure will occur. People consume differing amounts of the same foods, including none at all, and a food will contain differing amounts of a pesticide residue, including none at all.

environmental exposure of humans to carbofuran.

1. *Exposure from food*. Data on the residues of carbofuran in foods are available from a variety of sources. One of the primary sources of the data comes from federally-conducted surveys, including the PDP conducted by the USDA. Further, market basket studies, which are typically performed by registrants, can provide additional residue data. These data generally provide a characterization of pesticide residues in or on foods consumed by the U.S. population that closely approximates real world exposures because they are sampled closer to the point of consumption in the chain of commerce than field trial data, which are generated to establish the maximum level of legal residues that could result from maximum permissible use of the pesticide. In certain circumstances, EPA will rely on field trial data, as it can provide more accurate exposure estimates (see below in Unit VI.E.1).

EPA uses a computer program known as the DEEM-FCID to estimate exposure by combining data on human consumption amounts with residue values in food commodities. DEEM-FCID also compares exposure estimates to appropriate RfD or PAD values to estimate risk. EPA uses DEEM-FCID to estimate exposure for the general U.S. population as well as for 32 subgroups based on age, sex, ethnicity, and region. DEEM-FCID allows EPA to process extensive volumes of data on human consumption amounts and residue levels in making risk estimates. Matching consumption and residue data, as well as managing the thousands of repeated analyses of the consumption database conducted under probabilistic risk assessment techniques, requires the use of a computer.

DEEM-FCID contains consumption and demographic information on the individuals who participated in the USDA's CSFII in 1994–1996 and 1998. The 1998 survey was a special survey required by the FQPA to supplement the number of children survey participants. DEEM-FCID also contains ''recipes'' that convert foods as consumed (*e.g.*, pizza) back into their component raw agricultural commodities (*e.g.*, wheat from flour, or tomatoes from sauce, etc.). This is necessary because residue data are generally gathered on raw agricultural commodities rather than on finished ready-to-eat food. Data on residue values for a particular pesticide and the RfD or PADs for that pesticide are inputs to the DEEM-FCID program to estimate exposure and risk.

For carbofuran's assessment, EPA used DEEM-FCID to calculate risk estimates based on a probabilistic distribution. DEEM-FCID combines the full range of residue values for each food with the full range of data on individual consumption amounts to create a distribution of exposure and risk levels. More specifically, DEEM-FCID creates this distribution by calculating an exposure value for each reported day of consumption per person (''person/day'') in CSFII, assuming that all foods potentially bearing the pesticide residue contain such residue at the chosen value. The exposure amounts for the thousands of person/days in the CSFII are then collected in a frequency distribution. EPA also uses DEEM-FCID to compute a distribution taking into account both the full range of data on consumption levels and the full range of data on potential residue levels in food. Combining consumption and residue levels into a distribution of potential exposures and risk requires use of probabilistic techniques.

The probabilistic technique that DEEM-FCID uses to combine differing levels of consumption and residues involves the following steps:

(1) Identification of any food(s) that could bear the residue in question for each person/day in the CSFII;

(2) Calculation of an exposure level for each of the thousands of person/days in the CSFII database, based on the foods identified in Step #1, by randomly selecting residue values for the foods from the residue database;

(3) Repetition of Step # 2 one thousand times for each person/day; and

(4) Collection of all of the hundreds of thousands of potential exposures estimated in Steps ## 2 and 3 in a frequency distribution.

The resulting probabilistic assessment presents a range of exposure/risk estimates.

2. *Exposure from water*. EPA may use field monitoring data and/or simulation water exposure models to generate pesticide concentration estimates in drinking water. Monitoring and modeling are both important tools for estimating pesticide concentrations in water and can provide different types of information. Monitoring data can provide estimates of pesticide concentrations in water that are representative of the specific agricultural or residential pesticide practices in specific locations, under the environmental conditions associated with a sampling design (*i.e.*, the locations of sampling, the times of the year samples were taken, and the frequency by which samples were collected). Although monitoring data can provide a direct measure of the concentration of a pesticide in water, it does not always provide a reliable basis for estimating spatial and temporal variability in exposures because sampling may not occur in areas with the highest pesticide use, and/or when the pesticides are being used and/or at an appropriate sampling frequency to detect high concentrations of a pesticide that occur over the period of a day to several days.

Because of the limitations in most monitoring studies, EPA's standard approach is to use simulation water exposure models as the primary means to estimate pesticide exposure levels in drinking water. Modeling is a useful tool for characterizing vulnerable sites, and can be used to estimate peak pesticide water concentrations from infrequent, large rain events. EPA's computer models use detailed information on soil properties, crop characteristics, and weather patterns to estimate water concentrations in vulnerable locations where the pesticide could be used according to its label. (69 FR 30042, 30058–30065 (May 26, 2004)). These models calculate estimated water concentrations of pesticides using laboratory data that describe how fast the pesticide breaks down to other chemicals and how it moves in the environment at these vulnerable locations. The modeling provides an estimate of pesticide concentrations in ground and surface water. Depending on the modeling algorithm (*e.g.*, surface water modeling scenarios), daily concentrations can be estimated continuously over long periods of time, and for places that are of most interest for any particular pesticide.

EPA relies on models it has developed for estimating pesticide concentrations in both surface water and ground water. Typically EPA uses a two-tiered approach to modeling pesticide concentrations in surface and ground water. If the first tier model suggests that pesticide levels in water may be unacceptably high, a more refined model is used as a second tier assessment. The second tier model is actually a combination of two models: the Pesticide Root Zone Model (PRZM) and the Exposure Analysis Model System (EXAMS).

A detailed description of the models routinely used for exposure assessment is available from the EPA OPP Water Models web site: *http://www.epa.gov/oppefed1/models/water/index.htm*. These models provide a means for EPA to estimate daily pesticide concentrations in surface water sources of drinking water (a reservoir) using local soil, site, hydrology, and weather

characteristics along with pesticide application and agricultural management practices, and pesticide environmental fate and transport properties. Consistent with the recommendations of the FIFRA SAP, EPA also considers regional percent cropped area factors (PCA) which takes into account the potential extent of cropped areas that could be treated with pesticides in a particular area. The PRZM and EXAMS models used by EPA were developed by EPA's Office of Research and Development (ORD), and are used by many international pesticide regulatory agencies to estimate pesticide exposure in surface water. EPA's use of the percent cropped area factors and the Index Reservoir scenario was reviewed by the FIFRA SAP in 1999 and 1998, respectively (Refs. 25 and 26).

In modeling potential surface water concentrations, EPA attempts to model areas of the country that are highly vulnerable to surface water contamination rather than simply model ''typical'' concentrations occurring across the nation. Consequently, EPA models exposures occurring in small highly agricultural watersheds in different growing areas throughout the country, over a 30 year period. The scenarios are designed to capture residue levels in drinking water from reservoirs with small watersheds with a large percentage of land use in agricultural production. EPA believes these assessments are likely reflective of a small subset of the watersheds across the country that maintain drinking water reservoirs, representing a drinking water source generally considered to be more vulnerable to frequent high concentrations of pesticides than most locations that could be used for crop production.

EPA uses the output of daily concentration values from tier two modeling as an input to DEEM-FCID, which combines water concentrations with drinking water consumption information in the daily diet to generate a distribution of exposures from consumption of drinking water contaminated with pesticides. These results are then used to calculate a probabilistic assessment of the aggregate human exposure and risk from residues in food and drinking water.

C. Selection of Acute Dietary Exposure Level of Concern

Because probabilistic assessments generally present a realistic range of residue values to which the population may be exposed, EPA's starting point for estimating exposure and risk for such aggregate assessments is the 99.9th percentile of the population under evaluation. When using a probabilistic method of estimating acute dietary exposure, EPA typically assumes that, when the 99.9th percentile of acute exposure is equal to or less than the aPAD, the level of concern for acute risk has not been exceeded. By contrast, where the analysis indicates that estimated exposure at the 99.9th percentile exceeds the aPAD, EPA would generally conduct one or more sensitivity analyses to determine the extent to which the estimated exposures at the high-end percentiles may be affected by unusually high food consumption or residue values. To the extent that one or a few values seem to ''drive'' the exposure estimates at the high end of exposure, EPA would consider whether these values are reasonable and should be used as the primary basis for regulatory decision making (Ref 58).

VI. Aggregate Risk Assessment and Conclusions Regarding Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA's assessment of exposures and risks associated with carbofuran use follows:

A. Toxicological Profile

Carbofuran is an *N*-methyl carbamate (NMC) pesticide. Like other pesticides in this class, the primary toxic effect seen following carbofuran exposure is neurotoxicity resulting from inhibition of the enzyme acetylcholinesterase (AChE). AChE breaks down acetylcholine (ACh), a compound that assists in transmitting signals through the nervous system. Carbofuran inhibits the AChE activity in the body. When AChE is inhibited at nerve endings, the inhibition prevents the ACh from being degraded and results in prolonged stimulation of nerves and muscles. Physical signs and symptoms of carbofuran poisoning include headache, nausea, dizziness, blurred vision, excessive perspiration, salivation, lacrimation (tearing), vomiting, diarrhea, aching muscles, and a general feeling of severe malaise. Uncontrollable muscle twitching and bradycardia (abnormally slow heart rate) can occur. Severe poisoning can lead to convulsions, coma, pulmonary edema, muscle paralysis, and death by asphyxiation. Carbofuran poisoning also may cause various psychological, neurological and cognitive effects, including confusion, anxiety, depression, irritability, mood swings, difficulty concentrating, short-term memory loss, persistent fatigue, and blurred vision (Refs. 15 and 16).

The most sensitive and appropriate effect associated with the use of carbofuran is its toxicity following acute exposure. Acute exposure is defined as an exposure of short duration, usually characterized as lasting no longer than a day. EPA classifies carbofuran as Toxicity Category I, the most toxic category, based on its potency by the oral and inhalation exposure routes. The lethal potencies of chemicals are usually described in terms of the ''dose'' given orally or the ''concentration'' in air that is estimated to cause the death of 50 percent of the animals exposed (abbreviated as LD_{50} or LC_{50}). Carbofuran has an oral LD_{50} of 7.8–6.0 mg/kg, and an inhalation LC_{50} of 0.08 mg/l (Refs. 12, 16 and 48). The lethal dose and lethal concentration levels for the oral and inhalation routes fall well below the limits for the Toxicity Category I, < 50 mg/kg and < 0.2 mg/l, respectively (40 CFR 156.62).

Carbofuran has a steep dose-response curve. In other words, a marginal increase in administered doses of carbofuran can result in a significant change in the toxic effect. For example, carbofuran data in juvenile rats (postnatal day 11 and 17) demonstrate that small differences in carbofuran doses (0.1 mg/kg to 0.3 mg/kg) can change the measured effect from significant brain and red blood cell (RBC) AChE inhibition without clinical signs (0.1 mg/kg) to significant AChE inhibition, and resultant tremors, and decreased motor activity (0.3 mg/kg) (Refs. 31 and 46). In other words there is a slight difference in exposure levels that produce no noticeable outward effects and the level that causes adverse effects. This means that small differences in human exposure levels can have significant adverse consequences for large numbers of individuals. For example, as discussed in greater detail in Unit VI.E.1.b below, the difference between the amount of food with carbofuran residues that can be safely consumed without adverse effect, and the amount that provides a dose that exceeds safe levels is minimal. Children who consume typical amounts of watermelon (*i.e.*, 8 grams) containing carbofuran residues of 0.009 ppm–a residue level detected in PDP data—receive a safe daily dose, but those consuming the same amount of watermelon with a PDP residue level of 0.013 receive an exposure of 130% of the safe daily dose.

B. Deriving Carbofuran's point of departure

EPA uses a weight of evidence approach to determine the toxic effect that will serve as the appropriate PoD for a risk assessment for AChE inhibiting pesticides, such as carbofuran (Ref. 61). The neurotoxicity that carbofuran causes can occur in both the central (brain) and peripheral nervous systems (PNS). In its weight of the evidence analysis, EPA reviews data, such as AChE inhibition data from the brain, peripheral tissues and blood (*e.g.*, RBC or plasma), in addition to data on clinical signs and other functional effects related to AChE inhibition. Based on these data, EPA selects the most appropriate effect on which to regulate; such effects can include clinical signs of AChE inhibition, central or peripheral nervous tissue measurements of AChE inhibition or RBC AChE measures (Id.). Although RBC AChE inhibition is not adverse in itself, it is a surrogate for inhibition in peripheral tissues when peripheral data are not available. As such, RBC AChE inhibition provides an indirect indication of adverse effects on the nervous system (Id.). Due to technical difficulties regarding dissection of peripheral nerves and the rapid nature of carbofuran toxicity, measures of AChE inhibition in the PNS are very rare for NMC pesticides. For these reasons, other state and national agencies such as California, Washington, Canada, the European Union, as well as the World Health Organization (WHO), all use blood measures in human health risk assessment and/or worker safety monitoring programs.

AChE inhibition in brain and the PNS is the initial adverse biological event which results from exposure to carbofuran, and with sufficient levels of inhibition leads to other effects such as tremors, dizziness, as well as gastrointestinal and cardiovascular effects, including bradycardia (Ref. 16). Thus, AChE inhibition provides the most appropriate effect to use in risk extrapolation for derivation of RfDs and PADs. Protecting against AChE inhibition ensures that the other adverse effects mentioned above do not occur.

EPA has relied on a benchmark dose approach for deriving the PoD from the available rat toxicity studies. A benchmark dose, or BMD, is a point estimate along a dose-response curve that corresponds to a specific response level. For example, a BMD_{10} represents a 10% change from the background or typical value for the response of concern. Generically, the direction of change from background can be an increase or a decrease depending on the biological parameter and the chemical of interest. In the case of carbofuran, inhibition of AChE is the toxic effect of concern. Following exposure to carbofuran, the normal biological activity of the AChE enzyme is decreased (*i.e.*, the enzyme is inhibited). Thus, when evaluating BMDs for carbofuran, the Agency is interested in a decrease in AChE activity compared to normal activity levels, which are also termed ''background'' levels. Measurements of ''background'' AChE activity levels are usually obtained from animals in experimental studies that are not treated with the pesticide of interest (*i.e.*, ''negative control'' animals).

In addition to the BMD, a ''confidence limit'' was also calculated. Confidence limits express the uncertainty in a BMD that may be due to sampling and/or experimental error. The lower confidence limit on the dose used as the BMD is termed the BMDL, which the Agency uses as the PoD. Use of the BMDL for deriving the PoD rewards better experimental design and procedures that provide more precise estimates of the BMD, resulting in tighter confidence intervals. Use of the BMDL also helps ensure with high confidence (*e.g.*, 95% confidence) that the selected percentage of AChE inhibition is not exceeded. From the PoD, EPA calculates the RfD and aPAD.

Numerous scientific peer review panels over the last decade have supported the Agency's application of the BMD approach as a scientifically supportable method for deriving PoDs in human health risk assessment, and as an improvement over the historically applied approach of using no-observed-adverse-effect levels (NOAELs) or lowest-observed-adverse-effect-levels (LOAELs). The NOAEL/LOAEL approach does not account for the variability and uncertainty in the experimental results, which are due to characteristics of the study design, such as dose selection, dose spacing, and sample size. With the BMD approach, all the dose response data are used to derive a PoD. Moreover, the response level used for setting regulatory limits can vary based on the chemical and/or type of toxic effect (Refs. 27, 28, 29 and 57). Specific to carbofuran and other NMCs, the FIFRA SAP has reviewed and supported the statistical methods used by the Agency to derive BMDs and BMDLs on two occasions, February 2005 and August 2005 (Refs. 28 and 29). Recently, in reviewing EPA's draft NOIC, the SAP again unanimously concluded that the Agency's approach in using a benchmark dose to derive the PoD from carbofuran brain AChE data in juvenile rats is ''state of the art science and the Panel strongly encouraged the Agency to follow this approach for all studies where possible'' (Ref. 30).

There are laboratory data on carbofuran for cholinesterase activity in plasma, RBC, and brain. EPA evaluated the quality of the AChE data in all the available studies. In this review, particular attention was paid to the methods used to assay AChE inhibition in the laboratory conducting the study. Because of the nature of carbofuran inhibition of AChE, care must be taken in the laboratory such that experimental conditions do not promote enzyme reactivation (*i.e.*, recovery) while samples of blood and brain are being processed and analyzed. If this reactivation occurs during the assay, the results of the experiment will underestimate the toxic potential of carbofuran (Refs. 33, 37, 43, 66 and 67). Through its review of available studies, the Agency identified problems and irregularities with the RBC AChE data from both FMC supported studies. These problems are described in detail in the Agency's study review (Refs. 19 and 20). As such, the Agency determined that the RBC AChE inhibition data from both FMC studies were unreliable and not useable in extrapolating human health risk. In addition, RBC data from a study performed at EPA ORD did not provide doses low enough to adequately characterize the full dose-response in postnatal day 11 (PND11) rats. In the recent SAP review of the draft carbofuran NOIC, the Panel unanimously agreed with the Agency's conclusion, remarking that ''[t]he Agency is well-justified in taking the position that the data on AChE inhibition in rat RBC, particularly with regard to the PND11 pups, are not acceptable for the purpose of predicting health risk from carbofuran'' (Ref. 30). By contrast, the brain AChE data from the FMC and EPA-ORD studies are acceptable and have been used in the Agency's BMD analysis.

In EPA's BMD dose analysis to derive PoDs for carbofuran, the Agency used a response level of 10% brain AChE inhibition and thus calculated BMD_{10}s and $BMDL_{10}$s based on the available carbofuran brain data. These values (the central estimate and lower confidence bound, respectively) represent the estimated dose where AChE is inhibited by 10% compared to untreated animals. In the last few years EPA has used this 10% value to regulate AChE inhibiting pesticides, including organophosphate pesticides and NMCs including carbofuran. For a variety of toxicological and statistical reasons, EPA chose 10%

brain AChE inhibition as the response level for use in BMD and BMDL calculations. EPA analyses have demonstrated that 10% is a level that can be reliably measured in the majority of rat toxicity studies; is generally at or near the limit of sensitivity for discerning a statistically significant decrease in AChE activity across the brain compartment; and is a response level close to the background AChE level (Refs. 28 and 29)

The Agency used a meta-analysis to calculate the BMD_{10} and $BMDL_{10}$ for pups and adults; this analysis includes brain data from studies where either adult or juvenile rats or both were exposed to a single oral dose of carbofuran. The Agency used a dose-time-response exponential model where benchmark dose and half-life to recovery can be estimated together. This model and the statistical approach to deriving the BMD_{10}s, $BMDL_{10}$s, and half-life to recovery have been reviewed and supported by the FIFRA SAP (Refs. 28 and 29). The meta-analysis approach offers the advantage over using single studies by combining information across multiple studies and thus provides a robust PoD.

There are three studies available which compare the effects of carbofuran on PND11 rats with those in young adult rats (herein called 'comparative AChE studies') (Refs. 1, 2 and 46). Two of these studies were submitted by FMC, the registrant, and one was performed by EPA-ORD. An additional study conducted by EPA-ORD involved PND17 rats (Ref. 45). Although it is not possible to directly correlate ages of juvenile rats to humans, PND11 rats are believed to be close in development to newborn humans. PND17 rats are believed to be closer developmentally to human toddlers (Ref. 9). Other studies in adult rats used in the Agency's analysis included additional data from EPA-ORD (Refs 44 and 46).

Using quality brain AChE data from the three studies (2 FMC, 1 EPA–ORD) conducted with PND11 rats, in combination, provides data to describe both low and high doses. By combining the three studies in PND11 animals together in a meta-analysis, the entire dose-response range is covered (see Figure 1 in Unit VI.C. below). The Agency believes the BMD analysis for the PND11 brain AChE data is the most robust analysis for purposes of PoD selection.

The studies in juvenile rats show a consistent pattern that juvenile rats are more sensitive than adult rats to the effects of carbofuran. These effects include inhibition in AChE in addition to incidence of clinical signs of neurotoxicity such as tremors. This pattern has also been observed for other NMC pesticides, which exhibit the same mechanism of toxicity as carbofuran (Ref. 63). It is not unusual for juvenile rats, or indeed, for infants or young children, to be more sensitive to chemical exposures as metabolic detoxification processes in the young are still developing. Because juvenile rats, called 'pups' herein, are more sensitive than adult rats, data from pups provide the most relevant information for evaluating risk to infants and young children and are thus used to derive the PoD. In addition, typically (and is the case for carbofuran) young children (ages 0–5) tend to be the most exposed age groups because they tend to eat larger amounts of food per their body weight than do teenagers or adults. As such, the focus of EPA's analysis of carbofuran's dietary risk from residues in food and water is on young children (ages 0–5). Since these age groups experience the highest levels of dietary risk, protecting these groups against the effects of carbofuran will, in turn, also protect other age groups.

Using data from PND11 pup brain AChE levels, the estimated oral dose that will result in 10% brain AChE inhibition (BMD_{10}) is 0.04 mg/kg. The lower 95% confidence limit on the BMD_{10} ($BMDL_{10}$) is 0.03 mg/kg—this $BMDL_{10}$ of 0.03 mg/kg provides the PoD.

As noted, although EPA does not consider RBC AChE inhibition as an adverse effect in its own right, in the absence of data from peripheral tissues, RBC AChE inhibition data are a critical component to determining that a selected PoD will be sufficiently protective of PNS effects. Because of the problems discussed previously with the available RBC AChE inhibition data, there remains uncertainty surrounding the dose-response relationship for RBC AChE inhibition in pups, which the EPA-ORD data clearly show to be a more sensitive endpoint than brain AChE. Consequently, EPA cannot reliably estimate the BMD_{10} and $BMDL_{10}$ for RBC AChE data in pups. Furthermore, given that the EPA-ORD data clearly show RBC AChE to be more sensitive than brain AChE, EPA cannot conclude that reliance on the pup brain data as the PoD would be sufficiently protective of PNS effects in pups. This uncertainty provides the scientific basis, in part, for retention of the children's safety factor as described below.

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses acceptable risk to humans.

In applying the children's safety factor provision, EPA has interpreted the statutory language as imposing a presumption in favor of applying an additional 10X safety factor (Ref. 60). Thus, EPA generally refers to the additional 10X factor as a presumptive or default 10X factor. EPA has also made clear, however, that the presumption can be overcome if reliable data demonstrate that a different factor is safe for children (Id.). In determining whether a different factor is safe for children, EPA focuses on the three factors listed in section 408(b)(2)(C) - the completeness of the toxicity database, the completeness of the exposure database, and potential pre- and post-natal toxicity. In examining these factors, EPA strives to make sure that its choice of a safety factor, based on a weight-of-the-evidence evaluation, does not understate the risk to children (Id.).

2. *Prenatal and postnatal sensitivity.* As noted in the previous section, there are several studies in juvenile rats that show they are more sensitive than adult rats to the effects of carbofuran. These effects include inhibition of brain AChE in addition to the incidence of clinical signs of neurotoxicity (such as tremors) at lower doses in the young rats. The SAP concurred with EPA that the data clearly indicate that the juvenile rat is more sensitive than the adult rat with regard to brain AChE (Ref. 30). However, the Agency does not have AChE data for cabofuran in the peripheral tissue of adult or juvenile animals; nor does the Agency have adequate RBC AChE inhibition data at low doses relevant to risk assessment to serve as a surrogate in pups. As previously noted the RBC AChE data from both FMC supported studies are not reliable and thus are not appropriate for use in risk assessment. Although the EPA studies did provide reliable RBC data, they did not include data at the low end of the dose-response curve, which is the area on the dose-response curve most relevant for risk assessment (see Figure 1).

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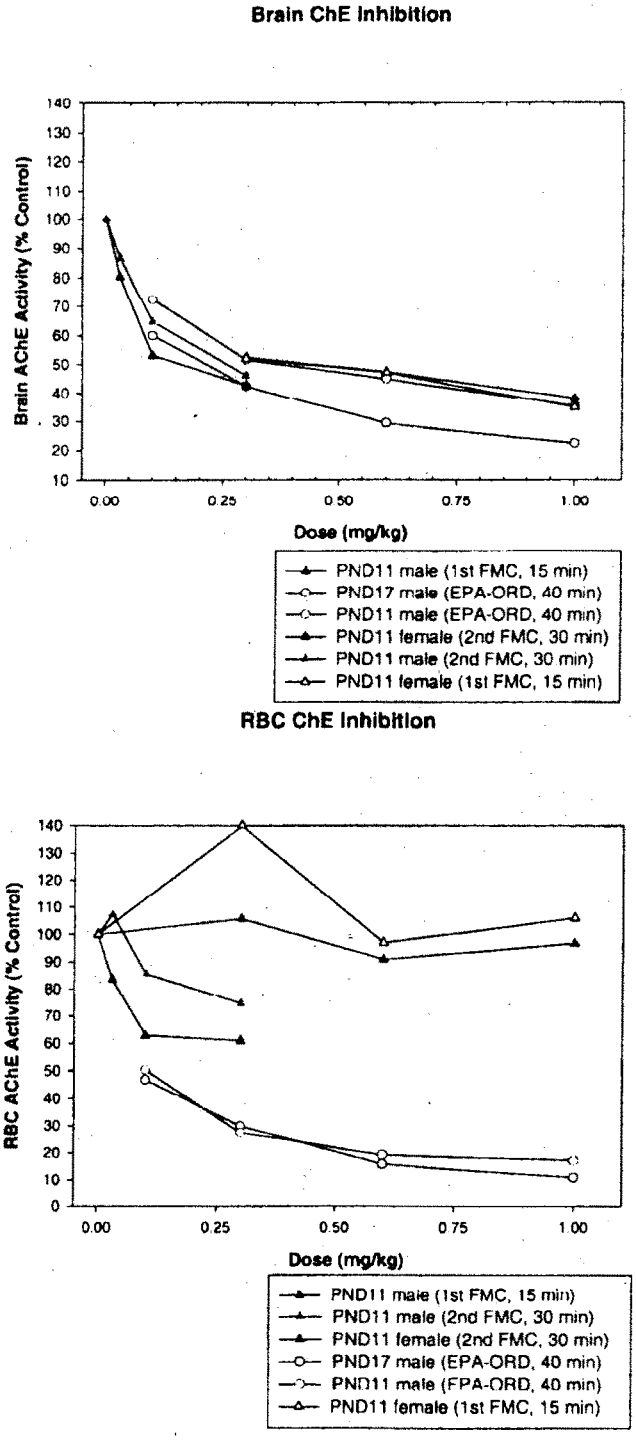
Figure 1. Brain and RBC AChE inhibition in pups following exposure to carbofuran



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There is indication in a toxicity study where pregnant rats were exposed to carbofuran that effects on the PNS are of concern; specifically, chewing motions or mouth smacking was observed in a clear dose-response pattern immediately following dosing each day (Ref. 64). Based on this study, the California Department of Pesticide Regulation calculated a BMD_{05} and $BMDL_{05}$ of 0.02 and 0.01 mg/kg/day, and established the acute PoD (Refs. 11 and 30). These BMD estimates are notable as they are close to the values EPA has calculated for brain AChE inhibition and being used as the PoD for extrapolating risk to children. It is important to note that these clinical signs have been reported for at least one other cholinesterase inhibiting pesticide at doses producing only blood, not brain, AChE inhibition (Ref. 38). Thus, although RBC AChE inhibition is not an adverse effect, per se, blood measures are used as surrogates in the absence of peripheral tissue data. Assessment of potential for neurotoxicity in peripheral tissues is a critical element of hazard characterization for NMCs, like carbofuran. The lack of an appropriate surrogate to assess the potential for RBC AChE inhibition is a key uncertainty in the carbofuran toxicity database. Thus, EPA cannot conclude that reliance on the pup brain data solely as the PoD will be protective of PNS effects in pups.

To account for the lack of RBC data in pups at the low end of the response curve, and for the fact that RBC AChE inhibition appears to be a more sensitive point of departure compared to brain AChE inhibition (and is considered an appropriate surrogate for the peripheral nervous system), EPA is retaining a portion of the children's safety factor. On the other hand, there are data available, albeit incomplete, which characterize the toxicity of carbofuran in juvenile animals, and the Agency believes the weight of the evidence supports reducing the statutory factor of 10X to a value lower than 10X. This results in a children's safety factor that is less than 10 but more than 1.

This modified safety factor should take into account the greater sensitivity of the RBC AChE. The preferred approach to comparing the relative sensitivity of brain and RBC AChE inhibition would be to compare the BMD_{10} estimates. However, as described above, BMD_{10} estimates from the available RBC AChE inhibition data are not reliable due to lack of data at the low end of the dose response curve (Figure 1). As an alternative approach, EPA has used the ratio of brain to RBC AChE inhibition at the BMD_{50}, since there are quality data at or near the 50% response level such that a reliable estimate can be calculated. There is, however, an assumption associated with using the 50% response level—namely that the magnitude of difference between RBC and brain AChE inhibition is constant across dose. In other words, EPA is assuming the RBC and brain AChE dose response curves are parallel. There are currently no data to test this assumption for carbofuran.

The Agency has recommended the application of a children's safety factor of 4X, based on a weight-of-evidence approach. This safety factor is calculated using the difference in RBC and brain AChE inhibition, using the data on administered dose for the animals from the EPA-ORD studies and the FMC studies combined. In other words, EPA estimated the BMD_{50} for PND11 animals from each quality study and used the ratio from the combined analysis, resulting in a BMD_{50} ratio of 4.1X[3]. EPA also compared the BMD_{50} ratios for PND17 pups (who are slightly less sensitive than 11–day olds; see Figure 2) in the EPA-ORD study, resulting in a BMD_{50} of 3.3 X. Conceptually, the RBC to brain potency ratio could be estimated using two different approaches: 1) EPA's data for RBC (the only reliable RBC data in PND11 animals for carbofuran) and all available data in PND11 animals for brain; or 2) using only EPA's data in PND11 animals for both RBC and brain. The former procedure, the approach used by EPA, yields a ratio of about fourfold, while the latter gives a twofold ratio for carbofuran. EPA has elected to use the 4X factor as the more health protective choice. This selection was made based on: 1) uncertainty regarding lack of an appropriate measure of peripheral toxicity (*i.e.*, lack of RBC AChE inhibition data at the low end of the dose response curve), and 2) the RBC to brain AChE ratio at the BMD_{50} for PND17 animals of 3.3X which suggests that a factor of 2X would not be protective of PND11 pups.

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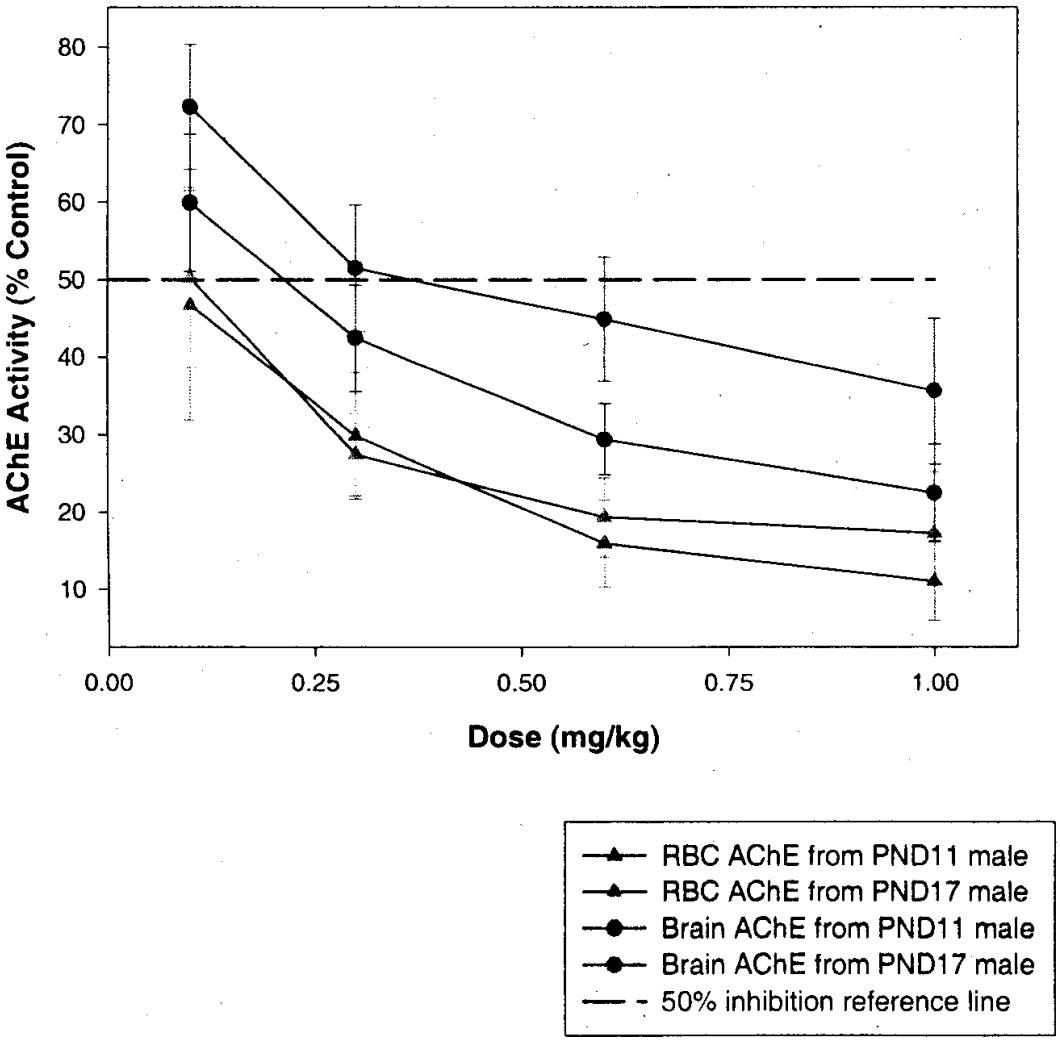
[3] EPA made a mathematical error when it originally calculated the children's safety factor, which resulted in a factor of 5X (Ref. 50). Correcting the mathematical error results in a 4X actor.

Figure 2. Comparison of brain and RBC AChE inhibition in PND11 and PND17 pups.



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EPA recently presented its dietary risk assessment of carbofuran to the FIFRA SAP, and requested comment on the Agency's approach to selecting the point of departure and the children's safety factor. Overall, the Agency believes that the Panel's responses support the Agency's approach with regard to carbofuran's hazard identification and hazard characterization. For example, the Agency notes that the Panel ''unanimously'' agreed with the Agency with regard to the conclusion that the second FMC comparative cholinesterase (ChE) study provides reliable brain, but not RBC, AChE data. The Panel further remarked that, ''EPA is well-justified in taking the position that the data on AChE inhibition in rat RBC, particularly with PND11 pups, are not acceptable for the purpose of predicting health risk from carbofuran'' (Ref. 30). The Panel went on to concur with the Agency that the brain AChE inhibition data from the FMC and EPA-ORD studies show ''good concordance.'' With regard to the use of a benchmark dose approach to derive a PoD from brain AChE data in pups, the Panel stated that the Agency's approach is ''state-of-the-art science and the Panel strongly encouraged the Agency to follow this approach for all studies where possible'' (Id.).

The Panel provided five 'scenarios' or options for applying the children's safety factor and/or PoD. Four of the five scenarios included the application of a children's safety factor. Because the Panel report stated that the Panel was ''not in agreement regarding the magnitude of a [children's] safety factor,'' it is reasonable to conclude that a majority did not support any one of the five scenarios, including the one advocating removal of the children's safety factor (Ref. 30). It follows that a majority of the Panel agreed with the Agency that at least a portion of the safety factor should be retained; however, recommendations for the appropriate factor ranged between a 2X and 10X. Two of the scenarios were consistent with the Agency's approach in which the magnitude of the safety factor is derived based on the differences in RBC and brain AChE responses, quantified by the administered dose. The remaining two scenarios were based on retention of the 10X safety factor. Those Panel members supporting retention of the 10X safety factor did so on the basis that the statutory requirement that EPA may use a different factor '''*only if, on the basis of reliable data, such margin will be safe for infants and children*.' Given the uncertainty in the data and in its interpretation for risk assessment by the entire Panel, these Panel members believes that this standard for change had not been met'' (Id.). EPA believes that, on balance, the application of a 4X children's safety factor is consistent with the SAP's advice. Additional detail on the SAP's advice and EPA's responses can be found at Ref. 23.

In sum, EPA has concluded that there is reliable data to support the application of a 4X safety factor and has therefore applied this safety factor in its dietary risk estimates. However, in light of the disagreement among the SAP panelists on the appropriate factor to apply, the Agency solicits comment on this issue.

D. Hazard Characterization and Point of Departure Conclusions

The doses and toxicological endpoints selected and Margins of Exposures for various exposure scenarios are summarized in Table 1 below.

TABLE 1—TOXICOLOGY ENDPOINT SELECTION

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA factor and Endpoint for Risk Assessment	Study and Toxicological Effects
Acute Dietary Infants and Children	$BMDL_{10}$ = 0.03 mg/kg/day UF = 100 Acute RfD = 0.0003 mg/kg/day	Children's SF = 4X aPAD = 0.000075 mg/kg/day	Comparative AChE Studies in PND11 rats (FMC and EPA-ORD) BMD_{10} = 0.04 mg/kg/day $BMDL_{10}$ = 0.03 mg/kg/day, based on brain AChE inhibition of postnatal day 11 (PND11) pups
Acute Dietary Youth (13 and older) and Adults	$BMDL_{10}$ = 0.02 mg/kg/day UF = 100 Acute RfD = 0.00024 mg/kg/day	Children's SF = 1X aRfD = 0.0002 mg/kg/day	Comparative AChE Study (EPA-ORD), Padilla et al (2007), McDaniel et al (2007) BMD_{10} = 0.06 mg/kg/day $BMDL_{10}$ = 0.02 mg/kg/day, based on RBC AChE inhibition in adult rat

E. Dietary Exposure and Risk Assessment

1. *Dietary exposure to carbofuran (food)*—a. *EPA methodology and background*. EPA conducted a refined (Tier 3) acute probabilistic dietary risk assessment for carbofuran residues in food. Carbofuran is registered for use on the following crops: alfalfa, artichokes, banana, barley, corn, cranberry, cucumber, grapes, melons, milk, oats, peppers, potatoes, pumpkin, rice, sorghum, soybean, spinach, squash, strawberry, sugar beets, sugar cane, sunflower seed, and wheat. To conduct the assessment, EPA relied on DEEM-FCID, Version 2.00–2.02, which uses food consumption data from the USDA's CSFII from 1994–1996 and 1998.

Using data on the percent of the crop actually treated with carbofuran and data on the level of residues that may be present on the treated crop, EPA developed estimates of combined anticipated residues of carbofuran and 3-hydroxycarbofuran on food. 3-Hydroxycarbofuran is a degradate of carbofuran and is assumed to have toxic potency equivalent to carbofuran (Refs. 12, 16 and 48). Anticipated residues of carbofuran for most foods were derived using USDA PDP monitoring data from recent years (through 2006 for all available commodities). In some cases, where PDP data were not available for a particular crop, EPA translated PDP monitoring data from surrogate crops based on the characteristics of the crops and the use patterns. For example, PDP data for cantaloupes were used to derive anticipated residues for casaba and honeydew.

USDA PDP provides the most comprehensive sampling design, and the most extensive and intensive sampling procedures for pesticide residues of the various data sources available to EPA. Additionally, the intent of PDP's sampling design is to provide statistically representative samples of food commodities eaten by the U.S. population specifically for the purpose of performing dietary risk assessments for pesticides. The program focuses on high-consumption foods for

children and reflects foods typically available throughout the year. A complete description of the PDP program (including all data through 2006) is available online.

The PDP analyzed for parent carbofuran and its metabolite of concern, 3-hydroxycarbofuran. Most of the samples analyzed by the PDP were measured using a high Level of Detection (LOD) and contained no detectable residues of carbofuran or 3-hydroxycarbofuran. Consequently, the acute assessment for food assumed a concentration equal to ½ of the LOD for PDP monitoring samples with no detectable residues, and 0.00 ppm carbofuran to account for the percent of the crop not treated with carbofuran.

An additional source of data on carbofuran residues was provided by a market basket survey of NMC pesticides in single-serving samples of fresh fruits and vegetables collected in 1999–2000 (Ref. 14), which was sponsored by the Carbamate Market Basket Survey Task Force. EPA relied on these data to construct the residue distribution files for 2 crops (bananas and grapes) because the use of these data resulted in more refined exposure estimates. The combined Limits of Quantitation (LOQs) for carbofuran and its metabolite in the Market Basket Survey (MBS) were between tenfold and twentyfold lower than the combined LODs in the PDP monitoring data.

For certain crops where PDP data were not available (sugar beets, sugarcane, and sunflower seed), anticipated residues were based on field trial data. EPA also relied on field trial data for particular food commodities that are blended during marketing (barley, field corn, popcorn, oats, rice, soybeans and wheat), as use of PDP data can result in significant overestimates of exposure when evaluating blended foods. Field trial data are typically considered to overestimate the residues that are likely to occur in food as actually consumed because they reflect the maximum application rate and shortest preharvest interval allowed by the label. However, for crops that are blended during marketing, such as corn or wheat, use of field trial data can provide a more refined estimate than PDP data, by allowing EPA to better account for the percent of the crop actually treated with carbofuran.

EPA used average and maximum percent crop treated (PCT) estimates for most crops, following the guidance provided in HED SOP 99.6 (*Classification of Food Forms with Respect to level of Blending; 8/20/99*), and available processing and/or cooking factors. The maximum PCT estimates were used to refine the acute dietary exposure estimates. Maximum PCT ranged from <1 to 35%. The estimated percent of the crop imported was applied to crops with tolerances currently maintained solely for import purposes (cranberry, rice, strawberry).

b. *Acute dietary exposure (food alone) results and conclusions*. The estimated acute dietary exposure from carbofuran residues in food alone (*i.e.*, assuming no additional carbofuran exposure from drinking water), exceeds EPA's level of concern for all but one of the children's population subgroups at the 99.9th percentile of exposure. Carbofuran dietary exposure at the 99.9th percentile was estimated at 0.000156 mg/kg/day (210% of the aPAD) for children 3–5 years old, the population subgroup with the highest estimated dietary exposure. Estimated dietary exposure to carbofuran also exceeds EPA's level of concern for children 1–2 years old and 6–12 years at the 99.9th percentile of exposure. (See results Table 2 below).

TABLE 2—RESULTS OF ACUTE DIETARY EXPOSURE ANALYSIS FOR FOOD ALONE

Population Subgroup	aPAD (mg/kg/day)	99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
All Infants (< 1 year old)	0.000075	0.000025	33	0.000070	93
Children 1–2 years old	0.000075	0.000045	60	0.000152	200
Children 3–5 years old	0.000075	0.000036	48	0.000156	210
Children 6–12 years old	0.000075	0.000024	32	0.000121	160

Exposure estimates for all of the major food contributors were based on PDP monitoring data adjusted to account for the percent of the crop treated with carbofuran and, therefore, may be considered highly refined.

As noted previously, because most of the PDP samples contained no detectable residues of carbofuran or its 3-hydroxy metabolite, the acute assessment for food assumed a concentration equal to ½ of the LOD for PDP monitoring samples with no detectable residues, with 0.00 ppm carbofuran incorporated to account for the percent of the crop not treated with carbofuran. In accordance with OPP policy for analyzing commodities with non-detectable residues, EPA performed additional analyses to determine the impact of using ½ the LOD to estimate exposure (Ref. 56).

In the first analysis (Sensitivity Analysis #1), those commodities that had no detectable residues at all in either the monitoring data or field trials were eliminated from the assessment. The commodities that were eliminated included barley, coffee, corn, cranberry, oats, potato, raisin, rice, soybean, spinach, strawberry, sugar beet, sunflower, winter squash, and wheat. For the remaining commodities, on which carbofuran was detected, EPA continued to substitute the ½ LOD values for the percent of the crop treated with carbofuran, with 0.00 ppm carbofuran incorporated to account for the remaining untreated percent of the crop. This analysis resulted in estimated exposures that were still above EPA's level of concern for children 1–2 at the 99.9th percentile (115% of the aPAD; see Table 3 below).

To further understand the extent to which the ½ LODs from the PDP monitoring data were affecting the risk assessment, EPA conducted an additional sensitivity analysis, (Sensitivity Analysis #2) that excluded the crops for which PDP and MBS data were not available and assigned 0.00 ppm carbofuran for all non-detected residues in commodities sampled in the PDP or MBS. In other words, an analysis using only detectable residues from residue monitoring programs was conducted. In this analysis, estimated dietary exposures at the 99.9th percentile of exposure remained above EPA's level of concern for children 1–2 yrs. old (114% of the aPAD). The

results of these sensitivity analyses at the 99.9th percentile of exposure are compared to the results using ½ LOD for non-detectable residues in Table 3 below.

TABLE 3—IMPACT OF USING ½ LOD FOR NON-DETECTABLE RESIDUES ON ESTIMATED EXPOSURE FROM FOOD[1]

Population Subgroup	aPAD (mg/kg/day)	Analysis Assuming ½ LOD for Non-Detectable Residues		Sensitivity Analysis #1[2]		Sensitivity Analysis #2[3]	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
All Infants (< 1 year old)	0.000075	0.000070	93	0.000044	58	0.000043	57
Children 1–2 years old	0.000075	0.000152	200	0.000086	115	0.000086	114
Children 3–5 years old	0.000075	0.000156	210	0.000066	88	0.000065	87
Children 6–12 years old	0.000075	0.000121	160	0.000039	52	0.000038	51

[1] At the 99.9th Percentile of Exposure.
[2] Non-detectable PDP residues assumed to be zero only for commodities having no detectable residues at all in the PDP monitoring data and field trials (*i.e.*, these commodities were eliminated from the analysis). Crops without PDP data and detectable residues in field trials were included, based on the distribution of residues from field trial studies.
[3] Non-detectable residues assumed to be zero for all commodities. Commodities without PDP or Market Basket data were excluded from the analysis.

The major contributors in Sensitivity Analysis #2, to the estimated dietary exposure of children are listed in Table 4 below.

TABLE 4—MAJOR CONTRIBUTORS TO CARBOFURAN ACUTE EXPOSURE AT THE 99.9TH PERCENTILE IN SENSITIVITY ANALYSIS #2 (EXPRESSED AS AN APPROXIMATE PERCENT OF TOTAL EXPOSURE)

Food	Infants, <1 year old	Children, 1–2 Years Old	Children, 3–5 Years Old
Cantaloupe	9	18	20
Squash	10	2	1
Grape	15	10	5
Cucumbers	2	20	29
Milk	32	<1	1
Watermelon	29	39	41

EPA's evaluation of these two sensitivity analyses and other information on carbofuran residue levels yields three conclusions. First, the results of the sensitivity analyses indicate that the dietary risk assessment for carbofuran is sensitive to the assumed concentrations (*i.e.*, ½ LOD) for non-detectable residues in the PDP monitoring data. This sensitivity appears to be more of a factor for commodities with no detections because the main difference between the Sensitivity Analyses #1 and #2 was substituting 0.00 ppm for ½ LODs for commodities with detects in the second analysis yet that analysis yielded similar results to the first sensitivity analysis. On the other hand, both sensitivity analyses were approximately 2X lower than the analysis that used ½ LOD for all treated commodities. The finding that the use of a ½ LOD assumption had a noticeable impact on the risk estimate is contrary to EPA's experience in conducting pesticide risk assessments. Generally, risk estimates do not show noticeable differences whether non-detects are treated as true zeros or ½ LODs. In all likelihood, this is a factor of the relatively insensitive level of the carbofuran method's LOD.

Second, given that there are data showing that carbofuran is found at levels below the LOD when a more sensitive method was used, EPA finds that use of either of the approaches in the sensitivity analyses will understate carbofuran risk. The available information demonstrates that carbofuran residues are present; when a lower level of detection was utilized, both in the most recent PDP milk analyses and in the Carbamate MBS data; residues of carbofuran and 3-hydroxycarbofuran were detected in commodities that previously had no detections. Moreover, detected residues ranged between levels below and above ½ LOD. Thus, unlike the circumstance where a relatively sensitive method of detection is used and there is some uncertainty as to whether a non-detect may mask an actual exposure, with cabofuran there is no question – treating all non-detects as zero clearly would mask actual exposures to carbofuran. Thus, these sensitivity analyses do not provide a basis for concluding that EPA has overestimated risk.

Third, and most important, EPA would call attention to the fact that these sensitivity analyses, although clearly underestimating actual carbofuran exposure and risk, still indicate that one group of children will have exposures exceeding the safe level.

Because it appears that carbofuran's dietary risks to children are driven by

relatively low residues in a small percentage of commodities, and to try to gain further insight into the potential impact of using ½ LOD in this case, EPA conducted a third sensitivity analysis to evaluate whether its estimates that food only and aggregate carbofuran exposure results in risks of concern were overstated. EPA combined actual residue values measured in the food supply (from PDP and MBS data) with the typical (50th percentile) and high-end (90th percentile) amounts of a single commodity that a child would be expected to consume, and compared that to the aPAD, without considering the likelihood that a child would be exposed to that residue value. The results one of these analyses are summarized in Table 5 below.

TABLE 5—RISK TO CHILDREN CONSUMING TYPICAL OR HIGH-END AMOUNTS OF FRESH (UNCOOKED) CUCUMBERS CONTAINING CARBOFURAN RESIDUES

Food	Population Subgroup	Typical: 50th Percentile of Consumption				High-End: 90th Percentile of Consumption			
		Consumption (g/kg bw)	PDP Residue[1] (ppm)	Exposure (mg/kg bw)	% aPAD	Consumption (g/kg bw)	PDP Residue[1] (ppm)	Exposure (mg/kg bw)	% aPAD
Cucumbers (Uncooked) DEEM food form 110	Children 1–2	1.0	0.005	0.000005	7	4.3	0.005	0.000022	29
			0.029	0.000029	39		0.029	0.000125	170
			0.063	0.000063	84		0.063	0.000271	360
			0.117	0.000117	160		0.117	0.000503	670
			0.137	0.000137	180		0.137	0.000589	790
			0.147	0.000147	200		0.147	0.000632	840
			0.437	0.000437	580		0.437	0.001879	2,500
			0.537	0.000537	720		0.537	0.002309	3,100
	Children 3–5	0.8	0.005	0.000004	5	5.1	0.005	0.000026	34
			0.029	0.000023	31		0.029	0.000148	200
			0.063	0.000050	67		0.063	0.000321	430
			0.117	0.000094	120		0.117	0.000597	800
			0.137	0.000110	150		0.137	0.000699	930
			0.147	0.000118	160		0.147	0.000750	1,000
			0.437	0.000350	470		0.437	0.002229	3,000
			0.537	0.000430	570		0.537	0.002739	3,700

[1] The PDP detected residues of carbofuran in 11 of 1479 cucumber samples at levels ranging from 0.005 ppm to 0.537 ppm.

Detectable residues of carbofuran and/or 3-hydroxycarbofuran were found in only a few samples of cucumber in monitoring data (11 out of 1479 or less than one percent). However, if young children aged 1 to 5 consume moderate amounts of cucumber (*i.e.*, the median or 50th percentile of consumption, corresponding to approximately 1 gram per kg of body weight of cucumber) that contain actual levels of carbofuran measured in the food supply, the percent of the aPAD that would be utilized ranges from about 7% of the safe daily dose for the lower observed residue values to 720% of the safe daily dose for the higher observed values. For children who consume larger amounts of cucumber (*i.e.*, the 90th percentile of consumption, corresponding to 5 grams per kg of body weight of cucumber or roughly ½ cup), exposure increases approximately tenfold (29% to over 3700% of the aPAD). Many of these values significantly exceed the Agency's level of concern based on the consumption of a single daily serving of one commodity.

Additional analyses are summarized in Table 6 below, and analyses on additional foods can be found in Ref. 12. EPA focused on children in making these calculations, because children have the highest estimated dietary exposure to carbofuran; however, it is reasonable to assume that adult exposures from a single treated food item could also exceed EPA's level of concern, particularly at the high end of consumption.

TABLE 6—RISK TO CHILDREN CONSUMING TYPICAL OR HIGH-END AMOUNTS OF CANTALOUPE OR WATERMELON CONTAINING CARBOFURAN RESIDUES

Population Subgroup	Typical: 50th Percentile of Consumption				High-End: 90th Percentile of Consumption			
	Consumption (g/kg bw)	PDP Residue (ppm)	Exposure (mg/kg bw)	% aPAD	Consumption (g/kg bw)	PDP Residue (ppm)	Exposure (mg/kg bw)	% aPAD
Cantaloupe								
Children 1–2	Approx. 6g	0.009	0.0000531	71	Approx. 12 g	0.009	0.0001035	140
		0.01	0.000059	79		0.01	0.000115	150
		0.02	0.000118	160		0.02	0.00023	310
		0.06	0.000354	470		0.06	0.00069	920
		0.085	0.0005015	670		0.085	0.0009775	1,300
		0.357	0.0021063	2,800		0.357	0.0041055	5,500
Children 3–5	approx. 5g	0.009	0.0000441	59	approx. 15g or ½ cup	0.009	0.0001368	180
		0.01	0.000049	65		0.01	0.000152	200
		0.02	0.000098	130		0.02	0.000304	400
		0.06	0.000294	390		0.06	0.000912	1,200
		0.085	0.0004165	560		0.085	0.001292	1,700
		0.357	0.0017493	2,300		0.357	0.0054264	7,200
Watermelon								
Children 1–2	approx. 8g	0.0057	0.00004332	58	less than 30g	0.0057	0.00014706	200
		0.009	0.0000684	91		0.009	0.0002322	310
		0.0132	0.00010032	130		0.0132	0.00034056	450
		0.014	0.0001064	140		0.014	0.0003612	480
		0.062	0.0004712	630		0.062	0.0015996	2,100
		0.081	0.0006156	820		0.081	0.0020898	2,800
		0.205	0.001558	2,100		0.205	0.005289	7,100
Children 3–5	approx. 12g	0.0057	0.00007125	95	approx. 35g	0.0057	0.00019893	270
		0.009	0.0001125	150		0.009	0.0003141	420
		0.0132	0.000165	220		0.0132	0.00046068	610
		0.014	0.000175	230		0.014	0.0004886	650
		0.062	0.000775	1,000		0.062	0.0021638	2,900
		0.081	0.0010125	1,400		0.081	0.0028269	3,800
		0.205	0.0025625	3,400		0.205	0.0071545	9,500

The analyses in Tables 5 and 6 demonstrate three significant points. First, the fact that individual children, consuming typical amounts of a single food item receive unsafe levels of carbofuran, based on actual residue levels measured in the food supply, strongly supports EPA's findings that aggregate exposures to carbofuran are unsafe. It is true that the results described in Tables 5 and 6, as well as the additional analyses in Ref. 12, do not describe the probability that an individual child will receive those residues on the foods they consume. By contrast, EPA's analyses in Tables 2 and 3 account for the probability that a particular level of residues will be present on a food item, as well as the likelihood that an individual will consume a particular food. It is EPA's typical approach, as was done with carbofuran, to conduct its estimates of exposure across the entire population, generally assuming that as long as the 99.9th percentile of the estimated daily exposure is equal to or less than the aPAD, there is a reasonable certainty of no harm to the general population, including all significant subpopulations (Ref. 58). In practice, this can mean that if only a small portion of the population reported eating the commodity, or if the residues are infrequently detected, individual high-end risks may fall above EPA's usual benchmark of the 99.9th percentile, or in other words, fall in the ''tail end'' of the distribution curve. Admittedly, some of the results described in Tables 5 and 6 would be expected to fall within this tail end, given the relatively infrequent detections of carbofuran in sampled commodities. However, taking into account the analysis of the risk drivers in Table 4 above, it is clear that some of these values do fall within the 99.9th percentile.

In any event, given all of the facts, it is just as appropriate for EPA to evaluate whether the eating occasions that drive a conclusion that risks at the 99.9th percentile yield unacceptable risks are realistic, as it is for EPA to examine whether eating occasions in the tail of a distribution curve are examples of consumption events the Agency should be concerned about. In this regard, it is notable that even the high-end consumption values described in Tables 5 and 6 are extremely likely to be valid reported consumption events—or in other words, consumption of the amounts at the 90th percentile are quite realistic. For example, a child between 3–5 years, who consumes a ½ cup of cantaloupe would receive a dose ranging between 180% and 7,200% of the aPAD. Accordingly, this analysis by itself supports a conclusion that the carbofuran tolerances are not safe and certainly buttresses EPA's conclusions that exposures from carbofuran in food or water alone or from carbofuran residues in food and water aggregated when assessed at the 99.9th percentile are not safe.

Additionally, because of the uncertainty surrounding carbofuran's exposure potential, investigation of individual children's risks, even if in the ''tail end,'' is particularly relevant. There are a number of reasons that significant uncertainty remains with respect to carbofuran's exposure potential. One primary consideration stems from the high LOD for carbofuran and consequent large numbers of non-detects in the PDP data. The LOD for most commodities is tenfold to twentyfold higher than the more precise methods used for the CMS and some of the more recent PDP data. Generally, EPA would consider use of ½ LOD as a conservative way of addressing non-detects but that may not be the case where the LOD is relatively insensitive and the risk of concern is an acute exposure. For acute risks, the higher values in a probabilistic risk assessment are often driven by relatively high values in a few commodities rather than relatively lower values in a greater number of commodities. This is due to the fact that an acute assessment looks at a narrow window of exposure where there are unlikely to be a great variety of foods consumed. Thus, to the extent that there is a high exposure it will be more likely due to a high residue value in a single commodity. However, assuming ½ LOD for non-detects does not reflect that the non-detects actually will bear a range of values from close to or near zero to close to or near the LOD. Importantly, those commodities bearing residues only slightly below the LOD may result in an exceedance of the aPAD where assuming ½ LOD would not. In this way, the ½ LOD analysis may actually understate risk. In these circumstances, reliance on ½ LOD can skew the distribution of residues, which in turn masks the true ''tail end'' of exposures. In other words, to the extent that the ½ LOD underestimates exposures for some individual commodities, it effectively decreases the probability of receiving higher residues, thereby shifting those values with greater risks to the tail end of the distribution curve, above the 99.9th percentile.

The second important point from these tables is that the exceedances from both the 50th and 90th percentile consumer are quite large—sometimes orders of magnitude above safe doses. The size of these exceedances gives rise to concerns that the exceedances are more likely to result in actual harm to exposed individuals, particularly if they are also consuming carbofuran-contaminated drinking water. Additionally worrisome in this regard is that carbofuran is a highly potent (*i.e.*, has a very steep dose-response curve), acute toxicant, and therefore any aPAD exceedances are more likely to have greater significance in terms of the potential likelihood of actual harm.

Finally, that Tables 5 and 6 show large exceedances across several crops for which relatively more residue data are available suggests these results are not unique to the specific crops for which precise residues have been detected in PDP and MBS. In other words, crops for which such residue data are not available may be posing similar risks.

In sum, these results strongly support EPA's conclusion that its dietary exposure assessment for carbofuran has not overstated exposure and risk. Further, serious questions remain as to the extent to which similar exceedances exist for all crops, but which remain undetected, because, as result of the high LOD, EPA lacks precise residue levels for the majority of crops.

2. *Drinking water exposures*. EPA's drinking water assessment uses both monitoring data for carbofuran and modeling methods, and takes into account contributions from both surface water and groundwater sources (Refs. 3, 4, 13, 36 and 47). Concentrations of carbofuran in drinking water, as with any pesticide, are in large part determined by the amount, method, timing and location of pesticide application, the chemical properties of the pesticide, the physical characteristics of the watersheds and/or aquifers in which the community water supplies or private wells are located, and other environmental factors, such as rainfall, which can cause the pesticide to move from the location where it was applied. While there is a considerable body of monitoring data that has measured carbofuran residues in surface and groundwater sources, the locations of sampling and the sampling frequencies generally are not sufficient to capture peak concentrations of the pesticide in a watershed or aquifer where carbofuran is used. Capturing these peak concentrations is particularly important for assessing risks from carbofuran because the toxicity end-point of concern results from single-day exposure (acute effects). Because pesticide loads in surface water tend to move in relatively quick pulses in

flowing water, frequent targeted sampling is necessary to reliably capture peak concentrations for surface water sources of drinking water. Pesticide concentrations in ground water, however, are generally the result of longer-term processes and less frequent sampling can better characterize peak ground water concentrations. However, such data must be targeted at vulnerable aquifers in locations where carbofuran applications are documented in order to capture peak concentrations. As a consequence, monitoring data for both surface and groundwater tends to underestimate exposure for acute endpoints. Simulation modeling complements monitoring by making estimations at vulnerable sites and can be used to represent daily concentration profiles, based on a distribution of weather conditions. Thus, modeling can account for the cases when a pesticide is used in drinking water watersheds at any rate and is applied to a substantial proportion of the crop. It can also account for stochastic processes, such as rainfall represented by 30 years of existing weather data maintained by the National Oceanic and Atmospheric Administration.

a. *Exposure to carbofuran from drinking water derived from ground water sources.* Drinking water taken from shallow wells is particularly vulnerable to contamination in areas where carbofuran is used around sandy, highly acidic soil. Some areas with these characteristics include Long Island, parts of Florida, and the Atlantic coastal plain, in addition to other areas of the country. Exposure estimates for this assessment are drawn primarily from (1) the results of a prospective groundwater (PGW) study developed by the registrant in the early 1980s; and (2) additional groundwater modeling conducted as part of the NMC cumulative assessment in 2007. The results of the PGW study are consistent with a number of other targeted groundwater studies conducted in the 1980s showing that high concentrations of carbofuran can occur in vulnerable areas; the results of these studies as well as the PGW study are summarized in (Refs. 13 and 47). For example, a study in Manitoba, Canada assessed the movement of carbofuran into tile drains and groundwater from the application of liquid carbofuran to potato and corn fields. The application rates ranged between 0.44–0.58 pounds a.i./acre, and the soils at the site included fine sand, loamy fine sand, and silt loam, with pH ranging between 6.5–8.3. Concentrations of carbofuran in groundwater samples ranged between 0 (non-detect) and 158 ppb, with a mean of 40 ppb (Refs. 13 and 47).

While there have been additional groundwater monitoring studies that included carbofuran as an analyte since that time, there has been no additional monitoring targeted to carbofuran use in areas where aquifers are vulnerable. Accordingly, EPA believes the PGW study continues to be the most relevant monitoring data for assessing drinking water exposures from private wells at vulnerable sites. Because this study was conducted over only one growing season, however, and was conducted at use rates that now exceed current label maximum rates for the use being studied (3 lb ai/acre vs. the current 2 lb ai/acre for corn), EPA has scaled the results to represent impacts from carbofuran use over a long-term period (25 years) at current label rates. Temporal scaling was necessary because the PGW study represents water quality impacts from a single application rather than repeated years of use. Based on EPA's assessment, the maximum 90–day average carbofuran concentrations in vulnerable groundwater for various application rates were estimated to range from a low of 11 parts per billion (ppb) based on a 1 pound per acre application rate, to a high of 34 ppb, based on a 3 pound per acre application rate. The peak concentration measured in the PGW study was 65 ppb. Because the degradate 3-hydroxycarbofuran, which is assumed to be of equal potency with the parent compound, was not measured in this study, exposure was not estimated. Although the failure to include the degradate is expected to underestimate exposure to some degree, the extent to which it would contribute to exposure is unclear.

EPA conducted additional groundwater modeling for the NMC cumulative risk assessment, and developed a time series of exposures at locations selected based on potential for exposure to a combination of carbamate insecticides relevant for cumulative exposure assessment for use in probabilistic dietary assessments using DEEM. EPA estimated carbofuran groundwater concentrations associated with two possible use scenarios: potatoes in northeastern Florida and cucurbits on the Delmarva Peninsula in the Mid-Atlantic region. While the modeled potato use scenario in Florida did not show concentrations of carbofuran of concern, estimated carbofuran concentrations associated with the cucurbit use in the Delmarva Peninsula – a region with shallow, acidic groundwater and acidic, sandy soils – are consistent with EPA's assessment of the PGW study discussed above. Specifically, the assessment indicated that at an application rate of 1.25 pounds a.i. per acre, on cucurbits, maximum concentrations were 38.5 ppb (Ref. 63). EPA does not believe the results of this assessment are particularly conservative, since the application rate used in this assessment was less than the maximum rate of 1.94 lb/acre that growers can use. Also, concentrations of the degradate, 3-hydroxycarbofuran were not included in modeling simulations, which would tend to underestimate exposure to some degree.

Based on these estimates, EPA compiled a distribution of estimated carbofuran concentrations in water that could be used to generate probabilistic assessments of the potential exposures from drinking water derived from vulnerable ground water sources. The results of EPA's probabilistic assessments are represented below in Table 7. As discussed in the previous section, it is important to remember that the aPAD for carbofuran is quite low, hence, relatively low concentrations of carbofuran monitored or estimated in vulnerable groundwater can have a significant impact on the aPAD utilized.

TABLE 7—RESULTS OF ACUTE DIETARY (GROUND WATER ONLY) EXPOSURE ANALYSIS USING DEEM FCID AND INCORPORATING THE DELMARVA GROUND WATER SCENARIO (REPRESENTING PRIVATE WELLS)

Population Subgroup	aPAD (mg/kg/day)	95th Percentile		99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
All Infants (< 1 year old)	0.000075	0.003800	5,100	0.006006	8,000	0.010030	>10,000
Children 1–2 years old	0.000075	0.001612	2,100	0.002732	3,600	0.004628	6,200

TABLE 7—RESULTS OF ACUTE DIETARY (GROUND WATER ONLY) EXPOSURE ANALYSIS USING DEEM FCID AND INCORPORATING THE DELMARVA GROUND WATER SCENARIO (REPRESENTING PRIVATE WELLS)—Continued

Population Subgroup	aPAD (mg/kg/day)	95th Percentile		99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
Children 3–5 years old	0.000075	0.001459	1,900	0.002405	3,200	0.004613	5,600
Children 6–12 years old	0.000075	0.001018	1,360	0.001710	2,300	0.002792	3,700
Youth 13–19 years old	0.0002	0.000809	400	0.001441	720	0.002919	1,500
Adults 20–49 years old	0.0002	0.000955	480	0.001632	820	0.003073	1,500
Adults 50+ years old	0.0002	0.000884	440	0.001345	670	0.002271	1,100

While the registrant has attempted to address drinking water exposure from ground water sources by including on current carbofuran product labeling an advisory statement warning growers against application in vulnerable areas, this language does not prohibit use in such areas. In addition, EPA does not believe that the available information demonstrates that even the additional restrictions that FMC included on its labels submitted in May, 2008 would adequately mitigate the risk of contaminating all vulnerable ground water (Refs. 18 and 54). For example, those restrictions were based on the use of a particular methodology to evaluate the characteristics in the site used in the PGW study in the Delmarva Penninsula. Using that as a surrogate to identify sites with vulnerability to ground water contamination, FMC identified counties that had higher vulnerability scores than the site used for the PGW study in the Delmarva Penninsula, and proposed label restrictions to preclude use in such areas. While EPA agrees in principle that precluding use in sites vulnerable to leaching can mitigate the risks, and even presuming that the methodology used by FMC adequately identifies those sites, sites less vulnerable than the PGW site would still be vulnerable to contamination, and the proposed restrictions in no way addressed the less sensitive, but still vulnerable, sites (Refs. 18 and 54). Accordingly, EPA continues to believe that its assessment of drinking water from groundwater sources based on current labels is a realistic assessment of potential exposures to those portions of the population consuming drinking water from shallow wells in highly vulnerable areas.

b. *Exposure from drinking water derived from surface water sources.* EPA's evaluation of environmental drinking water concentrations of carbofuran from surface water, as with its evaluation of groundwater, takes into account the results of both surface water monitoring and modeling.

Data compiled in 2002 by EPA's Office of Water show that carbofuran was detected in treated drinking water at a few locations. Based on samples collected from 12, 531 ground water and 1,394 surface water source drinking water supplies in 16 states, carbofuran was found at no public drinking water supply systems at concentrations exceeding 40 ppb (the MCL). Carbofuran was found at one public ground water system at a concentration of greater than 7 ppb and in two ground water systems and one surface water public water system at concentrations greater than 4 ppb (measurements below this limit were not reported). Sampling is costly and is conducted typically four times a year or less at any single drinking water facility. The overall likelihood of collecting samples that capture peak exposure events is, therefore, low. For chemicals with acute risks of concern, such as carbofuran, higher concentrations and resulting risk is primarily associated with these peak events, which are not likely to be captured in monitoring unless the sampling rate is very high.

Unlike drinking water derived from private groundwater wells, public water supplies (surface water or ground water source) will generally be treated before it is distributed to consumers. An evaluation of laboratory and field monitoring data indicate that carbofuran may be effectively removed (60 – 100%) from drinking water by lime softening and activated carbon; other treatment process are less effective in removing carbofuran (Ref. 63). The detections between 4 and 7 ppb, reported above, represent concentrations in samples collected post-treatment. As such, these levels are of particular concern to the Agency. An infant who consumes a single 8 ounce serving of water with a concentration of 4 ppb, as detected in the monitoring, would receive 121% of the aPAD. An infant who consumes a single 8 ounce serving of water with the higher detected concentration of 7 ppb, as detected in the monitoring, would receive 210% of the aPAD.

To further characterize carbofuran concentrations in surface water (*e.g.*, streams or rivers) that may drain into drinking water reservoirs, EPA analyzed the extensive source of national water monitoring data for pesticides, the United States Geological Survey National Water Quality Assessment (USGS NAWQA) program. The NAWQA program focuses on ambient water rather than on drinking water sources, is not specifically targeted to the high use area of any specific pesticide, and is sampled at a frequency (generally weekly or bi-weekly during the use season) insufficient to provide reliable estimates of peak pesticide concentrations in surface water. For example, significant fractions of the data may not be relevant to assessing exposure from carbofuran use, as there may be no use in the basin above the monitoring site. Unless ancillary usage data are available to determine the amount and timing of the pesticide applied, it is difficult to determine whether non-detections of carbofuran were due to a low tendency to move to water or from a lack of use in the basin. The program, rather, provides a good understanding on a national level of the occurrence of pesticides in flowing water bodies that can be useful for screening assessments of potential drinking water sources. A detailed description of the pesticide monitoring component of the NAWQA program is available on the NAWQA Pesticide National Synthesis Project (PNSP) web site (http://ca.water.usgs.gov/pnsp/).

A summary of the first cycle of NAWQA monitoring from 1991 to 2001 indicates that carbofuran was the most frequently detected carbamate pesticide in streams and ground water in agricultural areas. Overall, where

carbofuran was detected, these non-targeted monitoring results generally found carbofuran at levels below 0.5 ppb. In the NMC assessment, EPA summarized NAWQA monitoring for carbofuran between 1991 and 2004. Maximum surface-water concentrations exceeded 1 ppb in approximately nine agricultural watershed-based study units, with detections in the sub-ppb range reported in additional watersheds (Ref. 63). The highest concentrations of carbofuran are reported from at a sampling station on Zollner Creek, in Oregon. Zollner Creek, located in the Molalla-Pudding sub-basin of the Willamette River, is not directly used as a drinking water source. This creek is a low-order stream and its watershed is small (approximately 40 km2) and intensively farmed, with a diversity of crops grown, including plant nurseries. USGS monitoring at that location from 1993 to 2006 detected carbofuran annually in 40–100 % of samples. Although the majority of concentrations detected there are also in the sub-part per billion range, concentrations have exceeded 1 ppb in 8 of the 14 years of sampling. The maximum measured concentration was 32.2 ppb, observed in the spring of 2002. The frequency of detections generally over a 14–year period suggests that standard use practices rather than aberrational misuse incidents in the region are responsible for high concentration levels at this location.

While available monitoring from other portions of the country suggests that the circumstances giving rise to high concentrations of carbofuran may be rare, overall, the national monitoring data indicate that EPA cannot dismiss the possibility of detectable carbofuran concentrations in some surface waters under specific use and environmental conditions. Even given the limited utility of the available monitoring data, there have been relatively recent measured concentrations of carbofuran in surface water systems at levels above 4 ppb (concentrations of 4–7 ppb would result in exposures of 121–210% of the aPAD for an infant consuming 8 oz of water) and levels of approximately 1 to 30 ppb measured in streams representative of those in watersheds that support drinking water systems (Ref. 63). Based on this analysis, and since monitoring programs have not been sampling at a frequency sufficient to detect daily-peak concentrations that are needed to assess carbofuran's acute risk, the available monitoring data, in and of themselves, are not sufficient to establish the risks posed by carbofuran in surface drinking water are below thresholds of concern. Nor can this data be reasonably used to establish a lower bound of potential carbofuran risk through this route of exposure.

To further characterize carbofuran risk through drinking water derived from surface water sources, EPA modeled estimated daily drinking water concentrations of carbofuran using PRZM to simulate field runoff processes and EXAMS to simulate receiving water body processes. These models were summarized in Unit V.B.2.

There are sources of uncertainty associated with estimating exposure of carbofuran in surface water source drinking water. Several of the most significant of these are the effect of treatment in removing carbofuran from finished drinking water before it is delivered to the consumer supply system, the impact of percent crop treated assumptions, and the variation in pH across the landscape. The effect of the percent crop treated assumption in the case of carbofuran is discussed in detail in EPA's assessment of additional data submitted by the registrant (Refs. 18 and 54) and summarized below. Available data on the degree to which carbofuran may be removed from treatment systems was summarized previously and is discussed in more detail in Appendix E-3 of the Revised NMC Cumulative Assessment (Ref. 63). Although EPA is aware of the mitigating effects of specific treatment processes, the processes employed at public water supply utilities across the country vary significantly both from location to location and throughout the year, and therefore are difficult to incorporate quantitatively in drinking water exposure estimates. Therefore, EPA assumes that there is no reduction in carbofuran concentrations in surface water source drinking water due to treatment, which is a source of conservatism in surface water exposure estimates used for human health risk assessment. While it is well established that carbofuran will degrade at higher rates when the pH is above 7, and lower rates when below pH 7, due to the high variation of pH across the country a neutral pH (pH 7) default value was used to estimate water concentrations. Finally, available environmental fate studies do not show formation of 3-hydroxycarbofuran through most environmental processes except soil photolysis, where in one study it was detected in very low amounts. Although 3-hydroxycarbofuran was not explicitly considered as a separate entity in the drinking water exposure assessment, it is unclear whether it would significantly add to exposure estimates.

EPA compiled a distribution of estimated carbofuran concentrations in surface water in order to conduct probabilistic assessments of the potential exposures from drinking water. For the IRED, EPA modeled crops representing 80 percent of total carbofuran use at locations that would be considered among the more vulnerable where the crops are grown. Modeling was conducted at a range of application rates and included adjustments to reflect different regional levels for agricultural intensity, resulting in estimated 1-in-10-year (peak) concentrations of 0.11–75 ppb (Refs. 5 and 36). For corn, carbofuran concentration estimates assuming different rates and regional percent cropped area (PCA) factors reflective of corn intensity nationally resulted in a range of peak concentrations of 4 – 26 ppb. For the dietary risk assessment, EPA generated distributions for 13 different scenarios representing all labeled uses of carbofuran treated at maximum label rates and adjusted with PCA factors (Refs. 3, 13 and 47). Peak concentrations for these distributions ranged from 3.2 to 168 ppb (excluding use on bananas), with the corn use at 26 ppb (Refs. 3 and 47).

EPA has subsequently conducted several rounds of modeling to refine estimates for specific uses and agricultural practices. One set of refinements addressed use of carbofuran on corn at typical rather than maximum label rates and application practices that assume the only use of carbofuran in a watershed is on corn. Simulations included those specific to control European corn borer, a rescue treatment for corn rootworm, and an in-furrow application at plant. The assessment also included estimates resulting from treatment at the maximum label rate, for comparative purposes. The peak concentrations estimated ranged from 3.9 to 16.6 ppb for the refined analyses, compared to 32.9 ppb at the maximum application rate (Ref. 4). The range of 3.9 to 16.6 ppb is approximately 1 to 4 times the values of the 4 ppb detected in finished water from a surface water drinking plant, as summarized previously, and approximately twofold to tenfold lower than the maximum peak concentration of 32.2 ppb reported in the USGS-NAWQA data set.

Additional refined modeling assessments were based on a proposed label submitted by FMC in May 2008. The refinements focused on two uses currently allowed on the existing label that would have remained under the withdrawn label: a corn rootworm rescue treatment, evaluated at 7 representative sites, and an at-plant

treatment for melons evaluated at 4 additional sites. EPA developed 5 additional corn scenarios representing use in states with extensive carbofuran usage at locations more vulnerable than most in each state in areas corn is grown. Using measured rainfall values, and assuming typical rather than maximum use rates, these assessments focused on the corn rescue treatment (Ref. 4). Peak concentrations for the corn rescue treatments simulated for Illinois, Iowa, Indiana, Kansas, Minnesota, Nebraska, and Texas ranged from 16.6 – 36.7 ppb. For refinement of estimates for the other use, melons, EPA developed 3 additional melon scenarios representing states with extensive carbofuran usage at locations more vulnerable than most in each state in areas melons are grown. EPA used measured rainfall values and a wide row spacing to simulate an application rate less than half of what is allowed as the maximum rate for melons (0.65 versus 1.94 lb/A). Peak concentrations resulting from a single ground application of carbofuran at plant in Florida, Michigan, Missouri, and New Jersey resulted in peak concentrations from 4.2 – 24.4 ppb (Id.). Additional details on these assessments can be found at Ref. 4. Consistent with the analysis summarized above these predicted carbofuran water concentrations are similar to or lower than the peak concentrations reported in the USGS-NAWQA monitoring data and similar to or not more than tenfold higher than the 4 ppb reported in finished water from a surface water drinking plant.

There are few surface water field-scale studies targeted to carbofuran use that could be compared with modeling results. Most of these studies were conducted in fields that contain tile drains, which is a common practice throughout midwestern states to increase drainage in agricultural fields (Ref. 13). Drains are common in the upper Mississippi river basin (Illinois, Iowa, and the southern part of Minnesota), and the northern part of the Ohio River Basin (Indiana, Ohio, and Michigan) (Ref. 42). Although it is not possible to directly correlate the concentrations found in most of the studies with drinking water concentrations, these studies confirm that carbofuran use under such circumstances can contaminate surface water, as tile drains have been identified as a pathway for contamination of surface water. For example, one study conducted in the United Kingdom in 1991 and 1992 looked at concentrations in tile drains and surface water treated at a rate of 2.7 lbs a.i. per acre (granular formulation). Resulting concentrations in surface water downstream of the field ranged from 49.4 ppb almost two months after treatment to 0.02 ppb 6 months later, and were slightly lower than concentrations measured in the tile drains, which were a transport pathway. Even with the factors that limit the study's relevance to the majority of current carbofuran use—the high use rate and granular formulation—the study clearly confirms that tile drains can serve as a source of significant surface water contamination. Although EPA's models do not account for tile drain pathways, and acknowledging the uncertainties in comparing carbofuran monitoring data to the concentrations predicted from the exposure models, as noted previously, estimated (model-derived) peak concentrations of carbofuran are similar to peak concentrations reported in stream monitoring studies and are no more than tenfold higher than a value reported from a drinking water plant where it is unlikely the sample design would have ensured that water was sampled on the day of the peak concentration.

EPA conducted dietary exposure analyses based on the modeling scenarios for the current label as well as scenarios comparable to the uses on FMC's proposed label of May 2008. Exposures from all modeled scenarios substantially exceeded EPA's level of concern (Ref. 12). For example, an Illinois corn scenario, assuming 2 foliar applications at a typical 1–lb a.i. per acre use rate, estimated a 1-in-10-year peak carbofuran water concentration of 26 ppb. Exposures at the 99.9th percentile based on this modeled distribution ranged from 860% of the aPAD for youths 13–19 to greater than 10,000% of the aPAD for infants. This scenario is intended to be representative of highly vulnerable sites on which corn could be grown on a national basis, and is used as a screen for corn on a national basis. Similarly, exposures based on an Idaho potato scenario, and using a 3 lb a.i. acre rate, ranged from 230% of the aPAD for children 6–12 to 890% of the aPAD for infants, with a1-in-10-year peak carbofuran concentration of 10 ppb. Although other crop scenarios resulted in higher exposures, estimates for these two crops are presented here, as they are major crops on which a large percentage of carbofuran use occurs. More details on these assessments, as well as the assessments EPA conducted for other crop scenarios, can be found in Refs. 4, 12 and 47.

Table 8 below presents the results of one of EPA's refined exposure analyses that addresses a use comparable to one in FMC's proposed May 2008 label. This example is based on a Nebraska corn rootworm ''rescue treatment'' scenario, and assumes a single aerial application at a typical rate of 1 pound a.i. per acre. To simulate an application made post-plant, at or near rootworm hatch, EPA modeled an application of carbofuran 30 days after crop emergence. EPA used a crop specific PCA of 0.46 which is the maximum proportion of corn acreage in a Hydrologic Unit Code 8-sized basin in the United States. (The U.S. Geological Survey has classified all watersheds in the US into basins of various sizes, according to hydrologic unit codes, in which the number of digits indicates the size of the basin). The full distribution of daily concentrations over a 30–year period was used in the probabilistic dietary risk assessment. The 1-in-10-year peak concentration of the distribution of values for the Nebraska corn rescue treatment was 22.3 ppb. More details on these assessments, as well as the assessments EPA conducted for other crop scenarios, can be found in Refs. 4, 12 and 47.

TABLE 8—RESULTS OF ACUTE DIETARY (SURFACE WATER ONLY) EXPOSURE ANALYSIS INCORPORATING THE NEBRASKA CORN ROOTWORM RESCUE SCENARIO

Population Subgroup	aPAD (mg/kg/day)	95th Percentile		99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
All Infants (< 1 year old)	0.000075	0.000444	590	0.001236	1,650	0.002912	3,900
Children 1–2 years old	0.000075	0.000190	250	0.000517	690	0.001267	1,700
Children 3–5 years old	0.000075	0.000177	240	0.000473	630	0.001144	1,500

TABLE 8—RESULTS OF ACUTE DIETARY (SURFACE WATER ONLY) EXPOSURE ANALYSIS INCORPORATING THE NEBRASKA CORN ROOTWORM RESCUE SCENARIO—Continued

Population Subgroup	aPAD (mg/kg/day)	95th Percentile		99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
Children 6–12 years old	0.000075	0.000122	160	0.000329	440	0.000801	1,100
Youth 13–19 years old	0.0002	0.000091	45	0.000255	130	0.000671	340
Adults 20–49 years old	0.0002	0.000118	60	0.000313	160	0.000766	380
Adults 50+ years old	0.0002	0.000125	60	0.000307	150	0.000671	340

The populations described in the ''Nebraska corn'' assessments are those people who consume water from a reservoir located in a small watershed predominated by corn production (with the assumption that treatment does not reduce carbofuran concentrations). The only crop treated by carbofuran in the watershed is corn, and all of that crop is assumed treated with carbofuran at the rate of 1 lb per acre. To the extent a drinking water plant drawing water from the reservoir normally treats the raw intake water with lime softening or activated carbon processes the finished water concentrations could be reduced from 60 to 100% with the resultant aPADs ranging from approximately 460 to 102% of the aPAD to 0% of the aPAD, respectively, at the 99.9th percentile of exposure.

As discussed in the previous sections, it is important to remember that carbofuran's aPAD is quite low, hence relatively low concentrations of carbofuran monitored or estimated in surface water can have a significant impact on the percent of the aPAD utilized. Thus, while the refined carbofuran water concentrations for the corn ''rescue'' treatment in the range of approximately 16.6 to 36.7 ppb are comparable to maximum peak concentrations reported in the monitoring studies, these concentrations can result in very significant exceedences of the aPAD for various age groups, primarily because carbofuran is inherently very toxic.

FMC has criticized EPA's assessment for failing to account more fully for the percent of the crop treated (PCT) in its modeling. Uncertainty associated with PCT assumptions can be a major factor in EPA's drinking water exposure assessment for surface-water sources. Estimates of the percent of major crops (for example, corn) that are treated with pesticides are available at the state level, but are generally not available on a smaller scale suitable for estimating drinking water exposure in a watershed. In addition, the PCT should be assessed at a watershed-scale, aggregating all crops treated with the pesticide in a watershed. If state-scale estimates are used to account for PCT it will underestimate the risk for some of the drinking water facilities in the state as the state-wide estimate represents an average: values for individual facilities will be both lower and higher than the state-wide estimate. In some cases, the underestimate can be substantial if the application pattern tends to form cluster or pockets of high usage. Insecticides like carbofuran are particularly prone to this use pattern, as insect outbreaks often tend to be locally intense, rather than widespread. In addition, marginal use practice changes in a given watershed can substantially affect the percentage of the crop treated, and such changes are effectively impossible to track. Without data collected at a finer spatial scale, it is not possible to know whether pesticide usage is evenly dispersed through the state or is locally clustered. This results in large uncertainty in the drinking water exposure assessments when percent crop treated is moderate or low. Consequently, EPA does not typically include such information in its surface-water exposure assessments.

However, in response to FMC's concerns, EPA performed a sensitivity analysis of an exposure assessment using a PCT in the watershed to determine the extent to which some consideration of this factor could meaningfully affect the outcome of the risk assessment. The registrant has at different times, suggested the application of a 5 or 10% crop treated based on county sales data. While substantial questions remain as to the support for these percentages for a given basin where carbofuran may be used, EPA used the upper figure for the purpose of conducting a sensitivity analysis. The results suggest that, even at levels below 10% crop treated, exposures from drinking water derived from surface waters can contribute significantly to the aggregate dietary risks, particularly for infants and children. For example, applying a 10% crop treated figure to the Nebraska corn scenario described above, in addition to the corn-PCA of 0.46 incorporated into that scenario, results in estimated exposures from water alone, ranging from 110% of the aPAD for children 6–12 to 390% of the aPAD for infants, assuming water treatment processes do not affect concentrations in drinking water consumed. Details on the assessments EPA conducted for other crop scenarios, which showed higher contributions from drinking water, can be found in Refs. 12, 13 and 47. Accordingly, these assessments suggest that EPA's use of PCA alone, rather than in conjunction with PCT, will not meaningfully affect the carbofuran risk assessment, as aggregate exposures would still exceed 100% of the aPAD.

In conclusion, the large difference between concentrations seen in the monitoring data on the low side, and the simulation modeling on the high side, is an indication of the uncertainty in the assessment for surface-water source drinking water exposure. The majority of drinking water concentrations resulting from use of carbofuran are likely to be occurring at higher concentrations than those measured in most monitoring studies, but below those estimated with simulation modeling; however the exact values are highly uncertain. However, the monitoring data show a consistent pattern of low concentrations, with the occasional, infrequent spike of high concentrations. Those infrequent high concentrations are consistent with EPA's modeling, which is intended to capture the exposure peaks. For a chemical with an acute risk, like carbofuran, the spikes or peaks in exposures, even though infrequent, are the most relevant for assessing the risks. And, as previously noted, the available monitoring has its own limitations for estimating exposure for risk assessment.

Further, the results of the modeling analyses provide critical insights

regarding locations in the country where the potential for carbofuran contamination to surface water and associated drinking water sources are more likely. These locations include areas with soils prone to runoff (such as those high in clay or containing restrictive layers), in regions with intensive agriculture with crops on which carbofuran is used (*e.g.* corn), which have high rainfall amounts and/or are subject to intense storm events in the spring around the times applications are being made. Drinking water facilities with small basins tend to be more vulnerable, as it is more likely that a large proportion of the crop acreage will be treated in small basins.

Apparently FMC also has determined that some drinking water facilities associated with surface source waters are vulnerable to carbofuran exposure. In the now withdrawn labels FMC proposed to require buffer zones around surface waters in certain locations of the country, presumably to protect surface water. The proposed buffers were for fields where soils were considered to be highly erodible. Buffers were to be 66 feet wide and were to be vegetated with ''crop, seeded with grass, or other suitable crop''. In 2000, EPA participated in the development of a guidance document on how to reduce pesticide runoff using conservation buffers (Ref. 55). Results of this effort found that properly designed buffers can reduce runoff of weakly absorbed pesticides like carbofuran by increasing filtration so that the pesticide can be trapped and degraded in the buffer. However, it is of critical importance that sheet flow be maintained across the buffer in order for this to occur. To ensure sheet flow, buffers need to be specifically designed for that purpose and they must be well-maintained, as over time sediment trapped in the buffer causes flow to become more channelized and the buffer then becomes ineffective. The guidance concludes that un-maintained, un-vegetated buffers around water bodies, often referred to a 'setback,' are ineffective in reducing pesticide movement to surface water.

3. *Aggregate dietary exposures (food and drinking water).* EPA conducted a number of probabilistic analyses to combine the national food exposures with the exposures from the individual region and crop-specific drinking water scenarios. Although food is distributed nationally, and residue values are therefore not expected to vary substantially throughout the country, drinking water is locally derived and concentrations of pesticides in source water fluctuate over time and location for a variety of reasons. Pesticide residues in water fluctuate daily, seasonally, and yearly as a result of the timing of the pesticide application, the vulnerability of the water supply to pesticide loading through runoff, spray drift and/or leaching, and changes in the weather. Concentrations are also affected by the method of application, the location and characteristics of the sites where a pesticide is used, the climate, and the type and degree of pest pressure. Consequently, EPA conducted several estimates of aggregate dietary risks by combining exposures from food and drinking water. All of these estimates showed that aggregate exposures to carbofuran residues are unsafe. More details on the individual aggregate assessments presented below, as well as the assessments EPA conducted for other regional and crop scenarios, can be found in Refs. 12 and 13.

Table 9 below reflects the results of aggregate exposures from food and from drinking water derived from ground water in vulnerable areas (*i.e.*, from shallow wells associated with sandy soils and acidic aquifers, such as are found in the Delmarva Peninsula). The estimates range between 1,100% of the aPAD for adults, to over 10,000% of the aPAD for infants.

TABLE 9—RESULTS OF ACUTE DIETARY (FOOD AND WATER) EXPOSURE ANALYSIS INCORPORATING THE DELMARVA GROUND WATER SCENARIO

Population Subgroup	APAD (mg/kg/day)	95th Percentile		99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
All Infants (< 1 year old)	0.000075	0.003799	5,100	0.006026	8,000	0.010011	>10,000
Children 1–2 years old	0.000075	0.001622	2,200	0.002740	3,700	0.004644	6,200
Children 3–5 years old	0.000075	0.001465	2,000	0.002414	3,200	0.004273	5,700
Children 6–12 years old	0.000075	0.001026	1,400	0.001715	2,300	0.002825	3,800
Youth 13–19 years old	0.0002	0.000813	410	0.001442	720	0.002921	1,500
Adults 20–49 years old	0.0002	0.000958	480	0.001638	820	0.003091	1,500
Adults 50+ years old	0.0002	0.000888	440	0.001351	680	0.002278	1,100

The peak concentration estimates in the Delmarva groundwater scenario time series are consistent with monitoring data from wells in vulnerable areas where carbofuran was used. For example, the maximum water concentration from the time series is 38.5 ppb while maximum values from a targeted ground water monitoring study at the same site was 65 ppb, with studies at other sites having similar or higher peak concentrations (Refs. 13 and 47). For studies with multiple measurements at each well, central tendency estimates were also in the same range as the time series. For example, the mean carbofuran concentration from wells under no-till agriculture in Queenstown, MD was 7 ppb, while the median for the modeling was 15.5 ppb. The 90–day average concentration, based on the registrant's PGW study conducted on corn in the Delmarva (adjusted for current maximum application rates) is 22 ppb.

Table 10 below presents the results of aggregate exposure from food and derived from surface water using the Nebraska corn surface water scenario. This table reflects the risks only for those people in drinking watersheds with characteristics similar to that used in the scenario, and assuming that water treatment does not remove carbofuran.

As discussed previously, the estimated water concentrations are comparable to the maximum peak concentrations reported in monitoring studies that were not designed to detect peak, daily concentrations of carbofuran in vulnerable locations.

TABLE 10—RESULTS OF ACUTE DIETARY (FOOD AND WATER) EXPOSURE ANALYSIS USING THE NEBRASKA CORN SURFACE WATER SCENARIO

Population Subgroup	aPAD (mg/kg/day)	95th Percentile		99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
All Infants (< 1 year old)	0.000075	0.000448	600	0.001240	1,700	0.002899	3,900
Children 1–2 years old	0.000075	0.000200	270	0.000533	710	0.001326	1,800
Children 3–5 years old	0.000075	0.000187	250	0.000486	650	0.001190	1,600
Children 6–12 years old	0.000075	0.000128	170	0.000336	450	0.000824	1,100
Youth 13–19 years old	0.0002	0.000095	48	0.000264	130	0.000685	340
Adults 20–49 years old	0.0002	0.000122	61	0.000318	160	0.000785	390
Adults 50+ years old	0.0002	0.000129	65	0.000312	160	0.000689	340

Typically, EPA's food and water exposure assessments sum exposures over a 24–hour period, and EPA used this 24–hour total in developing its acute dietary risk assessment for carbofuran. Because of the rapid nature of carbofuran toxicity and recovery, EPA considered that it might be appropriate to consider durations of exposure less than 24 hours. EPA has developed an analysis using information about external exposure, timing of exposure within a day, and half-life of AChE inhibition from rats to estimate risk to carbofuran at durations less than 24 hours. Specifically, EPA has evaluated individual eating and drinking occasions and used the AChE half-life information to estimate the residual effects from carbofuran from previous exposures within the day. The carbofuran analyses are described in the July 2008 aggregate (dietary) memo (Ref. 12).

EPA has used two approaches for considering the impact of rapid reversibility on exposure estimates in the food and drinking water risk assessments. EPA previously used these approaches in the cumulative risk assessment of the NMC pesticides and/or risk assessments for other NMC pesticides (*e.g.*, methomyl and aldicarb) (Ref. 63).

Incorporating eating occasion analysis and either the 150 minute or 300 minute recovery half life for carbofuran into the food only analysis does not significantly change the risk estimates when compared to baseline levels (for which a total daily consumption basis – and not eating occasion - was used). From this, it is apparent that modifying the analysis such that information on eating (*i.e.* food) occasions and carbofuran half life is incorporated results in only minor reductions in estimated risk.

The food analysis showed that over 70% of exposures at the top 0.2 percentile for children ages 1–2 and 3–5 are from a single eating event of carbofuran indicating that carbofuran's food risk is not substantively overstated. Moreover, when incorporating half-life to recovery information, risks from summing exposures over 24 hours are similar to those when incorporating half-life to recovery of 150 or 300 minutes. Regarding drinking water exposure, accounting for drinking water consumption throughout the day and using the half-life to recovery information, risk is reduced by approximately 2–3X.

Consequently, risk estimates for which food and drinking water are jointly considered and incorporated (i.e, Food + Drinking Water) are reduced considerably—by a factor of two or more in some cases—compared to baseline. This is not unexpected, as infants receive much of their exposures from indirect drinking water in the form of water used to prepare infant formula. But even though the risk estimates from aggregate exposure are reduced, they nonetheless still substantially exceed EPA's level of concern for infants and children. Using drinking water derived from the surface water from the New Jersey melon scenario, which estimated one of the lower exposure distributions, aggregate exposures ranged from a low of 280% of the aPAD for infants, based on a 150–minute half-life, to a high of 370% of the aPAD for infants, based on a 300–minute half-life.

The two approaches discussed above are used to evaluate the extent to which the Agency's 24–hour approach to dietary risk assessment overestimates risk from carbofuran exposure. The results of both approaches indicate that the risk to carbofuran is indeed not substantively overestimated using the current exposure models and the 24–hour approach. This is due to the fact that exposure to carbofuran occurs predominantly through single eating events and not from multiple events that occur throughout the day. Based on these analyses, the Agency concludes that the current exposure assessment methods used in the carbofuran dietary assessment provide realistic and high confidence estimates of risk to carbofuran exposure through food.

The result of all of these analyses clearly demonstrate that aggregate exposure from all uses of carbofuran fail to meet the FFDCA section 408 safety standard, and revocation of the associated tolerances is warranted. Based on the contribution from food alone, dietary exposures to carbofuran exceed EPA's level of concern for all of the more sensitive subpopulations of infants and children. In addition, EPA's analyses show that those individuals–both adults as well as children—who receive their drinking water from vulnerable sources are also exposed to levels that exceed EPA's level of concern—in some cases by orders of magnitude. This primarily includes those populations consuming drinking water from groundwater from shallow wells in acidic aquifers overlaid with sandy soils that have had crops treated with carbofuran. It could also include those populations that obtain their

drinking water from reservoirs located in small agricultural watersheds, prone to runoff, and predominated by crops that are treated with carbofuran, although there is substantially more uncertainty associated with these exposure estimates. Every sensitivity analysis EPA has performed has shown that estimated exposures significantly exceed EPA's level of concern for children. Although the magnitude of the exceedance varies depending the level of conservatism in the assessment, the fact that in each case, aggregate exposures from dietary exposures of carbofuran fail to meet the FFDCA section 408 safety standard strongly corroborates EPA's conclusion that aggregate exposures from all uses of carbofuran are not safe.

VII. When Do These Actions Become Effective?

The Agency is proposing that the revocations of the tolerances for all commodities except artichoke and sunflower seed become effective 60 days after a final rule is published. EPA is also proposing to establish an extended effective date for artichokes and sunflower seed, to allow growers of these crops additional time to transition to alternative compounds. The revocation for these two tolerances will become effective two years after a final rule or order is published. The Agency believes that these revocation dates will allow users to exhaust stocks of carbofuran currently in their possession. However, if EPA is presented with information during the comment period on this proposal that end-users may need additional time to utilize carbofuran stocks currently in their possession, and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding the effective date, or if you have comments on how long it would take you to utilize the carbofuran stocks currently in your possession, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodities listed in this proposal treated with the pesticide subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

VIII. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select Regulations and Proposed Rules and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IX. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (*e.g.*, tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This

action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et.seq, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute. This is required 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. The Agency has determined that no small organizations or small governmental jurisdictions are impacted by today's rulemaking.

For purposes of assessing the impacts of today's determination on businesses, a small business is defined either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each North American Industry Classification System (NAICS) code by the Small Business Administration (SBA). Farms are classified under NAICS code 111, Crop Production, and the SBA defines small entities as farms with total annual sales of $750,000 or less.

The Agency has examined the potential effects today's proposed rule may have on potentially impacted small businesses. Based on this analysis, EPA concludes that the Agency can certify that revoking the food tolerances for carbofuran will not have a significant economic impact on a substantial number of small entities (No SISNOSE) for alfalfa, artichoke, banana, chili pepper, coffee, cotton, cucurbits (cucumber, melons, pumpkin, and squash), grape, grains (barley, flax, oats, and wheat), field corn, potato, soybean, sorghum, sugarbeet, sugarcane, sunflower, and sweet corn. Even in a worst-case scenario, in which a grower obtains income only from a single crop and his/her entire acreage is affected, the impact generally amounts to less than 2% of gross income and would be felt by fewer than 3% of affected small producers. Estimates of impacts to corn growers were refined to account for the sporadic nature of need for carbofuran while still maintaining some assumptions that would bias the estimates upward. Refined estimates were also made for artichoke and sunflower, which consider the diversity in growers' revenue. The largest impact may be felt by artichoke growers, with impacts as high as 5% of gross revenue, but fewer than five growers are likely to be affected. EPA could not quantify the impacts to banana, sugarcane, and sweet corn producers, but the number of impacted farms is less than 2% of the farms subject to the action. Additional detail on the analyses EPA conducted in support of this certification can be found in Ref. 49.

X. References

EPA has established an official record for this rulemaking. The official record includes all information considered by EPA in developing this proposed rule including documents specifically referenced in this action and listed below, any public comments received during an applicable comment period, and any other information related to this action, including any information claimed as CBI. This official record includes all information physically CAlocated in docket ID number EPA–HQ–OPP–2005–0162, as well as any documents that are referenced in the documents listed below or in the docket. The public version of the official record does not include any information claimed as CBI.

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4. Additional refinements of the drinking water exposure assessment for the use of carbofuran on corn and melons (PC code 090601)(R. David Jones, 06/2008 D353714).

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11. California Department of Pesticide Regulation. Risk Characterization Document for Carbofuran. January 23, 2006. 219 pgs.

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List of Subjects in 40 CFR Part 180

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

Dated: July 23, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.254 is amended by revising the table in paragraph (a) and the table in paragraph (c), and by removing paragraph (d) to read as follows.

§ 180.254 Carbofuran; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Sunflower, seed (of which no more than 0.2 ppm is carbamate)	1.0	10/31/10

* * * * *

(c) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Artichoke, globe (of which no more than 0.2 ppm is carbamate)	0.4	10/31/10

[FR Doc. E8–17660 Filed 7–29–08; 1:15 pm]

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Federal Register

Thursday,
July 31, 2008

Part IV

The President

Notice of July 30, 2008—Continuation of the National Emergency With Respect To the Actions of Certain Persons To Undermine the Sovereignty of Lebanon Or Its Democratic Processes And Institutions

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Presidential Documents

Title 3—

The President

Notice of July 30, 2008

Continuation of the National Emergency With Respect To the Actions of Certain Persons To Undermine the Sovereignty of Lebanon Or Its Democratic Processes And Institutions

On August 1, 2007, by Executive Order 13441, I declared a national emergency and ordered related measures blocking the property of certain persons undermining the sovereignty of Lebanon or its democratic processes or institutions and certain other persons, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). I took this action to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions, to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation, to reassert Syrian control or contribute to Syrian interference in Lebanon, or to infringe upon or undermine Lebanese sovereignty which contributes to political and economic instability in that country and the region.

Because these actions continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on August 1, 2007, and the measures adopted on that date to deal with that emergency, must continue in effect beyond August 1, 2008. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13441.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
July 30, 2008.

[FR Doc. E8–17787
Filed 7–30–08; 10:30 am]

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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 31, 2008

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Animal and Plant Health Inspection Service

Citrus Canker; Movement of Fruit From a Quarantined Area; Bag Markings; published 7-31-08

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National Oceanic and Atmospheric Administration

Fisheries of the Northeastern United States:

Atlantic Mackerel, Squid, and Butterfish Fisheries; published 7-1-08

Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 9; Correction; published 7-30-08

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Massachusetts; published 7-31-08

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False Statements Regarding Security Background Checks; published 7-31-08

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Price-Anderson Act Financial Protection Regulations And Elimination of Antitrust Reviews; Correction; published 7-31-08

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Class E Airspace:

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Pagosa Springs, CO; Establishment; published 4-8-08

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IFR Altitudes; Miscellaneous Amendments; published 6-27-08

Modification of Restricted Areas R-5314A, B, C, D, E, F, H, and J; and Revocation of Restricted Area R-5314G; Dare County Range, NC; published 5-29-08

Revision of Class E Airspace:

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Internal Revenue Service

Grantor Retained Interest Trusts- Application of Sections 2036 and 2039; Correction; published 7-31-08

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Severance of a Trust for Generation-Skipping Transfer (GST) Tax Purposes; published 7-31-08

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Caribbean Monk Seal; comments due by 8-8-08; published 6-9-08 [FR E8-12808]

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Fisheries Off West Coast States:

Modifications of West Coast Commercial Salmon Fishery; (Inseason Action 3 and 4); comments due by 8-6-08; published 7-22-08 [FR E8-16784]

Fisheries Off West Coast States; Modifications of the West Coast Commercial Salmon Fishery:

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South Coast Air Quality Management District; comments due by 8-4-08; published 7-3-08 [FR E8-14883]

California State Implementation Plan; Revision:

Sierra Air Quality Management District, et al.; comments due by 8-8-08; published 7-9-08 [FR E8-15435]

Direct Final Approval of Revised Municipal Waste Combustor State Plan for Designated Facilities and Pollutants:

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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index.html. Some laws may not yet be available.

H.R. 1553/P.L. 110–285

Caroline Pryce Walker Conquer Childhood Cancer Act of 2008 (July 29, 2008; 122 Stat. 2628)

H.R. 3890/P.L. 110–286

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S. 2766/P.L. 110–288

Clean Boating Act of 2008 (July 29, 2008; 122 Stat. 2650)

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Housing and Economic Recovery Act of 2008 (July 30, 2008; 122 Stat. 2654)

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